



October 15, 2024
5:00 p.m.

Board of Adjustment Packet
Millhouse - Variance & Conditional Use
Permits for a Marijuana Retail Store

BOARD OF ADJUSTMENT HEARING
OCTOBER 15, 2024 - 5:00 P.M.
KENAI CITY COUNCIL CHAMBERS

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BOARD OF ADJUSTMENT HEARING

October 15, 2024 - 5:00 P.M.

Kenai City Council Chambers

210 Fidalgo Avenue, Kenai, Alaska

www.kenai.city

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Agenda

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF MINUTES

1. June 20, 2022 Hansen Appeal
2. June 20, 2022 Molloy-Schmidt Appeal
3. August 21, 2024 Carlyle Appeal

D. OPENING STATEMENT

1. Brian Gabriel, Board Chair

E. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

F. PUBLIC COMMENTS (5 minutes per speaker)

G. STAFF REPORT (15 minutes)

H. APPELLANT

1. Troy Millhouse, represented by Attorney Richard Moses (30 minutes)

I. APPELLEE

1. City of Kenai Planning & Zoning Department (30 minutes)

J. APPELLANT REBUTTAL

1. Troy Millhouse, represented by Attorney Richard Moses (10 minutes)

K. APPELLEE REBUTTAL

1. City of Kenai Planning & Zoning Department (10 minutes)

L. APPELLANT CLOSING ARGUMENTS

1. Troy Millhouse, represented by Attorney Richard Moses (5 minutes)

M. APPELLEE CLOSING ARGUMENTS

1. City of Kenai Planning & Zoning Department (5 minutes)

N. DELIBERATIONS (Deliberations may be held in public or adjudicative session)

Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

- O. PUBLIC COMMENTS** *(5 minutes per speaker)*
- P. STAFF REPORT** *(15 minutes)*
- Q. APPELLANT**
 - 1. Troy Millhouse, represented by Attorney Richard Moses *(30 minutes)*
- R. APPELLEE**
 - 1. City of Kenai Planning & Zoning Department *(30 minutes)*
- S. APPELLANT REBUTTAL**
 - 1. Troy Millhouse, represented by Attorney Richard Moses *(10 minutes)*
- T. APPELLEE REBUTTAL**
 - 1. City of Kenai Planning & Zoning Department *(10 minutes)*
- U. APPELLANT CLOSING ARGUMENTS**
 - 1. Troy Millhouse, represented by Attorney Richard Moses *(5 minutes)*
- V. APPELLEE CLOSING ARGUMENTS**
 - 1. City of Kenai Planning & Zoning Department *(5 minutes)*
- W. DELIBERATIONS** *(Deliberations may be held in public or adjudicative session)*

Please contact the City Clerk's Office at 907-283-8231 for additional information or questions.

Registration is required to join the meeting remotely through Zoom. Please use the following link to register:

<https://us02web.zoom.us/meeting/register/tZcpde6spzkqG9Lh5cVFumThZrig1xNNcUQC>

**MINUTES
BOARD OF ADJUSTMENT HEARING
JUNE 20, 2022 – 5:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611**

Appeal of the Chief Animal Control Officer Denial of a Permit to Lisa Hansen for a Livestock Permit for Educational Purposes at 704 Poplar Circle, Kenai, AK.
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A. CALL TO ORDER

The City of Kenai Board of Adjustment convened on June 20, 2022 in the City Hall Council Chambers, Kenai, AK. Board Chair Brian Gabriel called the meeting to order at 5:00 p.m.

B. ROLL CALL

There were present:

Brian Gabriel, Chair
Deborah Sounart
James Baisden

Jim Glendening
Henry Knackstedt
Tea Winger

Absent:

Glenese Pettey

C. PREVIOUS MINUTES

1. Minutes of May 31, 2022 (*Hoelsing*)

MOTION:

Board Member Knackstedt **MOVED** to approve the minutes of May 31, 2022 and requested **UNANIMOUS CONSENT**. Board Member Baisden **SECONDED** the motion.

VOTE: There being no objections; **SO ORDERED**.

D. OPENING STATEMENT

Board Chair Gabriel provided an opening statement and read the Board of Adjustment procedures.

Attorney Selia Butler requested that late filed evidence be allowed to be submitted. Hearing no objections from the appellee or the Board, the additional evidence was accepted.

E. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

City Clerk Saner administered the oath for all persons providing evidence and testimony.

F. PUBLIC COMMENT (*5 minutes per speaker.*)

Kim Howard spoke in opposition to the issuance of a livestock permit noting they purchased their home because they wanted to live in a residential neighborhood, not by a gravel pit or chicken farm; loose chickens was not a onetime incident; Heritage Homestead was a business and not an appropriate use within a residential neighborhood; and she stated concerns regarding attracting predators or rodents.

Dave Howard spoke in opposition to the issuance of a livestock permit noting that up until the livestock permit had been denied the neighbors had compromised and dealt with the issues; and stated that the appellant had violated the terms of the original permit.

Terry Jarecki spoke in opposition to the issuance of a livestock permit noting concerns with recent cases of the Bird-Flu in Alaska.

Jessica Franklin spoke in support of the issuance of a livestock permit identifying her families five-year homeschool involvement with Heritage Homestead; and the benefits from the education being received.

Amy Jackman read her letter as submitted in the packet supporting the issuance of a livestock permit.

Carolyn McGee spoke in opposition to the issuance of a livestock permit noting that the original request for only one-year; stated that she had to bring her dogs in when they bark; however, she hears roosters through the day and night; and noted concerns regarding predatory animals coming into the neighborhood.

Ivy Franklin spoke in support of the issuance of a livestock permit noting it would be a great loss if it were not issued; and stated how much she had learned about handling and caring for chickens.

Katherine Carmichael spoke in support of the issuance of a livestock permit noting some of the noise may be related to the Howards dogs being loose and antagonizing the chickens, loose cats had killed two of the chickens; and this is a 4-H education-based project.

Dan Conetta spoke in opposition to the issuance of a livestock permit noting safety concerns with predatory wildlife; and this was an incompatible use within the neighborhood.

G. STAFF REPORT (15 minutes)

Animal Control Office Giordano stated he did not participate in the original inspection during the previous year; however, did participate in this one; he explained the process of sending out reminders to all who have kennel or livestock permits; noting when he did not hear back from Ms. Hansen he called and Ms. Hansen indicated she did not receive the notice. He stated when the new application was received it was for 25 chickens, which was substantially more than the 5-10 originally applied for; during the inspection a smell was noted and chicken odor is very unique in comparison to general spring/break up odor; there was fecal matter pooled in the kennel; the facility looked good, structures were sound and there were some temporary winter structures; and we did note quite a bit of noise, which is expected when an animal sees someone they do not recognize. He stated the he felt the complains were warranted as 25 plus chickens would make a lot of noise referring to the video evidence that had been provided showing the chickens and roosters making noise at different times of the day; stated the smell can get extravagant during the summer heat and in consideration that the original permit was for 5-10 and now there were 25 or more chickens, it was understandable why the neighbors would complain.

Officer Giordano stated the original application was for a 4-H educational program, the timeline for the project enrollment was October through September; in March Faith Hansen was not enrolled in the 4-H program, she was enrolled two days following the conversation with Ms. Hansen regarding Faiths enrollment. He noted that this has gotten much bigger than a 4-H project, it has become a business, they are now selling chicks; current code related to the property size and the original application indicate this has gotten out of control; and when asked Ms. Hansen said she did not know how many chickens were in the main coop.

Clarification was provided on how a livestock permit is applied for; if the pens were set at the proper distance as the original permit indicated; procedures for extending a livestock permit; if City code or the permit specified chickens or roosters; proper disposal of fecal matter; crow collars were considered inhumane; and the number of chickens on site during the 2022 inspection being 35.

H. APPELLANT (30 minutes)

Ms. Lisa Hansen was represented by Selia Butler from the Law Offices of Holmes Weddle & Barcott. Ms. Butler referenced page 146 of the packet which showed the exceptions allowed within KMC 3.15.050 nothing that the Hansen's were only requesting a one-year renewal. She stated that the well being of the animals and the nuisance to the neighbors was being balanced; that nuisance as defined is substantial and unreasonable; she asked that the Board to balance the benefits of Heritage Homestead verses the nuisance to the neighbors. We do believe we are substantially in compliance with the permit; the extra ten are Bantam chickens, which are show birds and no different from the mess and noise of a parrot kept in your home; and that none of the facilities had been moved so the appellant was relying on the original boundary lines. In terms of sanitary conditions and odor, it was unfortunate that the inspection occurred during the time of year it did; the standard is no objectionable odor; many improvements have been made to ensure the chickens be contained on the premises; these animals are an investment for the Hansen's.

Ms. Butler stated the question was the number of animals allowed; the chickens are happy and healthy and the purpose of the code was to make sure the animals were safe and well cared for; she restated that nuisance must be substantial and that there is no requirement for enrollment in a program for a purpose to be considered educational in Alaska.

Ms. Lisa Hanson was called. It was clarified that Ms. Hanson is Faiths Marie's mother and her background with livestock was provided.

Ms. Hanson stated of the 30 chickens, some were laying hens, some are endangered and the extra 10 Bantam chickens were for showing; the renewal is for educational and youth activities; Faith was enrolled in Idea Homeschool to offer her a more rounded education; Faith is considering a degree in veterinary and husbandry; the curriculum established meets her needs; there are other families who are using our curriculum. She identified membership in the Last Frontier Poultry Association and how it helps those children to come and show their projects; the business portion was also related to Faiths education, when you're a farmer you're a business, this is showing her the process. When making a profit the funds are used to buy more feed and bedding.

In response to questions from Attorney Butler, Ms. Hanson clarified: newly hatched chicks stay 1-2 days; only neighbors from the cul-de-sac come to their home to purchase eggs other customers are met at locations away from the home; some neighbors have been given free eggs; crow collars were determined to be inhuman; and the Hansen's do not intend to remain at this rental location for more than one more year.

In response to questions from the Board, Ms. Hanson clarified: the original intent was not for commercial when applying for the livestock permit; she was current with borough sales tax; fecal matter is removed in black garbage bags and taken to the dump; structures were not over the property line; overhead containment was now installed over the coop; the education for Faith would be ending in September; the original permit did not identify between roosters or hens; and it was an oversight when the new application was for only 25 chickens when there were 30 on site.

Austin Hansen explained the structure of the coops and steps taken to protect the chickens; additional mitigation needed to keep animals or stray dogs from digging underground into the coop.

I. APPELLEE (30 minutes)

Animal Control Officer Giordano stated the Animal Control presentation was given in the staff report and summarized the complaint timeline and application timeline.

J. APPELLANT REBUTTAL (15 minutes)

Ms. Hanson explained the changes that were made to the coop after the video of loose chickens was taken; Bird-Flu affects birds and not a threat to humans; meeting customers at other locations to minimize the potential exposure to contagions; in consideration of the noise, the chickens are not let out until after 9:00 a.m. then brought back in at 10:00 p.m.; and clarified that the request is only for a one-year renewal.

Faith Hansen stated that she had been doing this for four to five years, she intended to stay involved and the proceeds from the eggs sales was going towards her college fund to attend veterinary school.

K. APPELLEE REBUTTAL (15 minutes)

Animal Control Officer Giordano - None

L. APPELLANT CLOSING ARGUMENTS (10 minutes)

Ms. Butler stated that the benefits are manageable and can be maintained in a safe and health way; the standard definition for nuisance is substantial; stated the request was only for a one-year renewal and that the Board had the tools to mitigate the issue.

M. APPELLEE CLOSING ARGUMENTS (10 minutes)

City of Kenai Administration, represented by Kris Giordano, City of Kenai Animal Control Officer stated that he was in support of education and he believed there is a way to bring this all together.

N. DELIBERATIONS *(Deliberations may be held in public or adjudicative sessions.)*

MOTION:

Board Member Knackstedt **MOVED** to adjourn into adjudicative session for deliberation after the next Board of Adjustment Hearing. Board Member Baisden **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

DRAFT

**MINUTES
BOARD OF ADJUSTMENT HEARING
JUNE 20, 2022 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611**

Appeal of a Planning and Zoning Commission Action Approving a Conditional Use Permit to Applicant Stephanie Nella Lenzini-LeBaron, to Operate a Day Care Center at 502 Ash Avenue, Kenai, AK

A. CALL TO ORDER

The City of Kenai Board of Adjustment convened on June 20, 2022 in the City Hall Council Chambers, Kenai, AK. Board Chair Brian Gabriel called the meeting to order at approximately 7:45 p.m.

B. ROLL CALL

There were present:

Brian Gabriel, Chair
Deborah Sounart
Glenese Pettey
James Baisden

Jim Glendening
Henry Knackstedt
Teea Winger

C. OPENING STATEMENT

Board Chair Gabriel provided an opening statement.

Board Member Winger declared a potential conflict as she had been in communication with the appellee, Chair Gabriel ruled that a conflict did exist and Board Member Winger was recused from the proceedings.

Board Chair Gabriel read the Board of Adjustment procedures.

D. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

City Clerk Saner administered the oath for all persons providing evidence and testimony.

E. PUBLIC COMMENT (5 minutes per speaker.)

William Vedders spoke in support of the issuance of the conditional use permit noting that he had no issues with a daycare; the daycare had been great for the neighborhood; identified the need for daycare options within the community; and stated his support for Ms. Lenzini-LeBaron's business.

Brooks Stratton spoke in support of the issuance of the conditional use permit noting that her son attended the daycare; stating her son was very happy attending the daycare; the difficulty finding childcare for children with behavioral needs that these services were being provided by Ms. Lenzini-LeBaron daycare; the home and business are kept in good condition; and stated support for Ms. Lenzini-LeBaron to receive her state license.

Lori Vedders spoke in support of the issuance of the conditional use permit noting her support for providing quality childcare services; the importance of giving children a healthy start; and stated that it was a benefit to the neighborhood to hear children playing in it.

Kelly Berberich spoke in support of the issuance of the conditional permit noting that she worked with Ms. Lenzini-LeBaron; they both had a mutual objective for providing quality childcare options; the benefits provided to the community; difficulties for families who cannot afford childcare; and stated Ms. Lenzini-LeBaron's daycare provided a safe and healthy environment for children.

F. STAFF REPORT (15 minutes)

Planning Director Foster summarized the staff report as provided within the certified record. He identified that the application was for a Conditional Use Permit for a daycare center; provided the definition of a

daycare center as established within Kenai Municipal Code; reviewed the criteria for issuing a conditional use permit; and noted that the applicant had met the established criteria.

Clarification was provided that the neighborhood included multi-family dwellings and homes that could accommodate large families; and the process difference between a home occupation and conditional use permit.

APPELLANT (30 minutes)

Robert Molloy noted that his allotted time would be share with co-appellant, Kristine Schmidt. He stated that evidence would show that the application does not meet the standards or criteria for a daycare center conditional use permit; and that there was other vacant commercial space available that would be more suited for Ms. Lenzini-LeBaron's daycare center. Mr. Molloy requested that if the Board of Adjustment (Board) chose not to overturn the decision granting the conditional use permit, that they then impose conditions to preserve the residential environment of the neighborhood. He identified provisions of the subdivisions covenants which prohibited uses other than single-family residential and reference the plat within the packet noting the small lot sizes; there being no public parks; and the three existing childcare facilities already in the neighborhood.

In addition, Mr. Molloy noted that a new daycare center would generate heavy traffic which would negatively affect the safety of the children in the neighborhood as well as the quality of life; stating it would violate the residential character of the neighborhood. He referenced photographs submitted as evidence which showed the location, size and characteristics of the neighborhood identifying that it would not benefit the neighborhood to add a fourth daycare center on Ash Avenue; and he noted that the photographs also showed that pickups and drop-offs were not occurring in the driveway as described.

Kristine Schmidt stated that a conditional use permit for a business within a residential zone is not an entitlement, it was an exception to the Kenai zoning code; she referred to changes to the zoning code made in 2021 that placed the burden of proof on the applicant; and that the applicant was responsible for providing substantial evidence that the application met established criteria. Ms. Schmidt noted that the application did not provide sufficient detail and it appeared that the staff did not consider the pros and cons nor did they provide any evidence to support approval of the application; which indicated that the Planning and Zoning Commission put the burden of proof on the neighbors, ignoring concerns and made no findings on the points of opposition.

Ms. Schmidt requested the following points be considered: the impact of other existing daycare centers and an additional daycare center to the quality of life in the neighborhood; the increased traffic impact on safety and noise issues; the small size of the lots within the subdivision; and the economic and non-economic value of the covenant restrictions related to use as residential. She drew comparisons with an application previously denied in another neighborhood and asked that the Board give her neighborhood the same consideration; noted that persons outside of a 300-foot radius are not notified when a conditional use permit is applied for, so those neighbors may not have the opportunity to oppose the permit. She requested the board include conditions which would mitigate the impact of the business, if the Board chose not to overturn the decision grating the conditional use permit. Ms. Schmidt stated that she is not opposed to daycare centers as long as they remain in a commercial zone; and emphasized her concern for the integrity of the neighborhood and quality of life.

G. APPELLEE (30 minutes)

Stephanie Nella Lenzini-LeBaron stated her educational and professional goals to work with children with special needs; identified the educational requirements and field work hours required to accomplish these goals; and her relevant educational background, work experience and accomplishments which prepared her for running this business. She indicated it was the needs of the community which led her to establishing a daycare center, and acquiring a State license would allow participation in the childcare assistance program as well as apply for grants. Ms. Lenzini-LeBaron noted her success assisting children with special needs that other daycare centers would not provide services for and how her business would help by allowing parents to return to work and provide for their families.

Ms. Lenzini-LeBaron questioned the appellants' concerns regarding her length of residency within the neighborhood; the lack of evidence regarding the claims that children from her daycare center are playing

in the streets; and she described the surrounding areas where children can play which include a nearby walking/biking path and her backyard. She noted the support she had received from neighbors and the number of permits issued in Woodland subdivision was insufficient to serve the current needs of the community; she clarified the limit on the number of children allowed under the State license, the hours of business and noted that it would not generate heavy traffic.

Ms. Lenzini-LeBaron noted that her business supported goals of the City of Kenai Comprehensive Plan and listed the goals: Goal 1 by providing a safe and educational place for children to go; Goal 2 because the center would support economic development by allowing parents to go to work and provide for their families, by providing jobs and educational opportunities for her employee and bring grant funding into the community; and Goal 3 because she believes the need to bring codes up to date so they reflect the needs of the people that currently reside within the community.

Ms. Lenzini-LeBaron questioned the appellants' claims that the neighborhood is maxed out on daycare noting that daycare facilities are in high demand. She stated that the claims that her children run in the streets were inaccurate and unjustified and that she takes safety very seriously and allowing that type of behavior would jeopardize her license and put the children at risk; she emphasized her goal to provide a safe place for children to learn.

H. APPELLANT REBUTTAL (15 minutes)

Kristine Schmidt stated that she had witnessed children from Ms. Lenzini-LeBaron's in the street and stated the importance of placing limitations to keep the children within the yard. She identified different requirements in State licenses and City permits; the diversity of types of family in the neighborhood; the need for written restrictions on the number of children and operation hours of the daycare center. She noted that the Ms. Lenzini-LeBaron had not made the case for why a daycare center should be in this residential location; had not addressed the increased traffic that will occur. Ms. Schmidt noted that the City did not have criteria for daycare use nor conditional use permit restrictions on the number of children allowed.

Robert Molloy noted that the City determines whether the location is right for the operation; he restated his request that if the Board did not overturn the decision to grant the conditional use permit, that they include conditions that would protect the livability of the neighborhood and protect the safety of the children; and these conditions should limit the number of children allowed and the hours of operation. He reiterated that considerations for State licensing and City permitting are not the same.

APPELLEE REBUTTAL (15 minutes)

Stephanie Nella Lenzini-LeBaron stated that her State license was not submitted as evidence because it had not been issued yet, the conditional use permit is required prior to issuance; she identified the tiers of State licensing for daycare facilities, and noted the State law provides significant restrictions, required training and standards for acquiring a State license. She stated that she does not have the means to purchase commercial property; however, does hope to do so in the future to expand her business.

I. APPELLANT CLOSING ARGUMENTS (10 minutes)

Kristine Schmidt requested that the Board apply the code and consider the issues and restated the request that written conditions be included in the conditional use permit. She also referenced the land use table and the requirement established within it for off street parking for a daycare center.

Robert Molloy requested the Board consider the location and the issues that have been raised such as traffic, livability of the neighborhood and the safety of the children; he requested the Board deny the permit, or grant it with the requested conditions.

APPELLEE CLOSING ARGUMENTS (10 minutes)

Stephanie Nella Lenzini-LeBaron referenced research which demonstrates that access to high-quality childcare corresponds to better educational, developmental and physical outcome; she identified skills that can be gained by children in a quality daycare environment; and restated her qualifications and her

desire to provide for children in the community. She emphasized the barriers faced by children and parents to day and the demand for access to safe and affordable childcare.

J. DELIBERATIONS *(Deliberations may be held in public or adjudicative sessions.)*

Board Chair Gabriel advised that the Board had 30 days to provide a decision.

MOTION:

Board Member Knackstedt **MOVED** to adjourn into adjudicative session for deliberations with the City Attorney present. Board Member Sounart **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: There being no objection; **SO ORDERED.**

With no further business before the Board, it adjourned into adjudicatory session for deliberation.

DRAFT



MINUTES
BOARD OF ADJUSTMENT HEARING
August 21, 2024 - 10:00 A.M.
Kenai City Council Chambers
210 Fidalgo Avenue, Kenai, Alaska

Appeal of the Planning and Zoning Commission Approval of a Conditional Use Permit Application to Salamatof Native Association Inc. for the Operating of Administrative Offices within an Existing Building, located at 1311 Kiana Lane, Kenai, Alaska.

A. CALL TO ORDER

The City of Kenai Board of Adjustment convened on August 21, 2024 in the City Hall Council Chambers, Kenai, AK. Board Chair Brian Gabriel called the meeting to order at approximately 10:00 a.m.

B. ROLL CALL

There were present:

Brian Gabriel, Chair
James Baisden
Victoria Askin

Henry Knackstedt
Phil Daniel
Deborah Sounart

Absent:

Alex Douthit

[Clerk's Note: Chair Gabriel reported that Board Member Douthit was recused from the meeting, as the Council Liaison to the Planning and Zoning Commission, he has information obtained from outside of today's hearing and is not impartial.]

C. OPENING STATEMENT

Board Chair Gabriel noted that Appellant Paula Carlyle had requested rescheduling of the hearing to an evening meeting; no motion was made to reschedule.

Board Chair Gabriel provided an opening statement and read the Board of Adjustment procedures.

D. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

City Clerk Saner administered the oath to all persons present who would be providing evidence and testimony.

E. PUBLIC COMMENTS (5 minutes per speaker)

Board Chair Gabriel open the floor for public comments.

Brad Brown spoke in opposition to the Conditional Use Permit (CUP); described the character of the residential neighborhood; noted that the building had not been used for institutional purposes in over ten years. He expressed concerns that the proposed uses and future expansion would harm the residential neighborhood; how increased traffic would reduce ability of children to play in the road; that the appellee, Chris Monfor, had not reached out to contact neighbors; and asked the Board of Adjustment to deny the CUP.

[Clerk's Note: Appellee Representative Eric Morrison arrived at 10:14 a.m.]

City Clerk Saner administered the oath to Appellee representative Eric Morrison.

Jim Hall spoke in opposition to the CUP; described the neighborhood as quiet and family-centered; expressed concerns about child safety and increased traffic; he reviewed the proposed uses in the CUP and explained that they did not fit the residential character of the neighborhood.

City Clerk Saner administered the oath to remote attendee Maxwell Howland.

Maxwell Howland spoke in support of the CUP; explained that his family owns the property in question; the CUP process and appeal was preventing them from moving to Anchorage to be near family; described the neighborhood as loud with frequent four-wheeler activity; emphasized that current CUP application is for administrative office use only; traffic would not be worse as the offices would have few employees; the building's previous use as yoga studio generated more traffic than the CUP would and did not compare to other existing issues in the area such as street parking and four-wheeler activity.

City Clerk Saner administered the oath to remote attendee Danette Howland.

Danette Howland spoke in support of the CUP; explained that the yoga and martial arts studio which had operated out of the building was busy; she had operated the studio with 20-30 people present and had received no complaints from neighbors; and she had been using the building residentially since 2020.

There being no one else wishing to be heard, the public comment period was closed.

F. STAFF REPORT (15 minutes)

Interim Planning Director Best summarized the staff report as provided within the certified record. He identified that the application was for a Conditional Use Permit for administrative offices within an existing building; reviewed the criteria for issuing a conditional use permit; and noted that the applicant had met the established criteria.

Traffic patterns and access were demonstrated using GIS maps of the area; property setbacks and landscape buffering were clarified; road had been constructed under a LID to City standards at the time; issues such as winter road parking and emergency access were discussed.

G. APPELLANT - Paula L. Carlyle (30 minutes)

Ms. Carlyle called Brad Brown as a witness; Brown discussed the historical context of the building and property; it was built fifty years ago as a Jehovah's Witness Kingdom Hall and the neighborhood was comprised of congregants; expressed concerns about narrow road with no center line or shoulder, and year-round issues of street parking which have not been properly enforced by the City.

Ms. Carlyle called John Williams as a witness; City Clerk Saner administered the oath to John Williams.

John Williams noted that this dilemma had been created over time, as the building was built over fifty years ago for a purpose it no longer serves; expressed concerns about increased traffic and disruption of the neighborhood's residential character; that the Comprehensive Plan when the building was built did not anticipate the community growth; noted that he was personally opposed to the CUP; and recommended a review and reevaluation of the City's Comprehensive Plan.

Ms. Carlyle called Jim Hall as a witness; Jim Hall noted that when he bought his house in 1990, all his neighbors were Jehovah's Witnesses who walked to church; asked the Board if how they would personally feel if an office building was built near their home.

Ms. Carlyle called Kathy McMurray as a witness; Kathy McMurray expressed concerns about year-round issues with the roads including emergency access and child safety; noted that she shares her driveway with this property and wants to make sure she has access to her home.

Ms. Carlyle called Henriette Arenson as a witness; Henriette Arenson expressed concerns about safety of children playing in the street and noise from a neighboring property; stated that she does not want traffic to increase with office staff; this is a residential neighborhood and this office would be an exception because there are no other businesses in the area.

Brad Brown stated that City ordinances for winter on-street parking are not being enforced; Salamatof as an organization has other properties that would fit this use.

Paula Carlyle, appellant, noted she was unable to attend the Planning & Zoning Commission meeting in person, and technical issues prevented her from testifying; felt that her neighbors' concerns were dismissed during the public hearing; stated appellee had been unclear and disingenuous when stating their intentions for the building; there will be 24/7 activity; that appellee intends to house people on-site, will add a second story; expressed concerns about increased traffic, noise, child and pet safety, and property devaluation; she shared information regarding Salamatof membership, financial and property holdings.

H. APPELLEE - Salamatof Native Association Inc. (30 minutes)

Eric Morrison, representing the Salamatof Native Tribe, respond to previous testimonies; clarified that Salamatof Native Tribe has smaller numbers than previous speakers had stated; explained difference between Salamatof Native Association, Inc. and Salamatof Tribe. He clarified that the Tribe provides social services, but will not be providing drug and alcohol assistance and housing at his location nor building a second story; enrollment hours and process; described Tribal values of respect, preservation of cultural traditions, youth development, environmentalism and community service; traffic issues such as ATV activity, children in road, emergency access already exist in the neighborhood; and office will operate within normal business hours.

I. APPELLANT REBUTTAL - Paula L. Carlyle (10 minutes)

Ms. Carlyle stated that the Salamatof membership information she had shared earlier was from the US Census; that during testimony at the Planning & Zoning Commission meeting, Mr. Morrison and Chris Monfor had discussed the facility's large kitchen, hosting events, homeless assistance, and people residing at the building. She noted that Salamatof Native Association, Inc. is a business that can give money to the Salamatof Tribe, and that the Association could find another location for the Tribe to operate.

J. APPELLEE REBUTTAL - Salamatof Native Association Inc. (10 minutes)

Mr. Morrison stated that people will not be living at the facility; that they will not be providing meals for the public as that requires additional permits they will not be applying for.

K. APPELLANT CLOSING ARGUMENTS - Paula L. Carlyle (5 minutes)

Ms. Carlyle stated that the neighborhood wants to preserve its culture and community; that this location is not right for the appellee's proposed uses; that the Salamatof Native Association intends to expand and has the resources to do so.

L. APPELLEE CLOSING ARGUMENTS - Salamatof Native Association Inc. (5 minutes)

Mr. Morrison noted that the Salamatof Native Association donates to other organizations but they have not provided significant donations to the Tribe; the Tribe's purpose is to serve the community; is currently working with the Visitor's Center to provide cultural services.

M. DELIBERATIONS (Deliberations may be held in public or adjudicative session)

Board Chair Gabriel advised that the Board had 30 days to provide a decision.

MOTION:

Board Member Knackstedt **MOVED** to adjourn into adjudicative session for deliberations with the City Attorney Present. Board Member Baisden **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: Motion **APPROVED**, without objection.

[Clerk's Note: The Board adjourned into Adjudicative Session at 12:34 p.m.]

DRAFT

BOARD OF ADJUSTMENT HEARING

Notice of Hearing

The Board of Adjustment shall ordinarily set a date for and hold a hearing on all appeals within forty-five (45) days of the filing of the appeal. However, should the forty-fifth day fall on a weekend or a municipal holiday, the hearing may be scheduled for the next following weekday which is not a municipal holiday. For good cause, the Board of Adjustment may hold the hearing up to sixty (60) days after the filing of the appeal. Notice of the time and place of such hearing shall be mailed to all interested parties and to all property owners as required by KMC 14.20.290(f) and 14.20.330(c), at least fifteen (15) days prior to the hearing. Notices to the appellant and/or applicant for the action or determination must be sent by certified mail, return receipt requested.

Type of Hearing

The Board of Adjustment Hearing will be conducted in compliance with the City of Kenai Municipal Code 14.20.290, reasonable regulations of the Board and other applicable law. The Board of Adjustment is a quasi-judicial board. The hearing is open to the public, recorded and streamed live on the City YouTube Channel. All persons presenting evidence and testimony shall do so under oath, administered by the City Clerk. This hearing will be conducted less formally with regard to rules of evidence and other court rules of procedure than in a judicial courtroom.

The hearing before the Board is de-novo; the Board will review both the facts and law presented during the hearing and submitted timely. Evidence and written arguments to be considered by the Board must be submitted to the Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city by **Monday, October 7, 2024 at 10:00 a.m.** A packet containing all evidence of written argument, timely submitted, will be provided to all parties as soon as possible after the submission date. The Clerk will include in the hearing packet the record from the Planning and Zoning Commission Hearing.

A list of witnesses any party intends to have testify during the hearing must be provided to the City Clerk by the date evidence is due. New tangible evidence not timely submitted to the City Clerk will normally not be admitted unless good cause is shown as to why the evidence could not be timely submitted. A decision to include the evidence will be decided by the board. All evidence considered in this matter should be in the record before the Board as previously provided to the parties. The Appellant, or party applying to the Board, has the burden of proof to show entitlement to relief.

Hearing Procedures

Any requested revision to the agenda or procedures by a party must be made to the Board and approved by the Board prior to the start of the hearing.

Each appeal will be heard as a separate hearing, in the following order:

1. Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
2. Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

The procedures below will be followed for the first appeal hearing, and then repeated for the second appeal hearing.

Prior to any presentations, members of the public may address the Board at the beginning of the hearing. Members of the public will have five (5) minutes each to speak on the appeal.

Staff will be allowed 15 minutes to provide a report to the Board at the beginning of the hearing.

Following the staff report, each party will be allowed 30 minutes to present its case. The Appellants will present their cases first. During the parties' presentation of the case, the parties may call witnesses. Any witness that testifies during the presentation of the case by either party, unless excused by the Board with concurrence of the parties, must remain available to be called during rebuttal, at which time cross examination may occur. Each party will be allowed 10 minutes for rebuttal and 5 minutes for closing arguments.

Upon recognition by the Chair, Board Members may question the parties and their witnesses. Questioning by the Board may take place at any time before the hearing is closed. Questioning by the Board and responsive answers will not count against a party's time.

Hearing Deliberation & Decision

The Board may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered.

The Board requires a quorum of four and a majority of those assembled to make a decision. The Board must issue a decision within 30 days of the hearing date. The Board may reverse, remand or affirm, wholly or in part, or may modify the order, requirement,

decision or determination, as ought to be made, and to that end shall have the powers of the body from whom the appeal is taken.

Deliberations need not be in public and may be conducted in an adjudicatory session with the Board Attorney. A written decision will be issued and will indicate how each board member voted. Copies of the decision shall be promptly posted on the City's official website and mailed to all parties participating in the appeal. The written decision shall trigger the timeline for any appeal to the Superior Court.



CITY OF KENAI
APPEAL TO THE BOARD OF
ADJUSTMENT

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611
Phone: 283-8231
Fax: 283-5068
Email: cityclerk@kenai.city

Contact Information	
Name of Appellant: Troy Millhouse	Date: 08/28/2024
Daytime Phone No.: 907.274.0666	Email Address: rmoses@hwb-law.com
Appellant's Physical Address: c/o Holmes Weddle & Barcott, PC 701 W 8th Ave, Ste 700, Anchorage, AK 99501	
Appellant's Mailing Address: Same as physical address.	
Appeal Information	
DESCRIPTION OF APPEAL:	
This is an appeal of the denial of a variance application known as Resolution PZ 2024-18.	
Subject Property Owner's Name and Address: Troy Millhouse (address is the same as above)	
Subject Property Street Address: 11888 Kenai Spur Hwy, #3, Kenai, AK 99611	
Decision was <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Denied	Date of Decision: 08/14/2024
Decision was made by <input type="checkbox"/> Administrative Official <input checked="" type="checkbox"/> Planning & Zoning Commission	
Check One:	
<input checked="" type="checkbox"/> I am the applicant for the action taken or determination, or the owner of the property that is the subject of the action or determination under appeal. I am Mr. Millhouse's attorney, and I have been authorized to act on his behalf.	
<input type="checkbox"/> I am the administrative official.	
<input type="checkbox"/> I am a legal occupant or owner of an interest in real property who can show the decision has or could have an adverse effect on the use, enjoyment, or value of that real property. An interest which is no different from that of the general public is not sufficient to make a person aggrieved. To be a "party of record," participation with either oral or written comments at the hearing before the Planning and Zoning commission or before the administrative official making a final decision must be shown.	
Description of Harm (Note: An interest which is no different from that of the general public is not sufficient.): Mr. Millhouse will not be able to operate a cannabis dispensary at the subject property, which is why he purchased the same, because of the denial of his application.	
I am seeking relief as follows: A reversal of the Commission's denial of Resolution PZ 2024-18 and approval of the same.	
Signature of Appellant:	<i>Richard Moses</i>
FOR CITY CLERK'S OFFICE USE ONLY:	
Receipt Stamp: RECEIVED 8/28/2024	Appellant <input checked="" type="checkbox"/> Owns <input type="checkbox"/> Leases, Lease Requested Appellant Participated <input checked="" type="checkbox"/> Orally <input type="checkbox"/> In Writing Appellant Paid Pursuant to <input checked="" type="checkbox"/> Fee Schedule <input type="checkbox"/> Fee Reduction Form Copy provided to Appellant <input type="checkbox"/> In Person <input checked="" type="checkbox"/> By Mail <i>Email</i> By: <i>UT</i> Application <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied for _____ Date Appellant Notified: 8/29/24

Kenai City Clerk's Office



August 29, 2024

Mailed Via: USPS Certified Mail-Return Receipt
Article No. 7020 0640 0002 2738 7347 &
Emailed to: rmoses@hwb-law.com

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700,
Anchorage, AK 99501

RE: Application to Appeal to Board of Adjustment: Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Mr. Millhouse:

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved. A copy of the application along with the receipt for payment is enclosed.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shellie Saner", is positioned above the printed name and title.

Shellie Saner, MMC
City Clerk



KENAI
140 BIDARKA ST
KENAI, AK 99611-9998
(800)275-8777

08/29/2024

03:12 PM

Product	Qty	Unit Price	Price
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Sat 08/31/2024

Certified Mail® \$4.85

Tracking #:

70200640000227382168

Return Receipt \$4.10

Tracking #:

9590 9402 6765 1074 8959 98

Total \$9.68

First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Sat 08/31/2024

Certified Mail® \$4.85

Tracking #:

70200640000227387347

Return Receipt \$4.10

Tracking #:

9590 9402 6765 1074 8960 18

Total \$9.68

Grand Total: \$19.36

Cash \$20.00

Change -\$0.64

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Anchorage, AK 99501

Certified Mail Fee \$4.85

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy) \$0.00

☐ Return Receipt (electronic) \$0.00

☒ Certified Mail Restricted Delivery \$0.00

☒ Adult Signature Required \$0.00

☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.73

Total Postage and Fees \$9.68

Sent To Troy Millhouse

Street and c/o Holmes Weddle & Barcott, PC

City, State 701 W 8th Ave, Ste 700

City, State Anchorage, AK 99501

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700,
Anchorage, AK 99501



9590 9402 6765 1074 8960 18

2. Article Number (Transfer from service label)

7020 0640 0002 2738 7347

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Rachel Koplin

C. Date of Delivery

8/30/24

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

☒ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☒ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

From: [City Clerk](#)
To: ["rmoses@hwb-law.com"](mailto:rmoses@hwb-law.com)
Subject: Application to Appeal to the Board of Adjustment Approved - Variance Permit
Date: Thursday, August 29, 2024 2:12:00 PM
Attachments: [Letter to Appellant - Application Approved - PZ2024-18 Variance.pdf](#)
[BOA appeal form - PZ2024-18 Variance.pdf](#)
[Payment Receipt - emailed 082824.pdf](#)
[image003.wmz](#)
[image004.png](#)
Importance: High

Mr. Millhouse,

After consulting the City Attorney, the attached application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Meghan Thibodeau
Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city



August 29, 2024

Delivered: In-Person &
Emailed to: teubank@kenai.city;
mbest@kenai.city;
bmcelrea@kenai.city

City of Kenai Planning & Zoning Department
210 Fidalgo Ave
Kenai, Alaska 99611

RE: Application to Appeal to Board of Adjustment: Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

To: City of Kenai Planning & Zoning Department

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shellie Saner", is positioned above the printed name and title.

Shellie Saner, MMC
City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

Acknowledgement of Receipt of Notice

I CHRISTINE WINNINGHAM certify and acknowledge the following:
(print name)

That I have received a copy of the following notices:

- Application Received for an Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Application Received for an Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Signature

8/29/24

Date

ASSISTANT TO CITY MANAGER

Title

Copy provided to Interim Planning Director, Max Best

From: [City Clerk](#)
To: [Terry Eubank](#); [Max Best](#); [Brandon McElrea](#)
Subject: Application to Appeal to the Board of Adjustment Approved - Variance Permit
Date: Thursday, August 29, 2024 2:27:00 PM
Attachments: [image001.wmz](#)
[Letter to Appellee - Appeal Received PZ2024-18 Variance.pdf](#)
[image002.png](#)

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Meghan Thibodeau
Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

September 6, 2024

Mailed Via: USPS Certified Mail-Return Receipt
Article No. 7020 0640 0002 2738 2175 &
Emailed to: rmoses@hwb-law.com

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700
Anchorage, AK 99501

RE: **Board of Adjustment Hearing** - Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Hearing Scheduled: This letter is to inform you that the Board of Adjustment Hearing for the above-referenced matters has been scheduled for Tuesday, October 15, 2024, beginning at 5:00 p.m. The hearing will be held at Kenai City Hall in Council Chambers located at 210 Fidalgo Avenue, Kenai, AK 99611. A packet of information will be provided to you and the Board of Adjustment prior to the hearing.

Information/Evidence Deadline: The deadline to submit information, to be included in the Board of Adjustment Hearing packet, related to your appeal is Monday, October 7, 2024 at 10:00 a.m.; please submit to Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city. This is your opportunity to introduce additional evidence to support your appeal. The Board of Adjustment Hearing packet will include the record from the Planning and Zoning Commission Hearing and will be distributed to all parties in advance of the hearing. Enclosed is information related to the hearing process.

Notice: Pursuant to KMC 14.20.290, this Notice of Hearing has been mailed to you by certified mail at least 15 days prior to the hearing. All property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties, have also been mailed the Notice of Hearing at least 15 days prior to the hearing.

If you have any questions, please contact me at 283-8231 or cityclerk@kenai.city.

Kenai City Clerk's Office



Shellie Saner, MMC
Kenai City Clerk

Enclosure: Board of Adjustment Procedures



KENAI
140 BIDARKA ST
KENAI, AK 99611-9998
(800)275-8777

09/06/2024

03:51 PM

Product	Qty	Unit Price	Price
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Mon 09/09/2024

Certified Mail® Tracking #:		\$4.85
70200640000227382182		

Return Receipt Tracking #:		\$4.10
9590 9402 6765 1074 8959 74		

Total		\$9.68
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Mon 09/09/2024

Certified Mail® Tracking #:		\$4.85
70200640000227382175		

Return Receipt Tracking #:		\$4.10
9590 9402 6765 1074 8959 81		

Total		\$9.68
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Grand Total:		\$19.36
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Cash		\$20.00
Change		-\$0.64

The timeliness of service to or from destination may be affected by US mail service delays.

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Anchorage, AK 99501

OFFICIAL USE

Certified Mail Fee \$4.85

Extra Services & Fees (check box, add fee as appropriate)

<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$4.10
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input checked="" type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.73

Total Postage and Fees \$9.68

Sent To Troy Millhouse

Street and: c/o Holmes Weddle & Barcott, PC

City, State, 701 W 8th Ave, Ste 700

Anchorage, AK 99501

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700
Anchorage, AK 99501



9590 9402 6765 1074 8959 81

2. Article Number (Transfer from service label)

7020 0640 0002 2738 2175

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name)

Brian Barcott 9-9-24

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type

- | | |
|--|---|
| <input checked="" type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input checked="" type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt

From: [City Clerk](#)
To: ["Richard Moses"](#)
Subject: City of Kenai Board of Adjustment Hearings Scheduled
Date: Friday, September 6, 2024 3:22:00 PM
Attachments: [Letter to Appellant - Hearing Scheduled - PZ2024-18 Variance.pdf](#)
[Letter to Appellant - Hearing Scheduled - PZ2024-19 CUP.pdf](#)
[BOA Hearing Procedures.pdf](#)
[image002.wmz](#)
[image004.png](#)

Please see attached items:

- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Board of Adjustment Hearing Procedures

Thank you,

Meghan Thibodeau

Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611

P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

September 6, 2024

Delivered: In-Person &
Emailed to: teubank@kenai.city;
sbloom@kenai.city;
mbest@kenai.city;
bmcelrea@kenai.city

City of Kenai Planning & Zoning Department
210 Fidalgo Ave
Kenai, AK 99611

RE: **Board of Adjustment Hearing** - Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Hearing Scheduled: This letter is to inform you that the Board of Adjustment Hearing for the above-referenced matters has been scheduled for Tuesday, October 15, 2024, beginning at 5:00 p.m. The hearing will be held at Kenai City Hall in Council Chambers located at 210 Fidalgo Avenue, Kenai, AK 99611. A packet of information will be provided to you and the Board of Adjustment prior to the hearing.

Information/Evidence Deadline: The deadline to submit information, to be included in the Board of Adjustment Hearing packet, related to the appeal is Monday, October 7, 2024 at 10:00 a.m.; please submit to Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city. This is your opportunity to introduce additional evidence. The Board of Adjustment Hearing packet will include the record from the Planning and Zoning Commission Hearing and will be distributed to all parties in advance of the hearing. Enclosed is information related to the hearing process.

Notice: Pursuant to KMC 14.20.290, this Notice of Hearing has been served to you. All property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties, will be mailed the Notice of Hearing at least 15 days prior to the hearing.

If you have any questions, please contact me at 283-8231 or cityclerk@kenai.city.

Kenai City Clerk's Office



Shellie Saner, MMC
Kenai City Clerk

Enclosure: Board of Adjustment Procedures



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

Acknowledgement of Receipt of Notice

I CHRISTINE WNNINGHAM certify and acknowledge the following:
(print name)

That I have received a copy of the following items:

- Notice of Hearing Scheduled for Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Notice of Hearing Scheduled for Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Board of Adjustment Hearing Procedures

Signature

9/6/24

Date

ASSISTANT TO CITY MANAGER

Title

Copy provided to Planning & Zoning Department

From: [City Clerk](#)
To: [Terry Eubank](#); [Scott Bloom](#); [Max Best](#); [Brandon McElrea](#)
Subject: City of Kenai Board of Adjustment Hearings Scheduled
Date: Friday, September 6, 2024 3:22:00 PM
Attachments: [Letter to Appellee - Hearing Scheduled - PZ2024-18 Variance.pdf](#)
[Letter to Appellee - Hearing Scheduled - PZ2024-19 CUP.pdf](#)
[BOA Hearing Procedures.pdf](#)
[image003.wmz](#)
[image004.png](#)

Please see attached items:

- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Board of Adjustment Hearing Procedures

Thank you,

Meghan Thibodeau

Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611

P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Tuesday, October 15, 2024 at 5:00 p.m.** in the Council Chambers 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Because you are a property owner within the notice periphery of the above-mentioned property or have stated an interest in the subject, you are hereby notified of the hearing date, time and place, pursuant to KMC 14.20.290(f) and 14.20.330(c). Your comments and/or attendance regarding this appeal are encouraged. Written comments will be accepted until 10:00 a.m. on Monday, October 7, 2024 and may be mailed to the Office of the City Clerk, 210 Fidalgo Ave., Kenai, Alaska 99611 or emailed to cityclerk@kenai.city. ~ Shellie Saner, City Clerk, 907-283-8231.

Thank you.

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Tuesday, October 15, 2024 at 5:00 p.m.** in the Council Chambers 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

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Thank you.



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE

EPISCOPAL DIOCESE OF ALASKA
110 S SPRUCE ST
KENAI
AK 99611

FIRST BAPTIST CHURCH
PO BOX 3412
KENAI
AK 99611

FIVE D INVESTMENTS LLC
PO BOX 969
KENAI
AK 99611

HILCORP ALASKA LLC
1111 TRAVIS ST
HOUSTON
TX 77002

HUGHEY KIANA
1103 2ND AVE
KENAI
AK 99611

HUGHEY TYSON E
1103 2ND AVE
KENAI
AK 99611

KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI
AK 99611

KENAITZE INDIAN TRIBE
PO BOX 988
KENAI
AK 99611

LAGOUTARIS ELAINNAH
36350 MAYONI ST
SOLDOTNA
AK 99669

MADRIGAL ANDY
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MADRIGAL SOPHIA
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MARSH LYN E
106 BIRCH ST
KENAI
AK 99611

MCKEIRNAN DANIEL F
PO BOX 2365
KENAI
AK 99611

MCKEIRNAN SUSAN
PO BOX 2365
KENAI
AK 99611

MCMANAMY SHELDON D
36350 MAYONI ST
SOLDOTNA
AK 99669

MILLHOUSE TROY
PO BOX 874574
WASILLA
AK 99687

MOREY DOLLIE K
202 BIRCH ST
KENAI
AK 99611

OSTRANDER PAUL CLARK
48645 RUNNERS AVE
SOLDOTNA
AK 99669

OUR LADY OF ANGELS PARISH OF
ARCHDIOCESE OF ANCHORAGE
225 S SPRUCE ST
KENAI
AK 99611

PEREZ FRED Jr
204 BIRCH ST
KENAI
AK 99611

RININGER LACEY
511 ASH AVE
KENAI
AK 99611

RININGER ZACHARY
511 ASH AVE
KENAI
AK 99611

RONELLENFITCH SARAH M
102 BIRCH ST
KENAI
AK 99611

RR KENA LLC
2133 E RANCH RD
TEMPE
AZ 85284

SALVATION ARMY
143 E 9TH AVE
ANCHORAGE
AK 99501

SARKS GARNET M
110 BIRCH ST
KENAI
AK 99611

SARKS PAUL E
110 BIRCH ST
KENAI
AK 99611

SARKS PAUL E & GARNET M
110 BIRCH ST
KENAI
AK 99611

SHAFFER KEITH
PO BOX 853
KENAI
AK 99611

SHAFFER MAUREEN K
PO BOX 853
KENAI
AK 99611

SIPES CHERYL L & GERALDINE L
PO BOX 4472
SOLDOTNA
AK 99669

SWEARINGEN GLENNA M
PO BOX 1031
KENAI
AK 99611

VARNE THOMAS
22205 67TH PL W
MOUNTLAKE TERRACE
WA 98043

WILES MICHAEL L & NANCY L
1206 1ST AVE
KENAI
AK 99611

WILLIAMSON HOWARD J
607 E 74TH AVE
ANCHORAGE
AK 99518

WILLIAMSON TERRY K
607 E 74TH AVE
ANCHORAGE
AK 99518

WILSON RUSSELL J SR & CONSTANCE
1402 1ST AVE
KENAI
AK 99611

DENIECE ISAACS
PO BOX 3526
KENAI, AK 99611

KEN DUNBAR
PO BOX 969
KENAI, AK 99611

TEEA WINGER
1111 5TH CT.
KENAI, AK 99611

JIM GLENDENING
694 SYCAMORE CT.
KENAI, AK 99611

AFFIDAVIT OF SERVICE

I, Meghan Thibodeau, Deputy Clerk for the City of Kenai, Alaska, do hereby certify that on September 20, 2024, I caused to be mailed the foregoing Notice of Hearing before the Board of Adjustment on the following appeal:

Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

This notice was sent by first class mail to all property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties. The list of recipients of the notice is attached herewith.

Further this affiant sayeth naught.



Meghan Thibodeau
Deputy City Clerk



PUBLIC NOTICE

Board of Adjustment Hearing Tuesday, October 15, 2024 - 5:00 p.m.

The Kenai City Council will convene as the Board of Adjustment on Tuesday, October 15, 2024 at 5:00 p.m. in the City Council Chambers located at Kenai City Hall 210 Fidalgo Avenue, Kenai, AK. The following items will be heard at that time:

- 1. Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.**
- 2. Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.**

The public is invited to attend and testimony will be taken. Any questions related to this public notice may be directed to the Kenai City Clerk's Office at 907-283-8231 or cityclerk@kenai.city.

Shellie Saner, MMC, City Clerk
Publish: 09/27/24 & 10/4/24

Affidavit of Publication & Posting

I, Meghan Thibodeau, Deputy City Clerk for the City of Kenai, Alaska do hereby certify that on the 20th day of September 2024, I electronically mailed or caused to be published the foregoing Notice of Hearing before the Board of Adjustment to the Peninsula Clarion and requested that this notice be published in September 27th and October 4th editions of their newspaper. On the 20th of September the notice was also posted at Kenai City Hall and on the internet at www.kenai.city.

Meghan Thibodeau, Deputy City Clerk



**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ2024-18**

A RESOLUTION **DENYING** THE APPLICATION FOR A VARIANCE PERMIT.

APPLICANT: Richard R. Moses

PROPERTY ADDRESS: 11888 Kenai Spur Highway #3

LEGAL DESCRIPTION: Government Lots 19, 20, and 21, in Section 6, Township 5 North,
Range 11 West, Seward Meridian

KENAI PENINSULA BOROUGH PARCEL NUMBER: 04702001

WHEREAS, a complete application meeting the requirements of Kenai Municipal Code 14.20.180(b) was submitted to the City on May 24, 2024; and,

WHEREAS, the applicant has not demonstrated that the prerequisites of a Conditional Use Permit have been met pursuant to Kenai Municipal Code 14.20.150; and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing on August 14, 2024, following requirements outlined in Kenai Municipal Code 14.20.280 for public hearings and notifications.

WHEREAS, the Planning and Zoning Commission finds:

1. *Special conditions or circumstances are present which are peculiar to the land or structures involved which are not applicable to other lands or structures in the same land use or zoning district.*

Findings: Staff finds no special conditions or circumstances peculiar to the land or structures of the subject parcel to meet this criterion.

2. *The special conditions or circumstances have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience.*

Findings: Staff finds that the requested variance is intended to redress a pecuniary hardship or inconvenience caused by actions of the applicant. The applicants indicate that the building only has value as a commercial marijuana establishment. There are many other uses permitted in the General Commercial zoning district. The inability to operate a retail marijuana store does not substantially diminish economic opportunity. Therefore, the request for a variance permit does not meet this criterion.

3. *The granting of the variance shall not authorize a use that is not a permitted principal use in the zoning district in which the property is located.*

Findings: Pursuant to KMC Section 14.22.010 Land Use Table, a retail marijuana store is not a permitted principal use in the General Commercial Zoning District, but instead requires a conditional use permit. Therefore, the request for a variance permit does not meet this criterion.

4. *The granting of a variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure.*

Findings: The granting of this variance would be the minimum variance by allowing the applicant to operate a retail marijuana store within approximately 332 feet of the outer boundaries of the nearest recreation or youth center.

5. *The granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district.*

Findings: An excerpt of the applicants' statement from another section of the application states "...another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance." Therefore, the request for a variance permit does not meet this criterion.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That the request for a variance permit to reduce the buffer distances as set forth in Kenai Municipal Code 14.20.330 be denied as it does not meet all of the requirements of KMC Section 14.20.180 Variance Permits.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, THIS 14TH DAY OF AUGUST, 2024.

ATTEST:



Meghan Thibodeau, Deputy City Clerk



JOE HALSTEAD, CHAIRPERSON



STAFF REPORT

PLANNING & ZONING DEPARTMENT

TO: Planning and Zoning Commission

FROM: Max Best, Planning Director

FROM: Brandon McElrea, Planning Technician

DATE: August 7, 2024

SUBJECT: Resolution PZ2024-19 – Conditional Use Permit to Allow a Retail Marijuana Store and Resolution PZ2024-18 – Variance Permit for Buffering Distance.

Request	The applicant is requesting a conditional use permit to operate a retail marijuana store, as well a variance permit to obtain relief from the ordinance for standards for commercial marijuana establishments.
----------------	--

Staff Recommendation	Denial of the Variance Permit for the adjustment of buffer distance as well as the Conditional Use Permit for the operation of a retail marijuana store within an approximately 1,600 square foot commercial space located at 11888 Kenai Spur Highway, #3.
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Applicants	Sandra and Troy Millhouse
Property Owner	Troy Millhouse
Legal Description	Government Lots 19, 20, 21, Section 6, T5N, R11W
Building Address	11888 Kenai Spur Highway
KPB Parcel ID	04702001
Lot Size (acreage)	1.67
Zoning	General Commercial (CG)
Current Property Use	Unoccupied Commercial Buildings
Current Building Use	Unoccupied Commercial
Land Use Plan	General Commercial (GC)

SUMMARY

The applicant has requested a Conditional Use Permit (CUP) to operate a retail marijuana store on a property described as Government Lots 19, 20, and 21, Section 6, Township 5 North, Range 11 West, Seward Meridian, Kenai, located at 11888 Kenai Spur Highway. The proposed retail store will be approximately 1,600 square feet and located in unit number three (3) of an approximately 9,332 square foot existing commercial building.

The applicant has also requested a Variance Permit in order to obtain relief from Kenai Municipal Code (KMC) Subsection 14.20.330(f)(2).

It should be noted that request for a Conditional Use Permit on this same property by a separate applicant was denied on June 22, 2016, PZ16-17. This decision was upheld by the Board of Adjustment, Case No. BA-16-03.

ANALYSIS – Variance

With the authorization of property owner Troy Millhouse, Richard R. Moses has submitted a variance permit application seeking relief from of KMC Subsection 14.20.330(f), requesting the buffer distance be adjusted such that the proposed marijuana retail store be considered.

Commercial marijuana establishments must comply with KMC 14.20.330 *Standards for Commercial Marijuana Establishment*. As stated in KMC Subsection 14.20.330(f):

No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:

- (1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and State-licensed substance abuse treatment facilities providing substance abuse treatment; and*
- (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.*

Within the 1,000-foot buffer map (see attachment), staff found no institutional uses. Therefore, the proposed retail marijuana store is located outside the 1,000-foot buffer from any primary and secondary schools (K-12).

The 500-foot buffer and accompanying maps (see attachments 500 ft Buffer Map, Exhibit A and Exhibit B) show that within 500 feet of the proposed retail marijuana store, two parcels contain facilities meeting the definition of recreation or youth center. KMC Section 14.20.320 *Definitions* states:

"Recreation or youth center" means a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age.

Prior to granting a variance permit, the Commission must find that all of the conditions have been met as set forth in KMC 14.20.180(c) [Variance Permit] *Review Criteria*.

Variance Criteria 1: Special conditions or circumstances are present which are peculiar to the land or structures involved which are not applicable to other lands or structures in the same land use or zoning district.

Findings: Staff finds no special conditions or circumstances peculiar to the land or structures of the subject parcel to meet this criterion.

Per the applicants' statement "The property in question was purchased after Linda Mitchell, the (former) Planning Director for the City of Kenai, called Mrs. Sandra Millhouse and told her that the property in question was outside the 500 foot buffer zone at issue here. Mr. and Mrs. Millhouse would not have purchased the property in question without Ms. Mitchell's assurance. In short, they relied upon her assurance to their detriment. Moreover, this property is currently vacant. Accordingly, its development will increase the values of surrounding properties as well as the overall aesthetic of the area."

Variance Criteria 2: The special conditions or circumstances have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience.

Findings: Staff finds that the requested variance is intended to redress a pecuniary hardship or inconvenience caused by actions of the applicant. The applicants indicate that the building only has value as a commercial marijuana establishment. There are many other uses permitted in the General Commercial zoning district. The inability to operate a retail marijuana store does not substantially diminish economic opportunity. Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "As stated, Mr. and Mrs. Millhouse relied upon Ms. Mitchell's assurance to purchase the property. Simply put, Mr. and Mrs. Millhouse would not have purchased the subject property but for Ms. Mitchell's mistake. It was entirely reasonable for Mr. and Mrs. Millhouse to rely upon the Planning Director in this situation. Additionally, Mr. and Mrs. Millhouse were informed by Ms. Mitchell that another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance."

Variance Criteria 3: The granting of the variance shall not authorize a use that is not a permitted principal use in the zoning district in which the property is located.

Findings: Pursuant to KMC Section 14.22.010 *Land Use Table*, a retail marijuana store is not a permitted principal use in the General Commercial Zoning District, but instead requires a conditional use permit. Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "The property in question is located in the general commercial zone, which allows for conditional use permits for marijuana retail facilities per KMC 14.22.010 and KMC 14.20.330(a)."

Variance Criteria 4: The granting of a variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure.

Findings: The granting of this variance would be the minimum variance by allowing the applicant to operate a retail marijuana store within approximately 332 feet (Exhibit A) of the outer boundaries of the nearest recreation or youth center.

Per the applicants' statement "The ballfield(s) in question are actually more than 1,000 feet away from the proposed marijuana retail facility, although within 500 feet of the "buffer zone" under KMC 14.20.330(f)(1) when measured as the City of Kenai measures. So, the requested variance is minimal in all practical effect and will allow Mr. and Mrs. Millhouse to enjoy their property as they see fit and as KMC allows."

Variance Criteria 5: The granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district.

Findings: An excerpt of the applicants' statement from another section of the application states "...another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance." Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "Given that the property in question is zoned for general commercial and that general commercial allows for conditional use permits for retail marijuana facilities, this variance will not be based upon other nonconforming land uses or structures within the same land use or zoning district."

PUBLIC NOTICE

Pursuant to Kenai Municipal Code 14.20.280 notices of public hearing for the variance permit were mailed to property owners within a three hundred (300) foot periphery of the subject property. City staff published notice of the public hearing in the *Peninsula Clarion* on August 2, 2024. City staff submitted an Affidavit of Posting verifying a sign was placed on the parcel with information on the public hearing for the variance permit request.

As of the date of this staff report, one public comment has been received (See Public Comment Attachment).

STAFF RECOMMENDATION

Staff finds that the proposed Variance Permit application requesting buffer zone adjustment does not meet the criteria for issuance of a Variance Permit as set forth in Kenai Municipal Code Section 14.20.180(c), and hereby recommends that the Planning and Zoning Commission deny the proposed Variance Permit application. The decision of the Planning and Zoning Commission is subject to appeal, pursuant to KMC 14.20.290.

ANALYSIS – Conditional Use Permit

Pursuant to KMC 14.20.150(a), the intent of a conditional use permit is to allow some uses that may be compatible with the designated principal uses in specific zoning districts provided certain conditions are met. Prior to granting a conditional use permit, the Commission shall determine that the identified criteria as outlined in KMC 14.20.150(e) *Conditional Use Permits Review Criteria* are met.

Criteria 1: The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district.

Findings: The General Commercial Zoning District is described in Section 14.20.120 of Kenai Municipal Code (KMC) as follows:

The CG Zone is established to provide for areas where a broad range of retail, wholesale, and service establishments is desirable. Uses are regulated to concentrate commercial development to the greatest extent possible and to prevent any uses which would have an adverse effect upon nearby properties. New single- and two (2) family residential uses and other noncommercial uses, except as otherwise provided in this chapter, are not permitted in this zone as principal uses because it is intended that land classified in this zone be reserved for commercial purposes, and because a commercial zone is not suited to the uses excluded above.

Retail marijuana stores are a conditional use within the CG Zoning District, therefore a conditional use permit is required to operate a retail marijuana store. As proposed, the retail marijuana store would occupy as approximately 1,600 square foot unit of an approximately 9,332 square foot commercial building. The remaining units of the building are currently unoccupied.

Given the preceding Variance Permit application not meeting required criteria, staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store is consistent with the purpose of this chapter or the intent of the zoning district.

Criteria 2: The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired.

Findings: The economic and noneconomic value of adjacent properties would not be adversely affected by the proposal. The applicant states that the building is currently in a state of disrepair, and improvements are planned for both the building and landscaping, thus enhancing the aesthetics of the property as a whole. Historically the building has housed an array of businesses including restaurants, billiards halls, thrift/antique stores, small engine repair, and more. A retail store would generate commercial activity on the commercial premises, and would be consistent with the existing commercial development. The operation of any commercial marijuana establishment is subject to KMC as well as AMCO standards and any code violations may be subject to the revocation of the CUP.

Criteria 3: The proposed use is in harmony with the Comprehensive Plan.

Findings: The Land Use Plan, from the 2016 Comprehensive Plan, identifies the subject property with the General Commercial (GC) land use classification. The GC Land Use Classification is defined in the Comprehensive Plan:

General Commercial is intended for retail, service, and office businesses that serve Kenai and the larger region. General Commercial is appropriate for locations along the arterial road system. General Commercial-type development requires larger parcels of land and access to a major road system. It is also intended to support smaller-scale businesses.

The subject property is surrounded by Kenai Spur Highway to the south and west, commercial and residential uses to the north, and commercial and airport light industrial uses to the east. The proposed use would be consistent with the existing commercial development on the subject property.

RELEVANT GOALS

In *Imagine Kenai 2030 Comprehensive Plan*, Chapter 6, "Goals, Objectives, and Implementation", several goals and objectives are met from the proposed use.

Goal 1 – Quality of Life is to promote and encourage quality of life in Kenai.

Objective Q-4

Promote siting and design of land uses that are in harmony and scale with surrounding uses.

Goal 2 – Economic Development is to support the fiscal health of Kenai.

Objective ED-5

Promote adaptive reuse of vacant commercial buildings in the city center and along the Kenai Spur Highway.

Goal 3 – Land Use is to develop land use strategies to implement a forward-looking approach to community growth and development.

Objective LU-2

Promote the infill of existing, improved subdivision lots.

Criteria 4: Public services and facilities are adequate to serve the proposed use.

Findings: City water and sewer are available along First Avenue, which is a City-maintained road. The primary access is off of Kenai Spur Highway, a State-maintained right-of-way. Staff finds there would be little to no noticeable increase to traffic on the Kenai Spur Highway. The approximately 1,600 square foot retail unit requires 1 parking space per 300 square feet for retail use, for a total of 5 parking spaces. Therefore, the proposed use would not require additional parking spaces. Staff finds that there are adequate public services and facilities to serve the proposed use.

Criteria 5: The proposed use will not be harmful to the public safety, health or welfare.

Findings: Given the preceding Variance Permit application not meeting required criteria (PZ2024-18), staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store consisting of approximately 1,600 square feet would not be harmful to the public safety, health, or welfare.

Criteria 6: Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

Findings: Pursuant to KMC 14.20.330 *Standards for Commercial Marijuana Establishments* the following conditions apply to retail marijuana stores:

1. On-site consumption is prohibited on the premises of the proposed commercial marijuana establishment.
2. The proposed retail marijuana store shall not emit an odor detectable by the public from outside establishment.
3. The proposed marijuana establishment may not conduct business on, or allow any customer or consumer to access, the licensed premises between the hours of 5:00a.m. and 8:00 a.m. daily.

PUBLIC NOTICE

Pursuant to Kenai Municipal Code 14.20.330(c) notices of the public hearing for the conditional use permit amendment to allow a retail marijuana store were mailed to property owners within a five hundred-foot (500') periphery of the subject property or expanded until a minimum of 30 different property owners are available for notification. City staff published notice of the public hearing in the *Peninsula Clarion* at least seven (7) days prior to the date of the hearing. City staff submitted an Affidavit of Posting verifying a sign was placed on the parcel with information on the public hearing for the conditional use permit amendment request.

As of the date of this staff report, one (1) public comment has been received.

Resolution PZ2024-18
Variance Permit
Buffer Distance Reduction
Resolution PZ2024-19
Conditional Use Permit
Retail Marijuana Store

STAFF RECOMMENDATION

Staff finds that the proposed CUP application for the operation of an approximately 1,600 square foot retail marijuana store within the existing approximately 9,332 square foot commercial building on Government Lots 19,20, and 21, Section 6, Township 5 North, Range 11 West, Seward Meridian, Kenai, located at 11888 Kenai Spur Highway does not meet the required criteria and conditions for issuance of a Conditional Use Permit as set forth in subsections (e)(1) through (e)(6) of Kenai Municipal Code (KMC) 14.20.150 and KMC 14.20.330 *Standards for Commercial Marijuana Establishments*, and hereby recommends that the Planning and Zoning Commission deny the Conditional Use Permit application. This decision of the Planning and Zoning Commission is subject to appeal, pursuant to KMC 14.20.290.

ATTACHMENTS

Exhibit A
Exhibit B
500 ft Buffer Map
1000 ft Buffer Map
CUP Application with Floor Plan
Public Comment
Affidavits of Posting
Variance Permit Application
Notice Mailing List

Resolution PZ2024-18
Variance Permit
Buffer Distance Reduction
Resolution PZ2024-19
Conditional Use Permit
Retail Marijuana Store

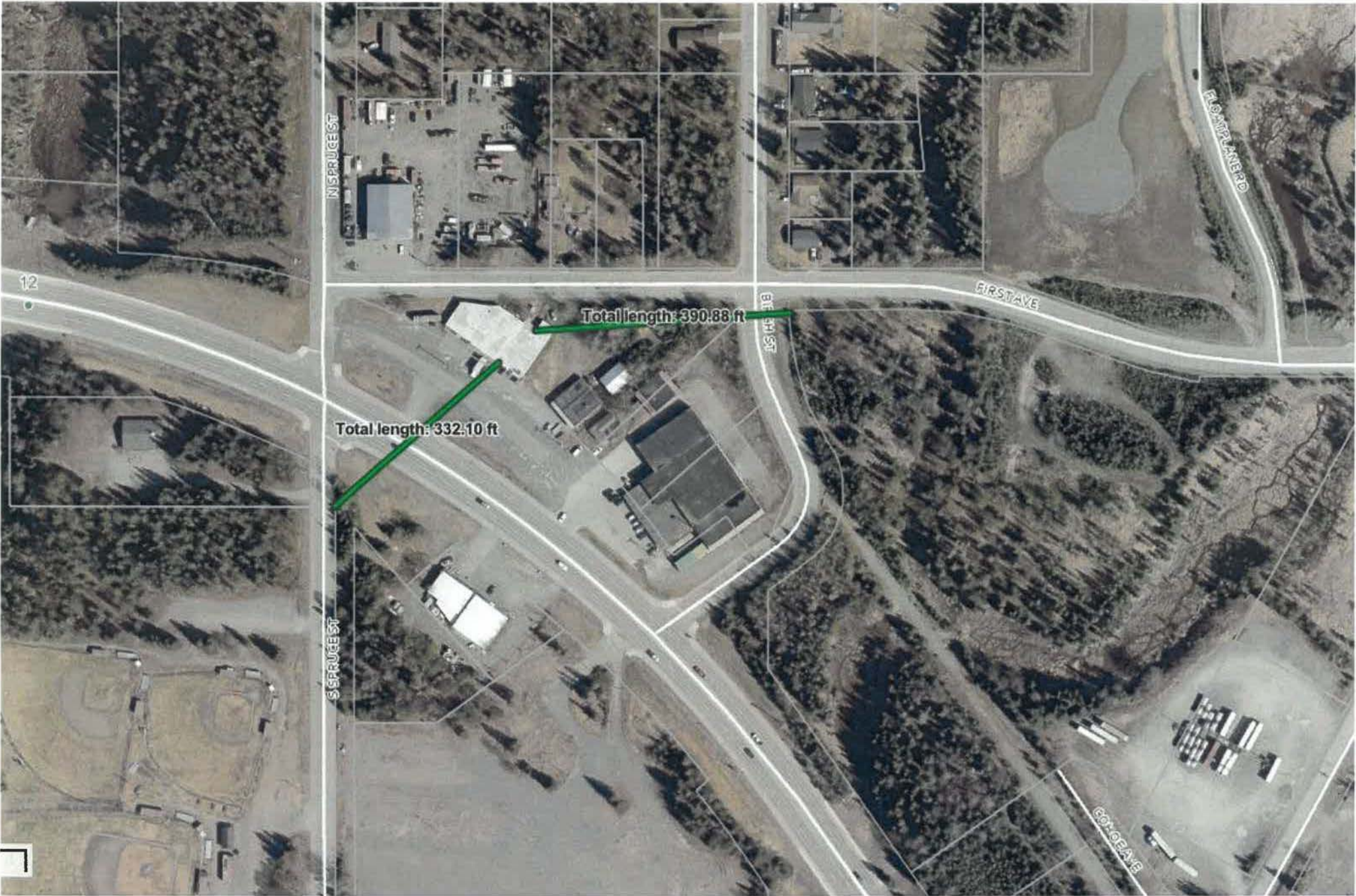
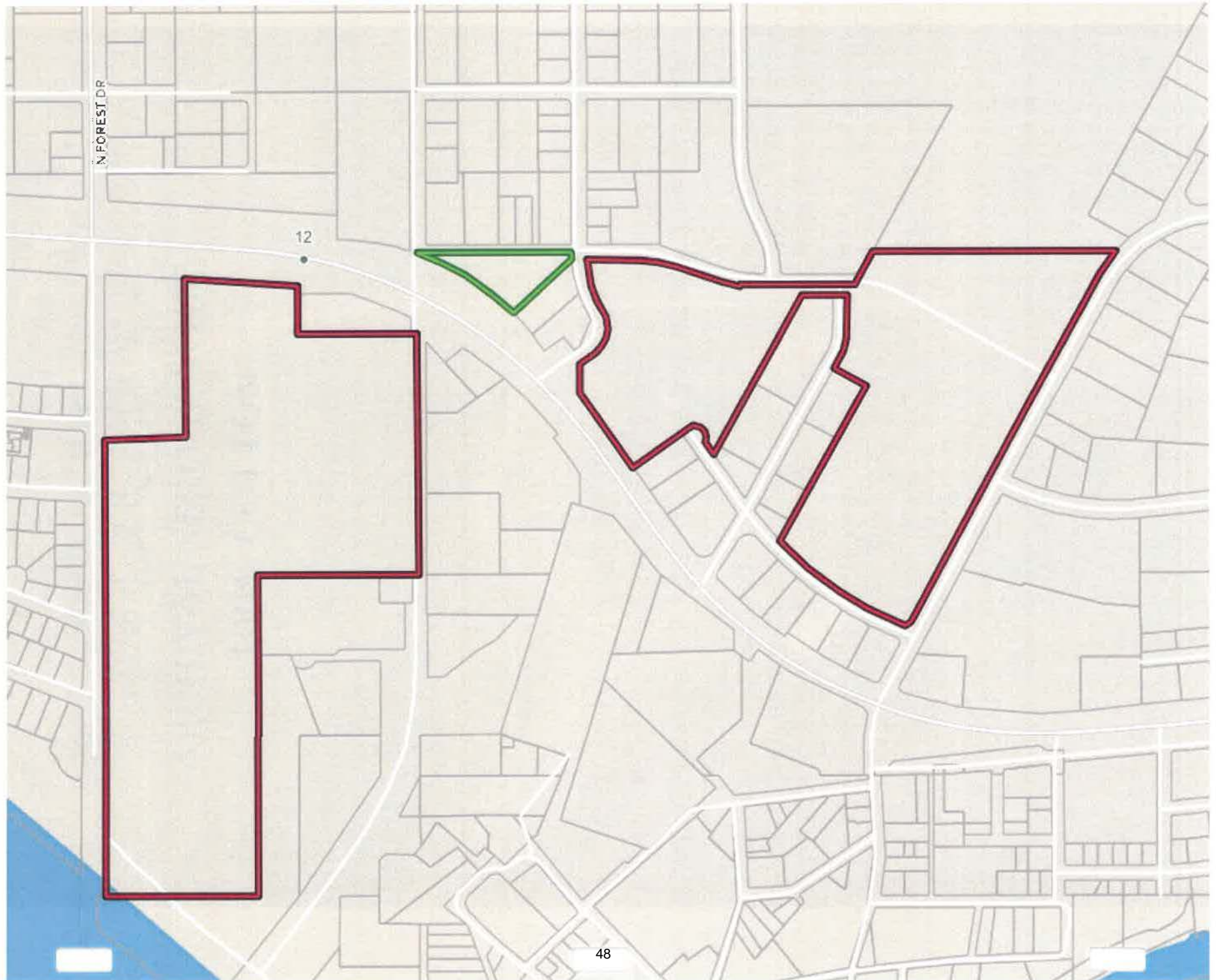
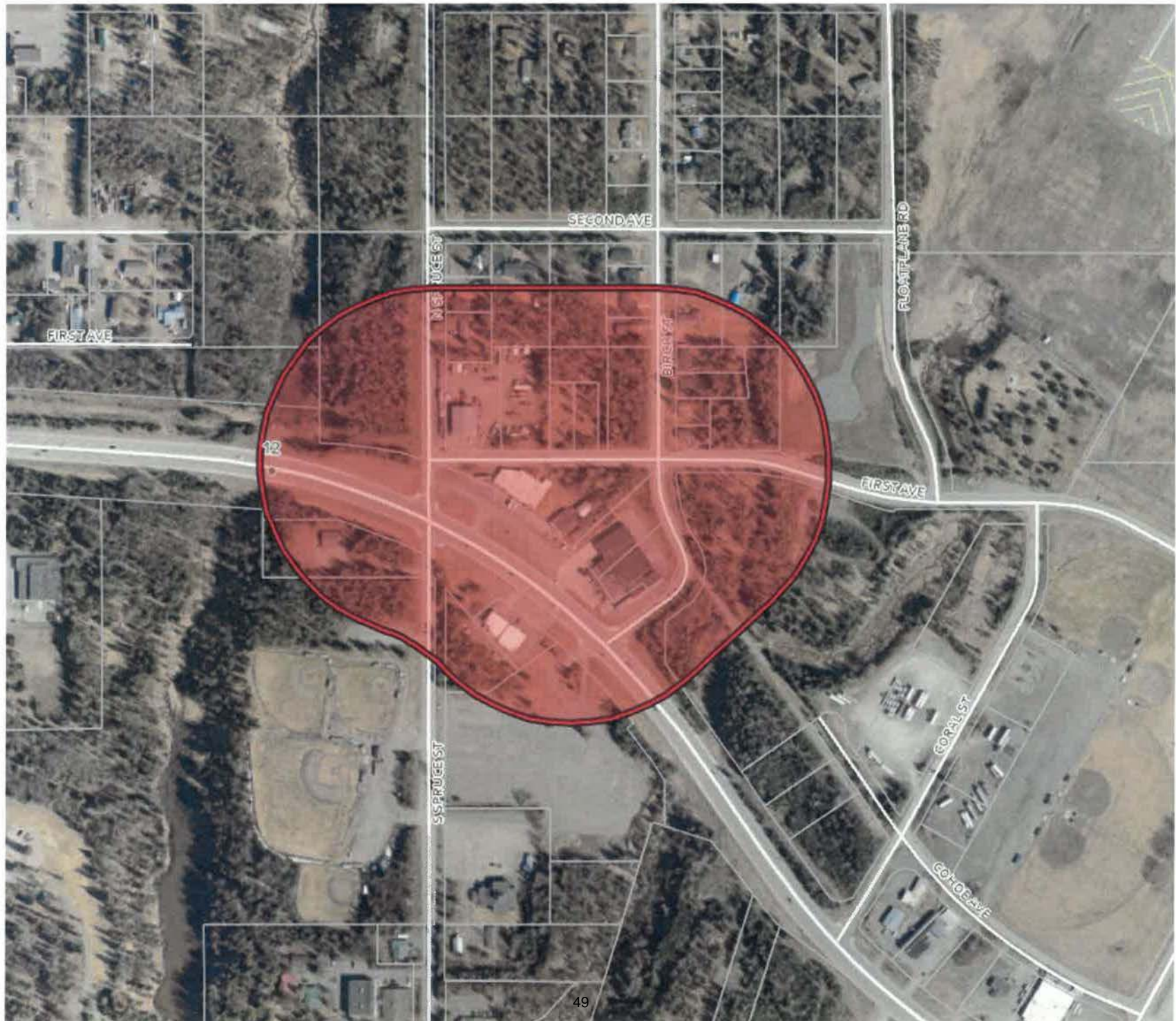


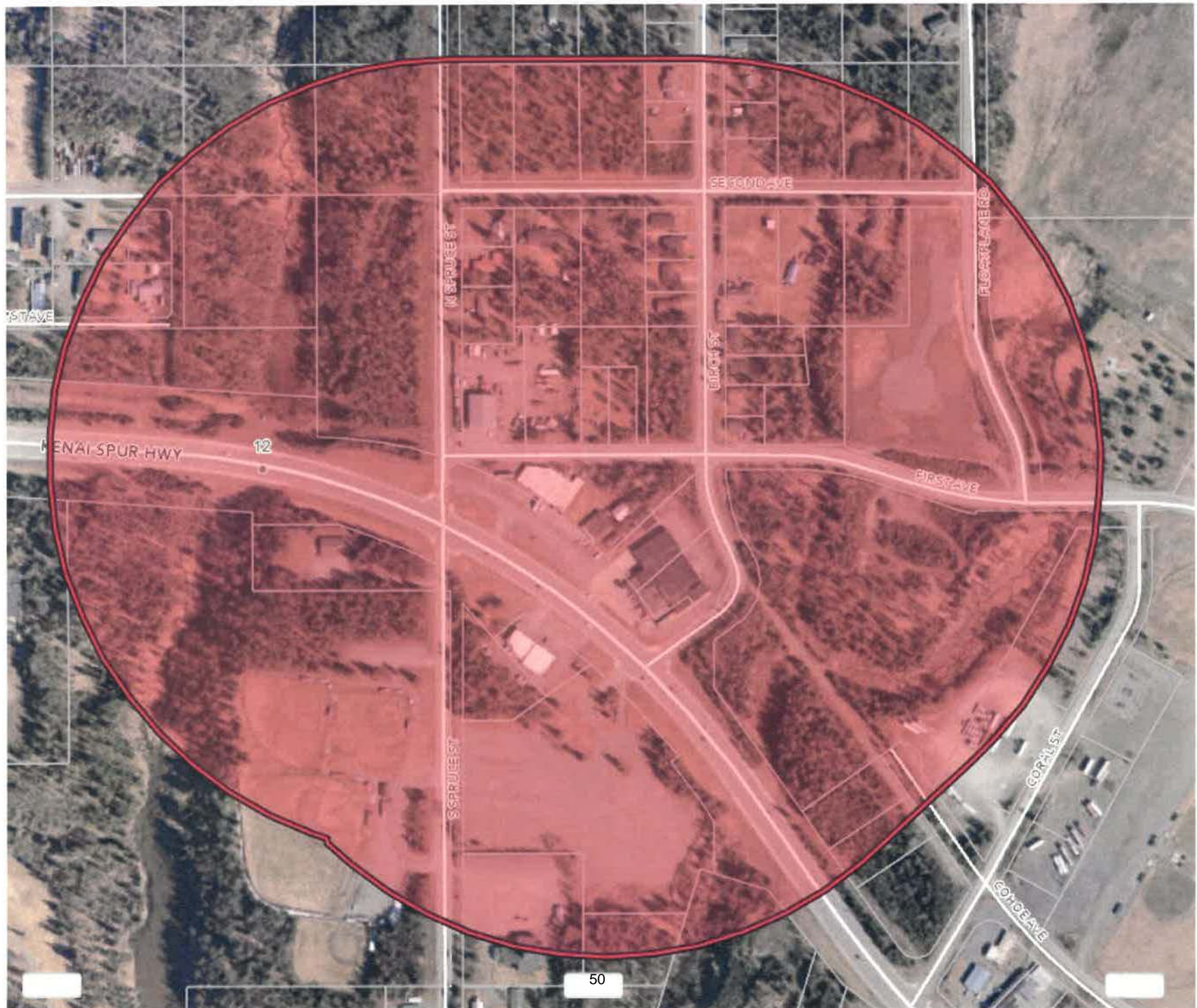
EXHIBIT B

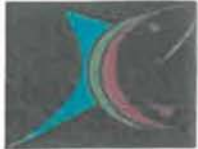


500 foot Buffer Map



1,000 foot Buffer Map





Conditional Use Permit Application

FEB 28 2024

Planning

Zoning

By:

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

PROPERTY OWNER

Name: Troy Millhouse
Mailing Address: PO Box 874574
City: Wasilla State: AK Zip Code: 99687
Phone Number(s): 907-229-6783
Email: bigdaddyfuzzy@yahoo.com

PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)

Name: Sandra D. Millhouse
Mailing Address: PO Box 874574
City: Wasilla State: AK Zip Code: 99687
Phone Number(s): 907-373-8761
Email: sandradhbia@yahoo.com

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (Property Tax ID): 04702001
Physical Address: 11888 Verai Spur Hwy #3 Kenai AK 99611
Legal Description: + 5N R 11W Sec 6 Seward Meridian KN Govt Lts 19, 20, 21
Zoning: General Commercial (C6)
Acres: 1.67

CONDITIONAL USE DESCRIPTION

(include site plan/floor plan with square footages)
(include State Business License and KPB Tax Compliance if applicable)

How is this property currently being used? currently vacant
Conditional Use Requested for (attach additional sheets if necessary):

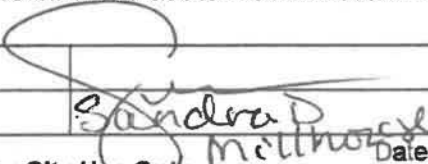
a marijuana Retail Facility as defined in municipal code 14.20.320.

Explain how the conditional use is consistent with purposes and intent of the zoning district of the property:

In the Land use code 14.22.010, the location we picked falls in the General Commercial zoning in the Land Use table, which allows conditional use permits for retail marijuana stores.

Explain how the value of adjoining property and neighborhood will not be significantly impaired by the conditional use:

we have a private access for our driveway. The property is currently vacant and unattractive. we are planning bldg improvements and plant additions or flower pots / beds to improve the look and aesthetic.

Use of surrounding property - north:	GC - Hall Quality Bldgs & Residential Use		
Use of surrounding property - south:	GC - Strip mall w/ antique store		
Use of surrounding property - east:	GC & ALI - Salvation Army		
Use of surrounding property - west:	Kenai Spur & Suburban Residential - vacant		
Explain how the conditional use is in harmony with the City's Comprehensive Plan:			
In Table 16 of the Land Use Plan Classifications GC will be used for future retail, and our location falls under GC on the map. we are planning improvements			
Are public services and facilities on the property adequate to serve the proposed conditional use?			
Our location is off the main road through downtown Kenai, and all utilities and public services are available there.			
Explain how the conditional use will not be harmful to public safety, health, or welfare:			
The access to our location is off the Kenai Spur Hwy so access is out of any residential area. we have 24 hour security set in place with camera monitoring and an alarm company. The retail is not visible inside to the public.			
Are there any measures with access, screening, site development, building design, or business operation that will lessen potential impacts of the conditional use to neighbors?			
we have easy access from the Kenai Spur Hwy, we have a ID card screening process for all visitors. we do not allow loitering anywhere on the property, and the facility is not visible from the outside.			
AUTHORITY TO APPLY FOR CONDITIONAL USE:			
I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.			
Signature:			Date: 2/22/24
Print Name:	Sandra D. Melthorse	Title/Business:	Canna Get Happy
For City Use Only		Date Application Fee Received:	
		PZ Resolution Number:	

1001

Millhouse Farms & Gardens

NUVISION FCU



90-8239/3222

02/25/2024

PAY TO THE
ORDER OF

\$

City of Kenai

**265.00

DOLLARS

Two hundred sixty-five and 00/100*****

City of Kenai
210 Fidalgo St
Kenai, AK 99611

MEMO



AUTHORIZED SIGNATURE

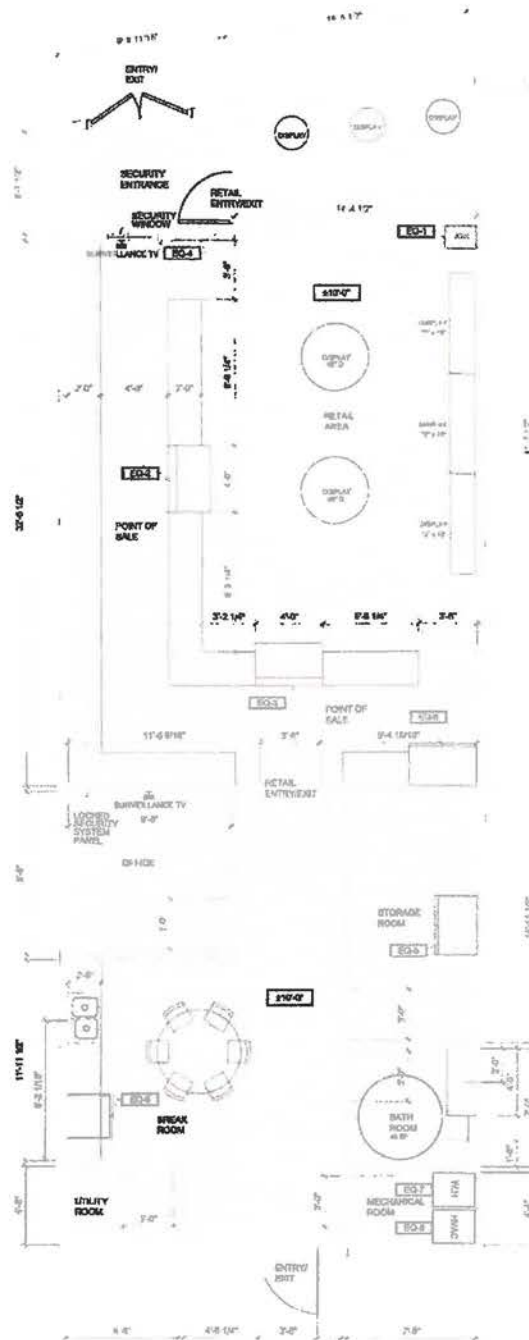
Security features. Details on back.





SITE PLAN
SCALE: 1/8" = 1'-0"

General Notes	
	KEY NOTE
	EXISTING PARTITIONS
	WINDOW
	EQUIPMENT TAG
	PLUMBING FIXT. TAG
	ELEVATION TAGS
	TRUE NORTH
	INGRESS
	EGRESS
	LICENSED PREMISES
	NON-LICENSED PREMISES
1	CREATED 10.08.21
DESIGNED BY: CST DESIGNS P.O. BOX 67474 WHEAT, AK 99577	
PROJECT: CANNA GET HAPPY, LLC LICENSE: 14-0104 SANDRA D. MILLHOUSE 1100 KENAI SPUR HWY, UNIT 3 KENAI, AK 99541	
DESIGNED: CANNA GET HAPPY DATE: 05/10/24 SCALE: 1/8"=1'-0"	DRAWING: 4



PROPOSED FLOOR PLAN
SCALE: 3/16" = 1'-0"

- EQUIPMENT:**
- (EQ-1) 100% CASH DISPENSING MACHINE, TBD
 - (EQ-2) CASH DISPENSING MACHINE, TBD
 - (EQ-3) CASH DISPENSING MACHINE, TBD
 - (EQ-4) SECURITY BUZZER
 - (EQ-5) STORAGE REFRIGERATOR, TBD
 - (EQ-6) BREAK ROOM REFRIGERATOR, TBD
 - (EQ-7) WATER FOUNTAIN
 - (EQ-8) HVAC
 - (EQ-9) BREAK ROOM REFRIGERATOR, TBD

General Notes	
(X)	KEY NOTE
---	EXISTING PARTITIONS
---	WINDOW
EQ-1	EQUIPMENT TAG
PD-1	PLUMBING FIXT. TAG
X X X	ELEVATION TAGS
■	PUBLIC ACCESS
■	RESTRICTED ACCESS AREA
⊙	TRUE NORTH
TV	SURVEILLANCE TV

1	UPDATED	02.21.24
1	CREATED	02.08.24

DESIGNED BY:
CST DESIGN
P.O. BOX 874624
WASILLA, AK 99613

PROJECT:
CANNON GET HAPPY, LLC
LOT 100000
SANDRA C. MILLHOUSE
1180 KENAI SPUR HWY, UNIT 3
KENAI, AK 99813

PROJECT:	DATE:
1/20/24	1
1/20/24	



Kenai Peninsula Borough, Alaska

Assessing Department

[Go Back](#)
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[Property Taxes](#)

Property Owner:
MILLHOUSE TROY
PO BOX 874574
WASILLA AK 99687-4574

[Change of Address](#)

[Owner\(s\)](#)

Property ID

04702001

Address

11888 KENAI SPUR HWY

Transfer Date

9/13/2023

Document / Book Page

20230071490

Acreage

1.6700

Tax Authority Group

30 - KENAI CITY

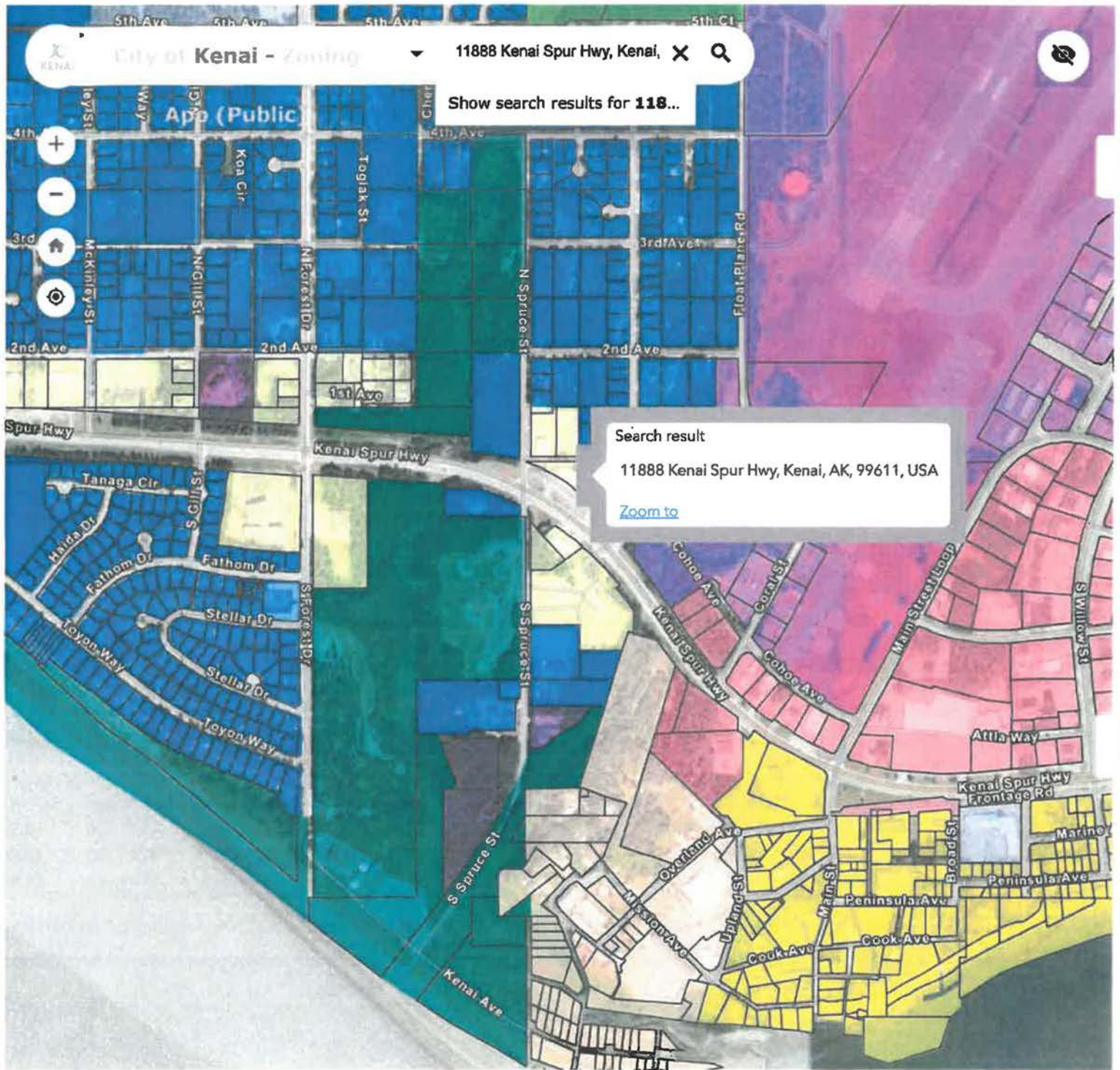
Description

T 5N R 11W SEC 6 Seward Meridian KN GOVT LOTS 19 20 & 21

Year	2023	2022	2021	2020	2019	2018	2017	2016	2015
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$209,300	\$209,300	\$129,500	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300
Imp Assd	\$112,900	\$262,400	\$229,900	\$242,400	\$244,600	\$233,200	\$228,700	\$225,100	\$247,000
Total Assd	\$322,200	\$471,700	\$359,400	\$365,700	\$367,900	\$356,500	\$352,000	\$348,400	\$370,300

C01

C02



600ft

From: Sandra D Millhouse sandradhbic@yahoo.com
Subject: Line From kenal canna to church
Date: February 20, 2024 at 8:43 PM
To: Sandra D Millhouse sandradhbic@yahoo.com



**“The Gardens”
Majestic & Magical**

Deniece & Ronald Isaacs
12656 Kenai Spur Hwy Kenai AK 99611
907-3983267 Dee 9072529777 Ron 9072834872 stores

July 17, 2024

To: major Kenai, city attorney, planning and zoning, city council & any interested party.

We are expressing our dissatisfaction of the willingness to try to change code, regulations for one person and not another.

As entrepreneurs we are fully aware of due diligence. Making sure approval is in writing before giving up our life savings and hawking everything we own. Putting down deposits and paying appraisers for official documentation became a consequence of this endeavor.

We spent a lot of money finding an approved location within the city limits of Kenai. 3 Different attempts before finding closing on a location

One of those locations was Swan square. Where we leased the building after the surveys were done, then we were denied a conditional use permit. Our appeal pleading for collaboration and seeking relief, to change alter existing properties to compile with state regulations was denied.

The Airport land is leased and is vital to our community. Regulations for public safety for these airports are vital to their operations. We can only imagine the funding that is supported by the airport. Athletic fields are on that leased airport land. This land comes practically to swans square back door. The little field at Steven Shearer Memorial Park ball field is too close at 438'.

The Alaskan Native Elders made an appearance to protest the location so close to where there were developing in old town. I am sure they would have some more opinions on what is being considered, I will be bringing this to their attention as well. They have invested tons of money in our community. The church across the street protested as well, offering buckets of money to prevent a marijuana business at that location. This letter will go to them as well.

Canna Get Happy's; Millhouse should have gotten a conditional use permit BEFORE purchasing the building and gotten some legal surveys. They are experienced marijuana businesses owners.

Swan Square owners knew full well a marijuana business could not go there, as two had already tried, they received revenue from those attempts and were denied. Vivian the owner at the time was over seen by her guardian daughter, Vivian as since passed, they were both aware as they received copies of necessary documents. Vivian did attended a meeting as I recall.

The city would not change, amend or help in any way to approve our conditional use permit, we were not giving the option to change anything, in fact we begged for help and consideration in collaborating to find a solution. NONE WAS GIVEN TO US.

The community, board members and the city officials made that decision not to have marijuana businesses in that location therefore it should stand. It was financially and emotionally draining to say the least. We have evaluated what this denial this has cost us and will be considering our options if this building is considered for a marijuana establishment of any kind. Something is not right it is fishy or feels corrupt to change for one and not another.

*Thank you
Deniece & Ronald*



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

AFFIDAVIT OF POSTING PUBLIC HEARING NOTICE

I hereby certify that I have posted a Notice of Public Hearing as prescribed by Kenai Municipal Code 14.20.280 (d) on the property that

SANDRA D. MILLHOUSE (Name of Applicant) has petitioned for a

CONDITIONAL USE PERMIT FOR A RETAIL MARIJUANA STORE

The notice was posted on the date of 02 AUG 2024, which is at least 10 days prior to the public hearing on this petition. I acknowledge this Notice must be posted so as to be visible from each improved street adjacent to the property and must be maintained and displayed until all public hearings have been completed. I acknowledge that the Notice must be removed within 5 days after the hearing.

Affirmed and signed by:

Brandon McElrea

Signature

BRANDON MCELREA

Printed Name

02 AUG 2024

Date

Property:

Address: 11888 KENAI SPRING HWY

Legal Description: GOVERNMENT LOTS 19, 20, 21, SEC 6, T5N, R11W

KPB Parcel #: 04702001

P&Z Resolution #:

PZ-2024-19



CITY OF KENAI
PLANNING & ZONING COMMISSION
Notice of Meeting

City of Kenai Council Chambers
210 Fidalgo Avenue, Kenai, AK 99611

The following agenda items will be before the City of Kenai Planning and Zoning Commission at their meeting starting at 7:00 p.m. on **Wednesday, August 14, 2024**.

PUBLIC HEARINGS

1. **Resolution PZ2024-18** – Consideration of a Variance Permit for Reduced Buffer Distances on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.
2. **Resolution PZ2024-19** – Consideration of a Conditional Use Permit to Operate a Retail Marijuana Store on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

The public is invited to attend the meeting and to participate virtually/telephonically. Additional information is available through the Planning and Zoning Department at planning@kenai.city, (907) 283-8237, or on the City's website at www.kenai.city.

Brandon McElrea, Planning & Zoning Administration

Publish: August 2, 2024



Variance Permit Application

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

PROPERTY OWNER

Name:	Troy D. Millhouse				
Mailing Address:	P.O. Box 874574				
City:	Wasilla	State:	AK	Zip Code:	99687
Phone Number(s):	907.229.6783				
Email:	bigdaddyfuzzy@yahoo.com				

PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)

Name:	Richard R. Moses (Alaska Bar No. 1311096)				
Mailing Address:	701 W. 8th Ave., Ste. 700				
City:	Anchorage	State:	AK	Zip Code:	99501
Phone Number(s):	907.274.0666				
Email:	rmoses@hwb-law.com				

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (Property Tax ID):	04702001
Physical Address:	11888 Kenai Spur Hwy., #3, Kenai, AK 99611
Legal Description:	Government Lots 19, 20, and 21, in Section 6, Township 5 North, Range 11 West, Seward Meridian
Zoning:	General Commercial (GC)
Acres:	1.67

VARIANCE DESCRIPTION

(include site plan with square footages and elevations of all existing/proposed buildings)
(use additional pages if necessary to answer questions)

A variance permit is the relaxation of the development requirements to provide relief when the literal enforcement would deprive a property owner of the reasonable use of their real property. The requirements for a variance permit in City Code must be met for a variance to be granted.

How is this property currently being used?	Currently vacant.
Use of surrounding property - north:	General Commercial -- Hall Quality Builders.
Use of surrounding property - south:	General Commercial -- Strip mall with antique store.
Use of surrounding property - east:	General Commercial and Airport Light Industrial -- Salvation Army.
Use of surrounding property - west:	Suburban Residential -- currently vacant.

Variance Requested for (attach additional sheets if necessary):

A marijuana retail facility as defined by KMC 14.20.320 to be located within the 500 foot buffer from ball field(s) that potentially qualify as a "recreation or youth center" under KMC 14.20.320.

Explain the special conditions or circumstances present which are peculiar to the land or structure involved which are not applicable to other land or structures in the same land use or zoning district:

The property in question was purchased after Linda Mitchell, the Planning Director for the City of Kenai, called Mrs. Sandra Millhouse and told her that the property in question was outside of the 500 foot buffer zone at issue here. Mr. and Mrs. Millhouse would not have purchased the property in question without Ms. Mitchell's assurance. In short, they relied upon her assurance to their detriment. Moreover, this property is currently vacant. Accordingly, its development will increase the values of surrounding properties as well as the overall aesthetic of the area.

Explain the special conditions or circumstances present that have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary (monetary) hardship or inconvenience:

As stated, Mr. and Mrs. Millhouse relied upon Ms. Mitchell's assurance to purchase the property. Simply put, Mr. and Mrs. Millhouse would not have purchased the subject property but for Ms. Mitchell's mistake. It was entirely reasonable for Mr. and Mrs. Millhouse to rely upon the Planning Director in this situation. Additionally, Mr. and Mrs. Millhouse were informed by Ms. Mitchell that another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance.

Explain how this variance will not authorize a use that is not a permitted principal use in the zoning district in which the property is located:

The property in question is located in the general commercial zone, which allows for conditional use permits for marijuana retail facilities per KMC 14.22.010 and KMC 14.20.330(a).

Explain how the variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure:


The ballfield(s) in question are actually more than 1,000 feet away from the proposed marijuana retail facility, although within 500 feet of the "buffer zone" under KMC 14.20.330(f)(1) when measured as the City of Kenai measures. So, the requested variance is minimal in all practical effect and will allow Mr. and Mrs. Millhouse to enjoy their property as they see fit and as the KMC allows.

Explain how the granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district:

Given that the property in question is zoned for general commercial and that general commercial allows for conditional use permits for retail marijuana facilities, this variance will not be based upon other nonconforming land uses or structures within the same land use or zoning district.

AUTHORITY TO APPLY FOR A VARIANCE:

I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a variance permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the variance. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.

Signature:		ABA# 13110910	Date:	05/21/2024
Print Name:	Richard R. Moses	Title/Business:	Holmes Weddle & Barcott, PC	
For City Use Only		Date Application Fee Received:		
		PZ Resolution Number:		



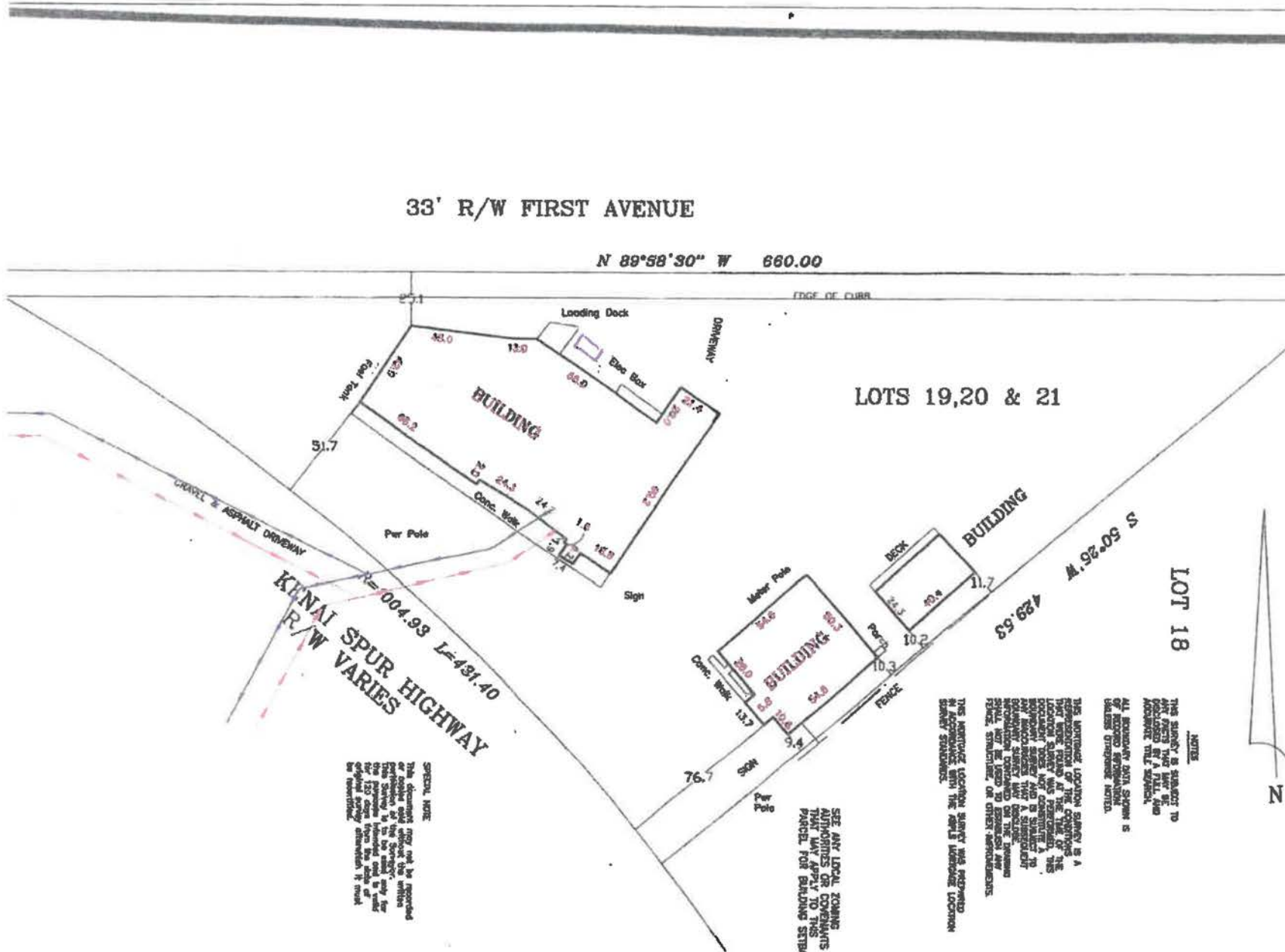
Variance Permit Application CHECKLIST

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

- ☐ Evaluate if your property has special conditions or circumstances peculiar to the property that prevent reasonable use of the property that are not merely a pecuniary inconvenience.
- ☐ Evaluate uses allowed in your zoning district. Information on zoning is available at kenai.city/planning/page/zoning.
- ☒ Submit completed application form. The application form must include an attached site plan/floor plan with square footages of all structures on the property and parking areas. If applicable, include a State Business License and a KPB Tax Compliance Form with the application.
Intents of zoning districts are at kenai.municipal.codes/KMC/14.20.
- ☐ Pay the \$265 fee as outlined in the Fee Schedule (\$250 + 6% tax).
- ☐ City staff will evaluate your application following Kenai Municipal Code 14.20.180- Variance Permits (kenai.municipal.codes/KMC/14.20.180). Please answer questions from City staff about your application.
- ☐ Post sign on your property and confirm the posting with the City. Planning staff will contact you and provide a sign stating a conditional use permit application has been submitted. The sign must be posted at least 10 days before the Planning & Zoning Commission meeting.
- ☐ Attend Planning & Zoning Commission meeting (not mandatory, but recommended). Attendance is beneficial so you are able to answer questions of the Commission.
- ☐ 15-day appeal period of the Planning & Zoning Commission's decision.

Thank you for choosing the City of Kenai!

Please contact the Planning & Zoning Department with application questions.



Legend

- (X) KEY NOTE
- EXISTING PARTITIONS
- WINDOW
- EQ-1 EQUIPMENT TAG
- PL-1 PLUMBING FIXTURE TAG
- X X X ELEVATION TAGS
- TRUE NORTH
- TV SURVEILLANCE TV
- TV MENU TV
- INGRESS
- EGRESS
- LICENSED PREMISES
- NON-LICENSED PREMISES

NOTES

THIS SURVEY IS SUBJECT TO ANY RIGHTS THAT MAY BE ACQUIRED BY A FILL AND ACCORDING THE SURVEY.

ALL BOUNDARY DATA SHOWN IS OF RECORD INFORMATION UNLESS OTHERWISE NOTED.

THE SURVEYED LOCATION SURVEY IS A REPRESENTATION OF THE CONDITIONS THAT WERE FOUND AT THE TIME OF THE SURVEY. THE SURVEYOR HAS CONDUCTED THIS SURVEY IN ACCORDANCE WITH THE SURVEYING ACT AND IS SUBJECT TO ANY PROVISIONS THAT A SUBSEQUENT SURVEY MAY BE CONDUCTED ON THE SURVEYED LOCATION. THE SURVEYOR SHALL NOT BE USED TO ESTABLISH ANY FENCE, STRUCTURE, OR OTHER IMPROVEMENTS.

THIS SURVEYED LOCATION SURVEY WAS PREPARED IN ACCORDANCE WITH THE SURVEYING ACT AND IS SUBJECT TO ANY PROVISIONS THAT A SUBSEQUENT SURVEY MAY BE CONDUCTED ON THE SURVEYED LOCATION. THE SURVEYOR SHALL NOT BE USED TO ESTABLISH ANY FENCE, STRUCTURE, OR OTHER IMPROVEMENTS.

SEE ANY LOCAL TOWNSHIP ORDINANCES OR COVENANTS THAT MAY APPLY TO THIS PARCEL FOR BUILDING SETBACKS.

SPECIAL NOTE

This document may not be reproduced or used for any purpose without the written permission of the Surveyor. This Survey is to be used only for the purpose for which it was prepared and for 100 years from the date of original survey. Any other use of this document is prohibited.

AS-BUILT PLAN
SCALE: 1/8" = 1'-0"

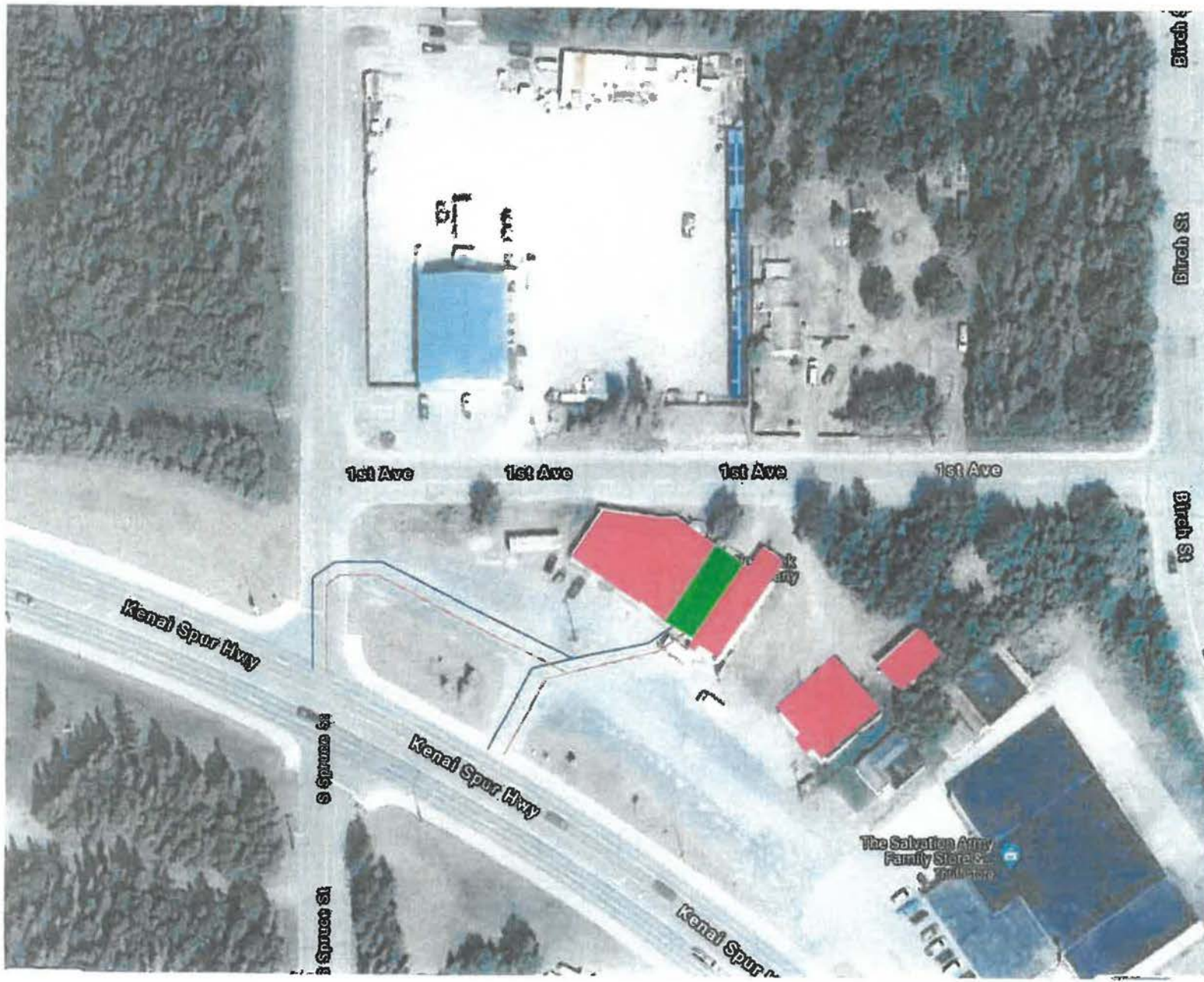
1	UPDATED	02.24.24
1	CREATED	02.28.24

DESIGNED BY:
CITY DESIGNS
P.O. BOX 8420
VANILLA, HI 96787

PROJECT:
CHINA GET HAPPY, LLC
LICENSED 3-0714
BANDRA D. MULLIGAN
THIRD KINAI SPUR HWY, UNITS 3
KINAI, HI 96781

PROJECT:	CHINA GET HAPPY	DATE:	02.28.24
DATE:	02.28.24	SCALE:	1/8" = 1'-0"

3



SITE PLAN
SCALE: 1/8" = 1'-0"

General Notes		
(X)	KEY NOTE	
---	EXISTING PARTITIONS	
---	WINDOW	
EQ-1	EQUIPMENT TAG	
PS-1	PLUMBING FIXT. TAG	
X-X-X-X	ELEVATION TAGS	
⊙	TRUE NORTH	
→	INGRESS	
→	EGRESS	
■	LICENSED PREAREA	
■	NOT LICENSED PREAREA	
1	CREATED	12/2014
DESIGNED BY: CST DESIGN P.O. BOX 6074 MOBILE, AL 36687		
PROJECT: CANA DETENTION LLC LICENSED AC 1004 SANDHILL MOUNTAIN 11550 KENAL SPUR HWY, UNIT 3 KENAL, AL 36051		
PROJECT: CANA DETENTION LLC	DRAWN:	
DATE:		
SCALE:		
1/8" = 1'-0"		
		4



Kenai Peninsula Borough, Alaska

Assessing Department

[Go Back](#)[Property Search](#)[Print Report](#)[Property Taxes](#)

Property Owner:
MILLHOUSE TROY
PO BOX 874574
WASILLA AK 99687-4574

[Change of Address](#)[Owner\(s\)](#)**Property ID**

04702001

Address

11888 KENAI SPUR HWY

Transfer Date

9/13/2023

Document / Book Page

20230071490

Acreage

1.6700

Tax Authority Group

30 - KENAI CITY

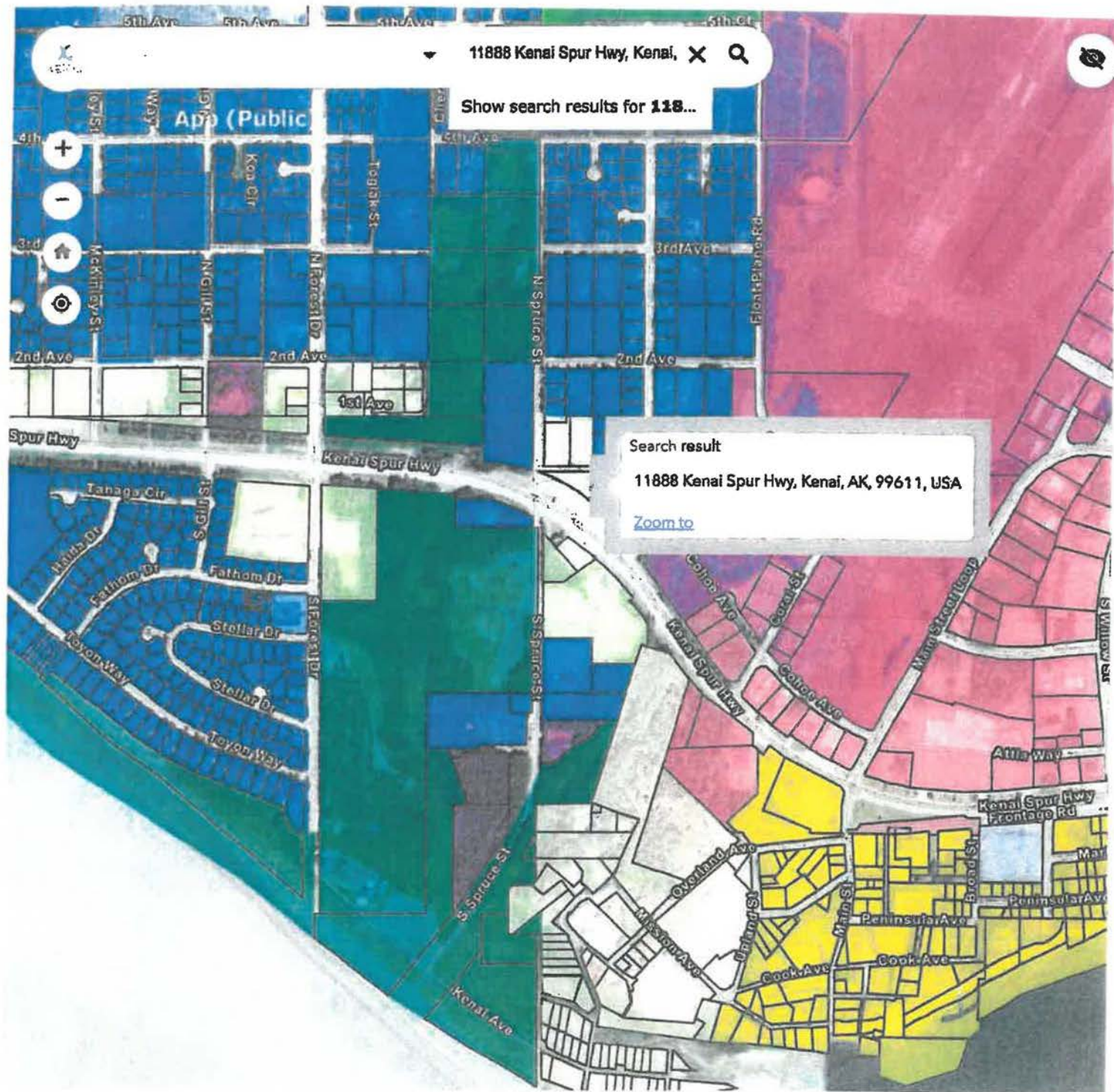
Description

T 5N R 11W SEC 6 Seward Meridian KN GOVT LOTS 19 20 & 21

Year	2023	2022	2021	2020	2019	2018	2017	2016	2015
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$209,300	\$209,300	\$129,500	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300
Imp Assd	\$112,900	\$262,400	\$229,900	\$242,400	\$244,600	\$233,200	\$228,700	\$225,100	\$225,100
Total Assd	\$322,200	\$471,700	\$359,400	\$365,700	\$367,900	\$356,500	\$352,000	\$348,400	\$348,400

C01

C02



From: Sandra D Millhouse sandradhbic@yahoo.com
Subject: Line From kanal canna to church
Date: February 20, 2024 at 8:43 PM
To: Sandra D Millhouse sandradhbic@yahoo.com



City of Kenai - Planning and Zoning Department

Inv#	Amt	Inv#	Amt	May 22, 2024
8952-035214	\$265.00			Check Total \$265.00

Variance Permit Application (Millhouse)
 Fee \$250.00 (+) Additional \$15 for 6% KPBTax

91079

HOLMES WEDDLE & BARCOTT, PC

WAFD BANK
 SEATTLE, WASHINGTON 98101
 19-7098/3250



Two hundred sixty-five Dollars 00/100*****

DATE

AMOUNT

May 22, 2024

\$265.00

PAY
 TO THE
 ORDER
 OF

City of Kenai - Planning and Zoning Department
 210 Fidalgo Ave
 Kenai, AK 99611

VOID AFTER 90 DAYS



[Signature]
 AUTHORIZED SIGNATURE

Security features. Details on back.



EPISCOPAL DIOCESE OF ALASKA
110 S SPRUCE ST
KENAI
AK 99611

HILCORP ALASKA LLC
1111 TRAVIS ST
HOUSTON
TX 77002

KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI
AK 99611

MADRIGAL ANDY
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MCKEIRNAN DANIEL F
PO BOX 2365
KENAI
AK 99611

MILLHOUSE TROY
PO BOX 874574
WASILLA
AK 99687

OUR LADY OF ANGELS PARISH OF
ARCHDIOCESE OF ANCHORAGE
225 S SPRUCE ST
KENAI
AK 99611

RININGER ZACHARY
511 ASH AVE
KENAI
AK 99611

SALVATION ARMY
143 E 9TH AVE
ANCHORAGE
AK 99501

SARKS PAUL E & GARNET M
110 BIRCH ST
KENAI
AK 99611

FIRST BAPTIST CHURCH
PO BOX 3412
KENAI
AK 99611

HUGHEY KIANA
1103 2ND AVE
KENAI
AK 99611

KENAITZE INDIAN TRIBE
PO BOX 988
KENAI
AK 99611

MADRIGAL SOPHIA
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MCKEIRNAN SUSAN
PO BOX 2365
KENAI
AK 99611

MOREY DOLLIE K
202 BIRCH ST
KENAI
AK 99611

PEREZ FRED Jr
204 BIRCH ST
KENAI
AK 99611

RONELLENFITCH SARAH M
102 BIRCH ST
KENAI
AK 99611

SARKS GARNET M
110 BIRCH ST
KENAI
AK 99611

SHAFFER KEITH
PO BOX 853
KENAI
AK 99611

FIVE D INVESTMENTS LLC
PO BOX 969
KENAI
AK 99611

HUGHEY TYSON E
1103 2ND AVE
KENAI
AK 99611

LAGOUTARIS ELAINNAH
36350 MAYONI ST
SOLDOTNA
AK 99669

MARSH LYN E
106 BIRCH ST
KENAI
AK 99611

MCMANAMY SHELDON D
36350 MAYONI ST
SOLDOTNA
AK 99669

OSTRANDER PAUL CLARK
48645 RUNNERS AVE
SOLDOTNA
AK 99669

RININGER LACEY
511 ASH AVE
KENAI
AK 99611

RR KENA LLC
2133 E RANCH RD
TEMPE
AZ 85284

SARKS PAUL E
110 BIRCH ST
KENAI
AK 99611

SHAFFER MAUREEN K
PO BOX 853
KENAI
AK 99611

SIPIES CHERYL L & GERALDINE L
PO BOX 4472
SOLDOTNA
AK 99669

SWEARINGEN GLENNA M
PO BOX 1031
KENAI
AK 99611

VARNE THOMAS
22205 67TH PL W
MOUNTLAKE TERRACE
WA 98043

WILES MICHAEL L & NANCY L
1206 1ST AVE
KENAI
AK 99611

WILLIAMSON HOWARD J
607 E 74TH AVE
ANCHORAGE
AK 99518

WILLIAMSON TERRY K
607 E 74TH AVE
ANCHORAGE
AK 99518

WILSON RUSSELL J SR & CONSTANCE
1402 1ST AVE
KENAI
AK 99611

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
AUGUST 14, 2024 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JOE HALSTEAD, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on August 14, 2024, in City Hall Council Chambers, Kenai, AK. Chair Halstead called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Chair Halstead led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Joe Halstead, Chair
Glenese Pettet
Jeff Twait
Gwen Woodard

John Coston, Vice Chair
Sonja Earsley
Diane Fikes

A quorum was present.

Also in attendance were:

Max Best, Interim Planning Director
Brandon McElrea, Planning Technician
Alex Douthit, City Council Liaison
Meghan Thibodeau, Deputy City Clerk

3. Approval of Agenda and Consent Agenda

MOTION:

Commissioner Woodard **MOVED** to approve the agenda and consent agenda. Commissioner Fikes **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Chair Halstead opened the floor for public comment on consent agenda items; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

There being no objection; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. APPROVAL OF MINUTES

1. *Regular Meeting of June 26, 2024

Approved by the consent agenda.

C. **SCHEDULED PUBLIC COMMENTS** - None.

D. **UNSCHEDULED PUBLIC COMMENTS** - None.

E. **CONSIDERATION OF PLATS** - None.

F. **PUBLIC HEARINGS**

1. **Resolution No. PZ2024-18** – Consideration of a Variance Permit for Reduced Buffer Distances on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

It was noted that the resolution was denying an application for a variance permit.

MOTION:

Commissioner Twait **MOVED** to approve Resolution PZ2024-18. Commissioner Fikes **SECONDED** the motion.

Interim Planning Director Best provided an overview of the staff report as included in the packet and attached to Resolution No. PZ2024-18; he noted that the application was for a variance permit for buffering distance within a conditional use permit (CUP) to allow a retail marijuana store; the CUP would be addressed in a separate public hearing on Resolution PZ2024-19. The criteria for a variance were reviewed; and it was reported the application did not meet the criteria for a variance and City staff recommended denial.

Chair Halstead opened the floor for public hearing.

Deneise Isaacs spoke in opposition to the applications; stating that she had previously been denied a conditional use permit to operate a marijuana store in the same location.

Nancy Wiles spoke in opposition to the applications; highlighted her family's involvement in sports at the nearby fields; explained that tournaments are large family events and a marijuana establishment should not be close to the fields.

Ken Dunbar spoke in opposition to the applications and stated that the applicants should have put the property in escrow subject to receiving all necessary permits.

Tea Winger spoke in opposition to the applications; stating that she conducted a neighborhood poll on the subject and the results showed the majority of respondents were not in support; expressed concerns about drugs, homelessness, traffic, ATV use and child safety in the neighborhood.

Jim Glendening spoke in opposition to the applications; provided a history of the City's development of marijuana laws through community, City and State involvement; and stated there was no reason to deviate from the established system.

Richard Moses, representative of the applicant, spoke in support of the applications; emphasized that this was an issue of fairness; stated that a previous City employee had provided assurances that the applicant was compliant with code.

Sandra Millhouse, applicant, stated that she was unaware the Isaacs had previously been denied a retail marijuana CUP when she purchased and remodeled the property; she lived in close proximity to the marijuana store she operated in Wasilla and had not experienced public trespassing; and the previous Planning Director had told her she had measured wrong.

There being no one else wishing to be heard, the public hearing period was closed.

[Clerk's note: Chair Halstead passed the gavel to Vice Chair Coston and disclosed a potential conflict with Resolution No. PZ2024-19 and Resolution No. PZ2024-19, as he had received a comment from the

public on the proposed marijuana business. Vice Chair Coston ruled he had no conflict and returned the gavel.]

Clarification was provided on the City's buffer distance requirements; previous Planning decisions on other marijuana properties; and the City's method of distance measurement.

Commissioner Twait noted that he had not observed homelessness issues related to marijuana properties, and the City has code in place for handling these issues.

Commissioner Fikes stated that she agreed with staff's finding, and did not support approving a variance from the established marijuana laws.

VOTE:

YEA: Fikes, Twait, Woodard, Earsley, Coston, Halstead

NAY: None

ABSENT: Pettey

MOTION PASSED WITHOUT OBJECTION.

Chair Halstead noted the 15-day appeal period.

2. **Resolution PZ2024-19** – Consideration of a Conditional Use Permit to Operate a Retail Marijuana Store on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

It was noted that the Resolution was denying a Conditional Use Permit for a Retail Marijuana Store.

MOTION:

Commissioner Twait **MOVED** to approve Resolution PZ2024-19. Commissioner Fikes **SECONDED** the motion.

Interim Planning Director Best provided an overview of the staff report as included in the packet and attached to Resolution No. PZ2024-19; he noted that the application was for a CUP to operate a retail marijuana store. The criteria for a CUP were reviewed; and it was reported that the application did not meet the criteria for a CUP and City staff recommended denial.

Richard Moses, representative of the applicant, stated that he was available for questions.

Chair Halstead opened the floor for public hearing.

Deniece Isaacs spoke in opposition to the application; emphasized due diligence and abiding to rules; and discussed history of previous tenants and owners of the property.

Nancy Wiles spoke in opposition to the application; expressed concerns about increased traffic and drug activity; and spoke of previous issues with other businesses near the property.

Teea Winger spoke in opposition to the application; expressed concerns about drug activity among the homeless and in her neighborhood; noted there was no written evidence of what the previous Planning Director told the applicant; and stated that the neighborhood was not in support of the proposed business.

There being no one else wishing to be heard, the public hearing period was closed.

MOTION TO AMEND:

Commissioner Twait **MOVED** to amend Criteria 5 to read as following:

Given the preceding Variance Permit application not meeting required criteria (PZ2024-18), staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store consisting of approximately 1,600 square feet would [NOT] be harmful to the public safety, health, or welfare.

Commissioner Woodard **SECONDED** the motion.

Commissioner Twait expressed sympathy for the applicant's position; stated that the Commission's role is to consider the application within Code; and said he was in support of Staff's recommendation to deny the permit.

Commissioner Halstead stated that the situation is unfortunate; noted that the City's zoning regulations were developed in the best interest of the community.

VOTE:

YEA: Coston, Earsley, Halstead, Woodard, Fikes, Twait

NAY: None

ABSENT: Pettey

MOTION PASSED WITHOUT OBJECTION.

Chair Halstead noted the 15-day appeal period.

G. UNFINISHED BUSINESS

1. **Discussion/Recommendation** – Proposal to Reduce the Number of Meetings for Planning and Zoning Commission. *[On 6/12/24 this item was postponed.]*

Deputy Clerk Thibodeau reviewed the memo provided in the packet, and noted that the City Clerk recommended postponing this item indefinitely.

MOTION:

Commissioner Twait **MOVED** to postpone the discussion to reduce the number of Planning and Zoning Commission Meetings indefinitely. Vice Chair Coston **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

There being no objection; **SO ORDERED.**

H. NEW BUSINESS

1. ***Action/Approval** – Requesting an Excused Absence for the June 26, 2024 Regular Meeting – Halstead

Approved by the consent agenda.

I. REPORTS

1. Planning Director – Interim Planning Director Best reported on the following:
 - The August 28, 2024 Regular Meeting will be cancelled due to lack of agenda items.
 - Thanked Planning Technician Brandon McElrea and Administrative Assistant Beth McDonald on their help during his time as Interim Director.
2. Commission Chair – None.
3. Kenai Peninsula Borough Planning – Commissioner Fikes reported on recent actions of the Kenai Peninsula Borough Planning Commission Meeting.
4. City Council Liaison – Council Member Douthit reported on recent actions of the City Council.

J. ADDITIONAL PUBLIC COMMENT

Jim Glendening thanked the Commission for their work on the public hearing items.

K. NEXT MEETING ATTENDANCE NOTIFICATION

1. Next Meeting: August 28, 2024

It was noted this meeting had been cancelled.

L. COMMISSION COMMENTS AND QUESTIONS

Commissioner Woodard thanked Max Best for returning as Interim Planning Director.

Commissioner Twait asked about the Board of Adjustment Hearing date.


M. PENDING ITEMS – None.

N. ADJOURNMENT

O. INFORMATIONAL ITEMS – None.

There being no further business before the Planning & Zoning Commission, the meeting was adjourned at 8:24 p.m.

I certify the above represents accurate minutes of the Planning & Zoning Commission meeting of August 24, 2024.



Meghan Thibodeau
Deputy City Clerk

LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

FOUNDED IN 1914

OVER A CENTURY OF SERVICE TO OUR CLIENTS

701 WEST EIGHTH AVENUE, SUITE 700 • ANCHORAGE, ALASKA 99501-3408

TELEPHONE (907) 274-0666 • FAX (907) 277-4657

RICHARD R. MOSES
rmoses@hwb-law.com

October 7, 2024

VIA EMAIL

Shellie Saner, MMC
Kenai City Clerk
cityclerk@kenai.city

RE: *Additional Information for Board of Adjustment Hearing Packet*
Board of Adjustment Hearing – Appeal of a Planning and Zoning Commission Action
Denying an Application of a Variance Permit for a Marijuana Retail Store
to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska
Date of Hearing: Tuesday, October 15, 2024
Our File No.: 8952-35214

Dear Ms. Saner:

Enclosed please find for inclusion in the Board of Adjustment Hearing packet, the written statement of Linda Mitchell, Former City of Kenai Planning Director.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Troy Millhouse



Richard R. Moses

RRM/san

Enclosure: As stated.

October 4, 2024

City of Kenai
Attn: Scott Bloom, City Attorney
210 Fidalgo Avenue
Kenai, AK 99611

Mr. Bloom,

At your request, I am providing my account of the initial communication with Sandra Millhouse regarding the property located at 11888 Kenai Spur Highway. She had called inquiring about the zoning for the subject property and whether a retail marijuana establishment would be allowed. I relayed to Mrs. Millhouse that a retail marijuana establishment is subject to a conditional use permit (CUP) and meeting the requirements outlined in Kenai Municipal Code (KMC) 14.20.330 *Standards for Commercial Marijuana Establishments*. I went over the basic requirements, such as the criteria of a CUP and then the 1000-foot and 500-foot buffering distances, which have different measurements based on whether the retail marijuana is conducted in a standalone structure or in a multi-tenant building. The subject property has an existing multi-tenant building and Mrs. Millhouse stated it would be in the 2nd tenant space from the right (east) side of the building. I shared that code [KMC 14.20.330(f)(2)] states the buffer distances for a multi-tenant building *"are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment."* Mrs. Millhouse inquired about the buffer distances and I utilized the Kenai Peninsula Borough's GIS Parcel Viewer (known as viewKPB) to obtain estimated measurements. To the southwest across the Kenai Spur Highway of the subject property is a church and I measured to the church's closest exterior from the exterior wall of the proposed tenant space and concluded it exceeded 500 feet. Next, I measured to the outer boundary of the nearby "recreation or youth center", Kenai Little League field, located at 220 S. Spruce Street to the exterior of the proposed unit and the distance exceed 500 feet. I measured to outer edge of the athletic field since "recreation or youth center" is defined as *"a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age."* I informed Mrs. Millhouse that it appears that the basic buffering requirement are met but a conditional use is a discretionary permit, meaning there are no guarantees, subject to meeting the criteria for approval. I offered to Mrs. Millhouse that when she is ready to submit a Conditional Use Permit application, I can assist with a submittal requirement as outlined in KMC 14.20.330(b) for an area map since it is a very specific map and generally requires assistance/guidance from staff.

Sincerely,



Linda Mitchell
Former City of Kenai Planning Director

October 4, 2024

City of Kenai
Attn: Scott Bloom, City Attorney
210 Fidalgo Avenue
Kenai, AK 99611

Mr. Bloom,

At your request, I am providing my account of the initial communication with Sandra Millhouse regarding the property located at 11888 Kenai Spur Highway. She had called inquiring about the zoning for the subject property and whether a retail marijuana establishment would be allowed. I relayed to Mrs. Millhouse that a retail marijuana establishment is subject to a conditional use permit (CUP) and meeting the requirements outlined in Kenai Municipal Code (KMC) 14.20.330 *Standards for Commercial Marijuana Establishments*. I went over the basic requirements, such as the criteria of a CUP and then the 1000-foot and 500-foot buffering distances, which have different measurements based on whether the retail marijuana is conducted in a standalone structure or in a multi-tenant building. The subject property has an existing multi-tenant building and Mrs. Millhouse stated it would be in the 2nd tenant space from the right (east) side of the building. I shared that code [KMC 14.20.330(f)(2)] states the buffer distances for a multi-tenant building *"are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment."* Mrs. Millhouse inquired about the buffer distances and I utilized the Kenai Peninsula Borough's GIS Parcel Viewer (known as viewKPB) to obtain estimated measurements. To the southwest across the Kenai Spur Highway of the subject property is a church and I measured to the church's closest exterior from the exterior wall of the proposed tenant space and concluded it exceeded 500 feet. Next, I measured to the outer boundary of the nearby "recreation or youth center", Kenai Little League field, located at 220 S. Spruce Street to the exterior of the proposed unit and the distance exceed 500 feet. I measured to outer edge of the athletic field since "recreation or youth center" is defined as *"a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age."* I informed Mrs. Millhouse that it appears that the basic buffering requirement are met but a conditional use is a discretionary permit, meaning there are no guarantees, subject to meeting the criteria for approval. I offered to Mrs. Millhouse that when she is ready to submit a Conditional Use Permit application, I can assist with a submittal requirement as outlined in KMC 14.20.330(b) for an area map since it is a very specific map and generally requires assistance/guidance from staff.

Sincerely,



Linda Mitchell
Former City of Kenai Planning Director

From: [Scott Bloom](#)
To: [Brandon McElrea](#)
Subject: FW: Linda Mitchell's Statement
Date: Monday, October 7, 2024 8:57:33 AM

Brandon, please include this as well

From: Linda <kenaiplanning@gmail.com>
Sent: Monday, October 7, 2024 8:54 AM
To: Scott Bloom <SBloom@kenai.city>
Subject: Re: Linda Mitchell's Statement

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Scott,

I offered to provide a map with the measurements when she was ready or preparing to submit a CUP application. I did not tell her that I would confirm the measurement and get back to her. I did mention to her that people usually place a condition on a purchase when a proposed use requires a CUP, similarly to the Salamatof CUP off Kiana Lane, I suggested that they do the same thing because they needed a CUP. I was anticipating that she would submit for a CUP and wait for a decision before she closed on the property.

On Mon, Oct 7, 2024 at 7:45 AM Scott Bloom <SBloom@kenai.city> wrote:

Linda,

I recall you telling me that you had told her you would confirm your measurements and follow up with her later, but she purchased the property before you had a chance to follow up?

From: Linda <kenaiplanning@gmail.com>
Sent: Friday, October 4, 2024 7:19 PM
To: Scott Bloom <SBloom@kenai.city>
Subject: Linda Mitchell's Statement

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Scott,

Attached is my statement.

Sorry it took so long, it has been a busy week at work with priority projects.

Sincerely,

Linda Mitchell

Scott Bloom

From: Brandon McElrea
Sent: Friday, March 29, 2024 3:02 PM
To: Linda Mitchell
Subject: FW: Maps & Parcel Lists
Attachments: Millhouse CUP.jpg; isaacs_board_of_adjustment_decision.pdf

From: Planning Department
Sent: Monday, March 25, 2024 12:37 PM
To: 'Sandra D Millhouse' <sandradsbic@yahoo.com>
Cc: Linda Mitchell <lmitchell@kenai.city>
Subject: RE: Maps & Parcel Lists

Mrs. Millhouse,

Attached is the measurement from the southwest corner of the proposed CME to the northeast corner of parcel 04701008, as well as from the northeast corner of the proposed CME to the western corner of parcel 04327036. Also attached is the Board of Adjustment decision ruling upholding the denial of a CUP on the same property in 2016. Page 6 of this document describes the method of measurement used to determine eligibility. I hope this helps.

Regards,
Brandon

Brandon McElrea
Planning Technician

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
O: (907)283-8233 | bmcelrea@kenai.city



From: Sandra D Millhouse <sandradsbic@yahoo.com>
Sent: Friday, March 22, 2024 1:01 PM
To: Planning Department <planning@kenai.city>
Subject: Fwd: Maps & Parcel Lists

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

I had turned in paperwork for a CUP at 11888 Kenai Spur #3.
I was told I was too close to the ball fields.
Can you please tell me which parcel it is that I am too close to.

Can you also please send me an explanation of how the distance is measured.
Is it measured from the front door or the furthest edge of the property.
Because it is located in a strip mall, is it from the front door or the edge of the property.

Thank you,
Sandra D Millhouse
907-373-8761

Begin forwarded message:

From: "jwbrowning424@aol.com" <jwbrowning424@aol.com>
Subject: Fw: Maps & Parcel Lists
Date: March 22, 2024 at 12:52:04 PM AKDT
To: <Sandradhbic@yahoo.com>

Hey Sandra here is those engineers email!!

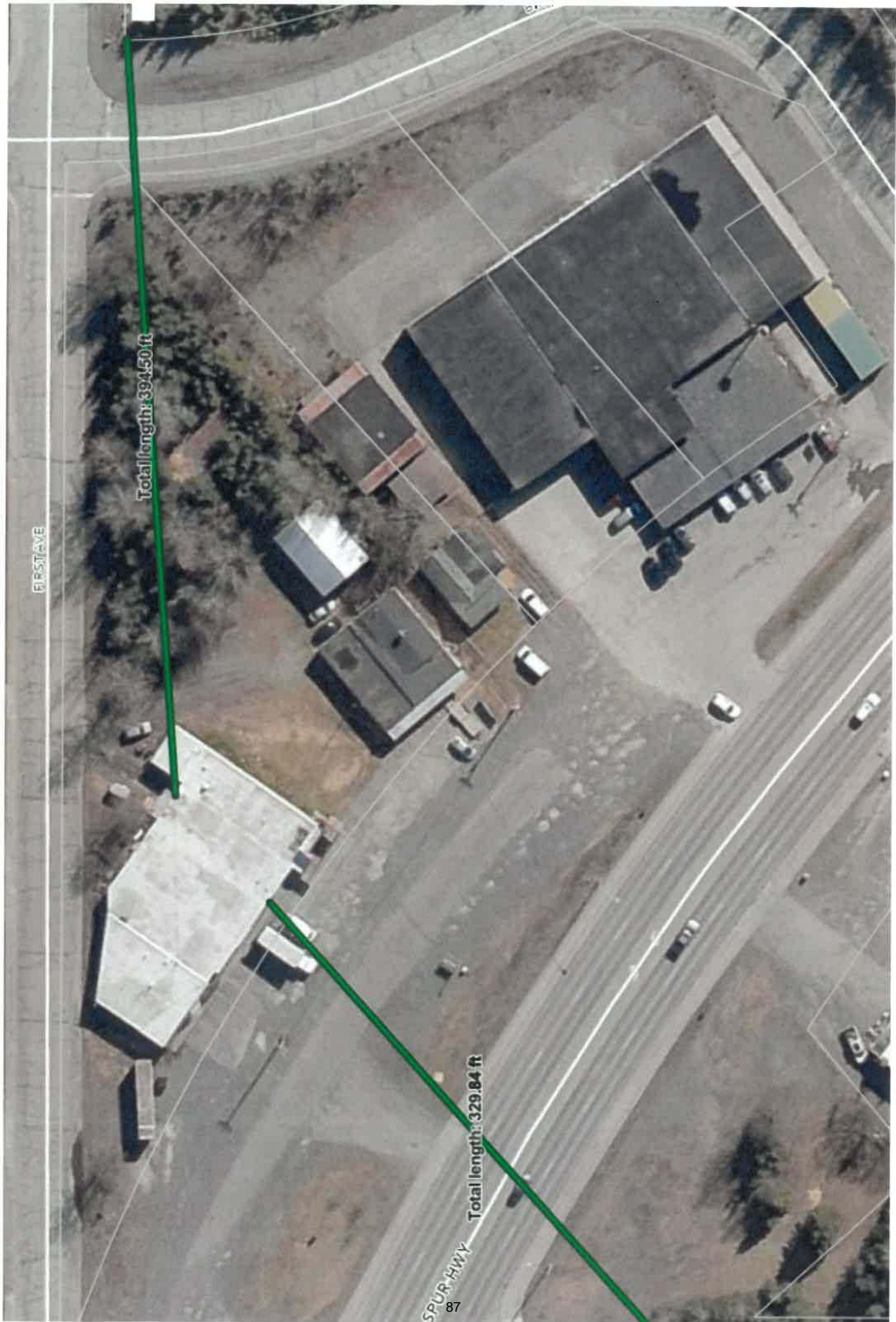
[Sent from the all new AOL app for iOS](#)

Begin forwarded message:

On Friday, March 15, 2024, 9:28 AM, Ben Benson <BBenson@mclanecg.com> wrote:

Wes, I put together some parcel offset maps and lists for you that should work for code 14.20.330 (b). The code calls for you to show all lots within 500' of the parcel. I ran one for 300' , 500' , & 1000'. I thought this will get the ball rolling for you.

Ben
907-398-3069



Total length: 394.50 ft

Total length: 329.84 ft

FIRST AVE

SPUR HWY

**BEFORE THE BOARD OF ADJUSTMENT FOR THE
CITY OF KENAI, ALASKA**
210 Fidalgo Avenue
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL
OF RONALD AND DENIECE ISAACS:
APPEAL OF PLANNING AND
ZONING COMMISSION ACTION
DENYING A CONDITIONAL USE
PERMIT FOR A MARIJUANA
RETAIL STORE AND LIMITED
CULTIVATION LOCATED AT
1188 KENAI SPUR HIGHWAY
SWANSON SQUARE #3
KENAI, ALASKA**

Case No. BA-16-03

DECISION ON APPEAL

I. INTRODUCTION

Ronald and Deniece Isaacs (the "Isaacs") appealed the DECISION of the City of Kenai Planning and Zoning Commission ("Commission") denying a Conditional Use Permit for the Isaacs to operate a Marijuana Retail Store and Limited Cultivation, located at 1188 Kenai Spur Highway, Swanson Square #3, Kenai, Alaska. For the reasons set forth below, the Isaacs' Appeal for a Conditional Use Permit is DENIED by the Board of Adjustment.

II. PROCEDURAL HISTORY

On May 24, 2016, the City of Kenai Planning Department received an application from the Isaacs requesting a Conditional Use Permit to operate a Marijuana Retail Store and Limited Cultivation. [R. 116-128] Pursuant to KMC 14.20.330-Standards for Commercial Marijuana Establishments, a Conditional Use Permit is required for all Commercial Marijuana Establishments in the City.

In the Matter of the Appeal of Ronald & Deniece Isaacs, Case No. BA-16-03
Decision On Appeal

1

On June, 22 2016, the Commission held a public hearing on the Conditional Use Permit. [R. 138-142] At that public hearing, the City Planner presented a Staff Report recommending the Commission deny the application for a Conditional Use Permit due to the proposed locations proximity to two parcels containing baseball and softball fields. [R. 74-76 and R. 139-140] At the public hearing three members of the public spoke in opposition to the Isaacs' application stating: the proposed business was located close to the Episcopal Dioceses of Alaska that was against the proposed marijuana establishment; that business would hurt surrounding property values; and that the business would negatively impact a neighboring restaurant. [R. 140] The Isaacs spoke in favor of their application at the hearing, noting that they were complying with all State requirements and questioned the City's method of measuring the buffer distances and definition of "outer boundary" as used in KMC 14.20.330(f)(2). [R. 140] Commission Members acknowledged the unique parcel conditions and configurations, but noted their obligation to follow the City Code in relation to buffer distances which the Commission found required buffer measurements to property lines of the parcels containing the ball fields. [R. 141] After the public hearing, the Commission unanimously voted against Resolution PZ16-17, because the proposed business location was too close to the two parcels with the ball fields. [R. 141]

The Isaacs timely appealed the Decision of the Commission to the Board of Adjustment (the "Board"). [R. 60] The Board scheduled a hearing for the Appeal on August 23, 2016. [R. 61] The record before the Commission was submitted for the Board's consideration. [R. 71-167]

On August 23, 2016, Board Members Brian Gabriel, Robert Molloy, Henry Knackstedt, Tim Navarre and Mike Boyle were present for the hearing. At the hearing, public comment was allowed and three members of the public spoke against the Conditional Use Permit due to the proposed locations proximity to a church of which they were members, noting that their church held Twelve Step meetings twice a week. One member of the public spoke in favor of the Conditional Use Permit stating that the business would be good for the local economy and create jobs. The City Planner reviewed his Staff Report and the Isaacs testified in support of their application for a Conditional Use Permit.

III. STANDARD OF REVIEW

Kenai Municipal Code provides that "...the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken."¹ The Board reviews the appeal *de novo*.² Therefore, no deference is given to the decision by the Commission. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.³

The function of the Board is to determine whether the requirements for a Conditional Use Permit have been met and grant or deny the Conditional Use Permit on the conditions supported by the substantial evidence before it.⁴ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ The Board must make specific findings supporting its conclusions.⁶

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Conditional Use Permit Requirements.

Kenai Municipal Code 14.20.330-Standards for Commercial Marijuana Establishments, provides in subpart (a) that Commercial Marijuana Establishments such as the retail and cultivation businesses applied for by the Isaacs are only allowed pursuant to a Conditional Use Permit under KMC 14.20.150-Conditional Use Permits. Kenai Municipal Code 14.20.150(a) states in relevant part that: "[t]he conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings." Conditional Use Permits must meet the following six criteria:

¹ KMC 14.20.290(f)(2).

² *Id.*

³ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n.11(Alaska 1993)

⁴ *Id.* At 931-932.

⁵ *Id.* Citing *Kiener v. City of Anchorage*, 378 P.2d 406, 411(Alaska 1963).

⁶ *Fields*, at 932. And KMC 14.20.180(c).

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.⁷

B. A Conditional Use Permit Can Not Be Approved due to the Proximity of the Proposed Business Location to Two Parcel Containing Recreation Centers.

While it is the intent of the Conditional Use Permit process to allow flexibility in uses, this flexibility must be considered in light of the impact of the proposed use on surrounding properties.⁸ In reviewing the six criteria required for the issuance of a Conditional Use Permit as provided in KMC 14.20.150(d), the Board finds that the first four are met. First, the use is consistent with the purpose of Conditional Use Permits and the intent of the zoning district in which the business is proposed. The proposed business is located within the General Commercial Zone. [R. 72] The City's Land Use Table provides that Limited Marijuana Cultivation Facilities and Marijuana Retail operations are allowed in the General Commercial Zone with a Conditional Use Permit.⁹ Second, the Board did not receive any convincing evidence that value of the surrounding properties or neighborhoods would be significantly impaired. However, the Board does note that there was testimony before the Planning and Zoning Commission in the record that raised this concern. Third, the proposed use is in harmony with the City's Comprehensive Plan. [R. 74] Fourth, the public services and facilities are adequate to serve the proposed use, as City water and sewer are available, along with City police and fire protection. [R. 74]

⁷ KMC 14.20.150(d)(1-6).

⁸ KMC 14.20.150(a).

⁹ KMC 14.22.010.

The fifth condition requires that the proposed use is not harmful to the public safety, health and welfare.¹⁰ In enacting Ordinance 2870-2016, which created the City's regulations on Commercial Marijuana Establishments, the City Council found that "some uses are especially susceptible to the potential negative impacts of marijuana-related activities and land-uses, requiring buffering in addition to the standard Zoning Regulations."¹¹ This concern expressed by the City Council was codified in KMC 14.20.330(f) which provides:

- (f) No portion of a parcel upon which any Commercial Marijuana Establishment is located shall be permitted within the following buffer distances:
- (1) 1,000 feet of any primary and secondary schools (K-12) and 500 feet of any vocational programs, post-secondary schools including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and,
 - (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, a substance abuse treatment facility providing substance abuse treatment.

There are two parcels of concern in this matter with regard to buffer distances.¹² Both parcels contain ball fields. [R. 75] Kenai Municipal Code 14.20.320-Definitions, defines "Recreation or Youth Center" to include "a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or

¹⁰ KMC 14.20.050(d)(5)

¹¹ Ordinance 2870-2016, 8th WHEREAS Clause.

¹² While there was public testimony at the hearing from several members of a church opposed to the location of the proposed business, there is no evidence in the record that the Church falls within the prohibited buffer distance of 500 feet. The Isaacs submitted evidence that the Church is 547 feet from their proposed business. [R.152]

leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.” Based on the testimony and evidence before it, the Board finds that the ball fields are athletic playing fields run or created by the City (local government), and thus fall under the definition of “Recreation or Youth Center.” Therefore the ball fields must be buffered from as required in KMC 14.20.330(f). There was no testimony by the Isaacs that disputed this. Instead the focus of the Isaacs’ testimony and evidence presented at the hearing was on the method of measuring the buffer distances and the appropriateness of such methods. [R. 143-144] In order to comply with the buffer requirements for Commercial Marijuana Establishments in KMC 14.20.330(f) the location of the business be 500 feet or greater from the outer boundaries of the ball fields.

On South Forest Drive the City maintains baseball fields that are located on 12 separate parcels with one Kenai Peninsula Borough Parcel Number. [R. 75] Government Lot 86, is the closest parcel to the proposed business that contains part of the ball fields. [R. 75]. Also, on Main Street Loop, bounded by First Avenue and Birch Street, the City maintains ball fields. This parcel is identified by the Kenai Peninsula Borough as Parcel No. 04327036.

As to the ball fields on South Forest, testimony was presented by the Isaacs that they retained a surveyor who measured the distance from the proposed business to the actual parking area for the ball fields or edge of grass of the playing fields and this distance was over 500 feet. This distance itself is not disputed. However, for buffer purposes the City Planner measured the distance from the proposed business to the closest edge of the parcel containing the ball fields (Government Lot 86) using a Geographic Information System (“GIS”) and found this distance to be less than 500 feet. [R. 75-76] With regard to the ball fields adjacent to Main Street, the Isaacs testified and the City Planner agrees that the actual ball fields are over 1,000 feet from the proposed business, however, due to the large size of the parcel on which the ball fields are on, the closest edge of the parcel containing the ball fields is approximately 438 feet from the proposed business. [R. 76] The Isaacs did not dispute that the closest edge of the parcel is within 500 feet, but instead argued that the measurement should not be to the closest edge of the parcel, but instead to the edge of the ball fields themselves.

During the hearing and in the evidence presented by the Isaacs, the Isaacs argued that the City Planner's measurement to the ball fields on South Forest did not account for topographical features, the curvature of the earth, an easement for South Forest Drive which is in between the ball fields from the edge of Government Lot 86 closest to their proposed business, and that the Planners' measurement should be to the closest part of the ball fields, and not the outer perimeter of the parcel itself. [R. 143-167] As to the ball fields on Main Street, the Isaacs argued that the ball fields themselves were over a thousand feet from their proposed business location, the lot containing the ball fields was very large and oddly shaped in such a manner to make application of a measurement to the edge of the parcel and not the ball fields themselves unfair. The Isaacs further provided testimony and evidence that the City should adopt a method of measuring buffers based on pedestrian routes, like the State of Alaska, instead of a lineal measurement. [R. 143-167] The Isaacs contend that with current technology, pedestrian routes are simple to measure and would not lead to disputes.

The Board finds that the issue related to the buffer distances for both parcels containing ball fields turns on the meaning of "outer boundary" with regard to its use in KMC 12.20.330(f). If "outer boundary" means to the edge of the ball fields themselves then the Isaacs' proposed business would be within the allowable buffer distance, however if "outer boundary" means the closest edge of the parcel on which the ball fields are on, then the proposed use violates the 500 foot buffer requirements. The Board finds that the City Planner's measurements using the GIS system were sufficient given the circumstances. The Board concludes that the discussion of buffer distances by the City Council and City Staff at the January 20, 2016, Council Meeting, at which the relevant code section on buffers was enacted, clearly shows that it was the intent of the City Council that "outer boundary" was intended to mean the outer edge or boundary of the parcel on which the use buffered from is located. This conclusion leads to the finding that the proposed business is located within 500 feet of the outer boundary of two parcels containing ball fields and does not meet the buffer requirements in KMC 14.20.330(f). Because the buffer requirements were established by the City Council as provided in Ordinance No. 2870-2016, out of a concern for public health, safety and welfare, the Board finds that the fifth element required in KMC

14.20.150(d) for granting a Conditional Use Permit, that the proposed use will not be harmful to the public safety, health or welfare, cannot be met.

While not directly relevant to the outcome of this decision at this time, the Board notes that the unusual and particular size, shapes and roadway easements on the lots at issue in this case may lead to unforeseen consequences and encourages a review of the method of measurement of the City's buffer distances that might provide for future changes to the City's Code.

V. CONCLUSION

City Code requires that Commercial Marijuana Establishments be located at a distance of 500 feet or greater from the outer boundary of Recreation or Youth Centers. The Board finds that based on the City Council's intent, this requires a measurement from the closest edge of the parcel on which the Recreation or Youth Center is located to the Commercial Marijuana Establishment. The Board finds that the location of the Isaacs' proposed Marijuana Retail Store and Limited Cultivation facility is within 500 feet of two City parcels that contain ball fields, or athletic playing fields, which by definition are Recreation or Youth Centers. Because the Board finds that the proposed location of the Isaacs' business does not meet the buffer requirements of City Code, the Conditional Use Permit applied for is DENIED and the decision of the Commission is UPHeld.

DATED this 22 day of September, 2016.

BY: 
Brian G. Gabriel, Chair

Robert J. Molloy, Board Member
Tim Navarre, Board Member
Henry Knackstedt, Board Member
Mike Boyle, Board Member

Notice of Right to Appeal

This decision constitutes the final decision of the City of Kenai Board of Adjustment in this matter. An appeal of this decision to the Alaska Superior Court must be filed within thirty (30) days of the date of this decision, in accordance with Kenai Municipal Code Section 14.20.300, Alaska Statute 22.10.020(d), and Alaska Rule of Appellate Procedure 602(a)(2).

CERTIFICATE OF DISTRIBUTION

I certify that on 22 day of September, 2016, a copy of this DECISION ON APPEAL was distributed by Certified and/or First Class Mail to each of the following:

Ronald and Deniece Isaacs
P.O. Box 3526
Kenai, Alaska 99611

Matthew Kelley, City Planner
City of Kenai
210 Fidalgo Avenue
Kenai, Alaska 99611


Sandra Modigh, City Clerk
City of Kenai, Alaska



In the Matter of the Appeal of Ronald & Deniece Isaacs, Case No. BA-16-03
Decision On Appeal

Scott Bloom

From: Brandon McElrea
Sent: Monday, March 25, 2024 5:11 PM
To: Linda Mitchell
Subject: FW: CUP Refund

From: Sandra D Millhouse <sandradsbic@yahoo.com>
Sent: Monday, March 25, 2024 4:36 PM
To: Brandon McElrea <bmcclrea@kenai.city>
Subject: Re: CUP Refund

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please wait, we are in the process of requesting an amendment to the code.

On Mar 25, 2024, at 1:44 PM, Brandon McElrea <bmcclrea@kenai.city> wrote:

Mrs. Millhouse,

I'm processing the refund for your Conditional Use Permit application fee. Would you like it mailed to P.O. Box 874574, or to the 2321 E. Palmer Highway address?

Thank you,

Brandon McElrea
Planning Technician

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
O: (907)283-8233 | bmcclrea@kenai.city
<image003.jpg>

From: [Nancy Wiles](#)
To: [City Clerk](#)
Subject: Conditional Use Permit at 11888 Kenai Spur Hwy #3
Date: Thursday, October 3, 2024 10:50:34 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Board of Adjustment -

I am in adamant opposition to a retail Marijuana store being allowed at the above referenced property!

I live directly behind that building at 1206 1st Avenue. I also own two additional lots 1204 and 1202 1st Avenue. We have lived at that location for 40 years come February.

The City thought long and hard before they created their zoning plan, and the comprehensive plan was the work of years.

There is no valid reason for overturning the consideration and effort made by the members of the previous committees and City Council, as well as the wishes of the citizens of the City of Kenai.

There are many other locations within the City to operate a retail Marijuana store that are not in close proximity to Little League Fields and Adult Softball Fields. Both of these recreational locations are used for large gatherings of families during tournaments as well as being used for family camping during the dipnet fisheries as overflow parking.

Please DO NOT grant a Conditional Use Permit.

Nancy Wiles
1206 1st Ave
Kenai, AK 99611



CITY OF KENAI
APPEAL TO THE BOARD OF
ADJUSTMENT

City of Kenai
210 Fidalgo Avenue
Kenai, AK 99611
Phone: 283-8231
Fax: 283-5068
Email: cityclerk@kenai.city

Contact Information	
Name of Appellant: Troy Millhouse	Date: 08/28/2024
Daytime Phone No.: 907.274.0666	Email Address: rmoses@hwb-law.com
Appellant's Physical Address: c/o Holmes Weddle & Barcott, PC 701 W 8th Ave, Ste 700, Anchorage, AK 99501	
Appellant's Mailing Address: Same as physical address.	
Appeal Information	
DESCRIPTION OF APPEAL:	
This is an appeal of the denial of a conditional land use permit known as Resolution PZ 2024-19.	
Subject Property Owner's Name and Address: Troy Millhouse (address is the same as above)	
Subject Property Street Address: 11888 Kenai Spur Hwy, #3, Kenai, AK 99611	
Decision was <input type="checkbox"/> Approved <input checked="" type="checkbox"/> Denied	Date of Decision: 08/14/2024
Decision was made by <input type="checkbox"/> Administrative Official <input checked="" type="checkbox"/> Planning & Zoning Commission	
Check One:	
<input checked="" type="checkbox"/> I am the applicant for the action taken or determination, or the owner of the property that is the subject of the action or determination under appeal. I am Mr. Millhouse's attorney, and I have been authorized to act on his behalf.	
<input type="checkbox"/> I am the administrative official.	
<input type="checkbox"/> I am a legal occupant or owner of an interest in real property who can show the decision has or could have an adverse effect on the use, enjoyment, or value of that real property. An interest which is no different from that of the general public is not sufficient to make a person aggrieved. To be a "party of record," participation with either oral or written comments at the hearing before the Planning and Zoning commission or before the administrative official making a final decision must be shown.	
Description of Harm (Note: An interest which is no different from that of the general public is not sufficient.): Mr. Millhouse will not be able to operate a cannabis dispensary at the subject property, which is why he purchased the same, because of the denial of his application.	
I am seeking relief as follows: A reversal of the Commission's denial of PZ 2024-19 and an approval of the same.	
Signature of Appellant:	<i>Richard Moses</i>
FOR CITY CLERK'S OFFICE USE ONLY:	
Receipt Stamp: RECEIVED 8/28/2024	Appellant <input checked="" type="checkbox"/> Owns <input type="checkbox"/> Leases, Lease Requested Appellant Participated <input checked="" type="checkbox"/> Orally <input type="checkbox"/> In Writing Appellant Paid Pursuant to <input checked="" type="checkbox"/> Fee Schedule <input type="checkbox"/> Fee Reduction Form Copy provided to Appellant <input type="checkbox"/> In Person <input checked="" type="checkbox"/> By Mail <i>email</i> By: <i>MT</i> Application <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied for _____ Date Appellant Notified: 8/29/24

Kenai City Clerk's Office



August 29, 2024

Mailed Via: USPS Certified Mail-Return Receipt
Article No. 7020 0640 0002 2738 2168 &
Emailed to: rmoses@hwb-law.com

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700,
Anchorage, AK 99501

RE: Application to Appeal to Board of Adjustment: Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Mr. Millhouse:

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved. A copy of the application along with the receipt for payment is enclosed.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shellie Saner", is positioned above the printed name and title.

Shellie Saner, MMC
City Clerk



KENAI
140 BIDARKA ST
KENAI, AK 99611-9998
(800)275-8777

08/29/2024 03:12 PM

Product	Qty	Unit Price	Price
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Sat 08/31/2024

Certified Mail®			\$4.85
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Tracking #:

70200640000227382168

Return Receipt			\$4.10
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Tracking #:

9590 9402 6765 1074 8959 98

Total			\$9.68
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Sat 08/31/2024

Certified Mail®			\$4.85
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Tracking #:

70200640000227387347

Return Receipt			\$4.10
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Tracking #:

9590 9402 6765 1074 8960 18

Total			\$9.68
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Grand Total:			\$19.36
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Cash			\$20.00
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Change			-\$0.64
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U.S. Postal Service™ CERTIFIED MAIL® RECEIPT

Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Anchorage, AK 99501

Certified Mail Fee	\$4.85
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$4.10
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input checked="" type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00

Postage \$0.73

Total Postage and Fees \$9.68

Sent To Troy Millhouse
Street and c/o Holmes Weddle & Barcott, PC
City, State, 701 W 8th Ave, Ste 700
Anchorage, AK 99501

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700,
Anchorage, AK 99501



9590 9402 6765 1074 8959 98

2. Article Number (Transfer from service label)

7020 0640 0002 2738 2168

PS Form 3800, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

Rachel Kodin 8/30/24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type ☐ Priority Mail Express®
☒ Adult Signature ☐ Registered Mail™
☐ Adult Signature Restricted Delivery ☐ Registered Mail Restricted Delivery
☒ Certified Mail® ☒ Signature Confirmation™
☐ Certified Mail Restricted Delivery ☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery ☐ Insured Mail
☐ Collect on Delivery Restricted Delivery ☐ Insured Mail Restricted Delivery (over \$500)

Domestic Return Receipt

From: [City Clerk](#)
To: ["rmoses@hwb-law.com"](mailto:rmoses@hwb-law.com)
Subject: Application to Appeal to the Board of Adjustment Approved - Conditional Use Permit
Date: Thursday, August 29, 2024 2:13:00 PM
Attachments: [Letter to Appellant - Application Approved PZ2024-19 CUP.pdf](#)
[BOA appeal form - PZ2024-19 CUP.pdf](#)
[Payment Receipt - emailed 082824.pdf](#)
[image002.wmz](#)
[image004.png](#)
Importance: High

Mr. Millhouse,

After consulting the City Attorney, the attached application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Meghan Thibodeau

Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611

P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city



August 29, 2024

Delivered: In-Person &
Emailed to: teubank@kenai.city;
mbest@kenai.city;
bmcelrea@kenai.city

City of Kenai Planning & Zoning Department
210 Fidalgo Ave
Kenai, Alaska 99611

RE: Application to Appeal to Board of Adjustment: Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

To: City of Kenai Planning & Zoning Department

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shellie Saner", is positioned above the printed name and title.

Shellie Saner, MMC
City Clerk



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

Acknowledgement of Receipt of Notice

I CHRISTINE WINNINGHAM certify and acknowledge the following:
(print name)

That I have received a copy of the following notices:

- Application Received for an Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Application Received for an Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Signature

8/29/24

Date

ASSISTANT TO CITY MANAGER

Title

Copy provided to Interim Planning Director, Max Best

From: [City Clerk](#)
To: [Terry Eubank](#); [Max Best](#); [Brandon McElrea](#)
Subject: Application to Appeal to the Board of Adjustment Approved - Conditional Use Permit
Date: Thursday, August 29, 2024 2:27:00 PM
Attachments: [image001.wmz](#)
[Letter to Appellee - Appeal Received PZ2024-19 CUP.pdf](#)
[image003.png](#)

After consulting the City Attorney, the above referenced application for an appeal to the Board of Adjustment has been approved.

The City Council during their regularly scheduled meeting on September 4, 2024, will have a discussion item to schedule the Board of Adjustment hearing.

I will advise you of the hearing date once it has been set.

Please contact my office at 907-283-8231 if you have any questions.

Meghan Thibodeau
Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

September 6, 2024

Mailed Via: USPS Certified Mail-Return Receipt
Article No. 7020 0640 0002 2738 2182 &
Emailed to: rmoses@hwb-law.com

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700
Anchorage, AK 99501

RE: **Board of Adjustment Hearing** - Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

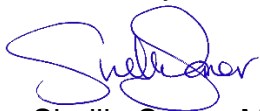
Hearing Scheduled: This letter is to inform you that the Board of Adjustment Hearing for the above-referenced matters has been scheduled for Tuesday, October 15, 2024, beginning at 5:00 p.m. The hearing will be held at Kenai City Hall in Council Chambers located at 210 Fidalgo Avenue, Kenai, AK 99611. A packet of information will be provided to you and the Board of Adjustment prior to the hearing.

Information/Evidence Deadline: The deadline to submit information, to be included in the Board of Adjustment Hearing packet, related to your appeal is Monday, October 7, 2024 at 10:00 a.m.; please submit to Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city. This is your opportunity to introduce additional evidence to support your appeal. The Board of Adjustment Hearing packet will include the record from the Planning and Zoning Commission Hearing and will be distributed to all parties in advance of the hearing. Enclosed is information related to the hearing process.

Notice: Pursuant to KMC 14.20.290, this Notice of Hearing has been mailed to you by certified mail at least 15 days prior to the hearing. All property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties, have also been mailed the Notice of Hearing at least 15 days prior to the hearing.

If you have any questions, please contact me at 283-8231 or cityclerk@kenai.city.

Kenai City Clerk's Office



Shellie Saner, MMC
Kenai City Clerk

Enclosure: Board of Adjustment Procedures



KENAI
140 BIDARKA ST
KENAI, AK 99611-9998
(800)275-8777

09/06/2024

03:51 PM

Product	Qty	Unit Price	Price
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Mon 09/09/2024

Certified Mail®			\$4.85
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Tracking #:
70200640000227382182

Return Receipt			\$4.10
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Tracking #:
9590 9402 6765 1074 8959 74

Total			\$9.68
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First-Class Mail® Letter	1		\$0.73
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Anchorage, AK 99501
Weight: 0 lb 0.80 oz
Estimated Delivery Date
Mon 09/09/2024

Certified Mail®			\$4.85
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Tracking #:
70200640000227382175

Return Receipt			\$4.10
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Tracking #:
9590 9402 6765 1074 8959 81

Total			\$9.68
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Grand Total:			\$19.36
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Cash			\$20.00
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Change			-\$0.64
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The timeliness of service to or from destinations outside the contiguous US be affected by the limited availability of transportation.

7020 0640 0002 2738 2182

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com .	
Anchorage, AK 99501	
Certified Mail Fee	\$4.85
Extra Services & Fees (check box, add fee as appropriate)	
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$4.10
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input checked="" type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.73
Total Postage and Fees	\$9.68
Sent To	Troy Millhouse
Street and	c/o Holmes Weddle & Barcott, PC
City, State	701 W 8th Ave, Ste 700 Anchorage, AK 99501
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Troy Millhouse
c/o Holmes Weddle & Barcott, PC
701 W 8th Ave, Ste 700
Anchorage, AK 99501



9590 9402 6765 1074 8959 74

2. Article Number (Transfer from service label)

7020 0640 0002 2738 2182

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent
☐ Addressee

B. Received by (Printed Name)

Brian Parker

C. Date of Delivery

9-9-24

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| <input checked="" type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input checked="" type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input checked="" type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

From: [City Clerk](#)
To: ["Richard Moses"](#)
Subject: City of Kenai Board of Adjustment Hearings Scheduled
Date: Friday, September 6, 2024 3:22:00 PM
Attachments: [Letter to Appellant - Hearing Scheduled - PZ2024-18 Variance.pdf](#)
[Letter to Appellant - Hearing Scheduled - PZ2024-19 CUP.pdf](#)
[BOA Hearing Procedures.pdf](#)
[image002.wmz](#)
[image004.png](#)

Please see attached items:

- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- City of Kenai Board of Adjustment Hearing Notice - Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Board of Adjustment Hearing Procedures

Thank you,

Meghan Thibodeau

Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611

P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

September 6, 2024

Delivered: In-Person &
Emailed to: teubank@kenai.city;
sbloom@kenai.city;
mbest@kenai.city;
bmcelrea@kenai.city

City of Kenai Planning & Zoning Department
210 Fidalgo Ave
Kenai, AK 99611

RE: **Board of Adjustment Hearing** - Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Hearing Scheduled: This letter is to inform you that the Board of Adjustment Hearing for the above-referenced matters has been scheduled for Tuesday, October 15, 2024, beginning at 5:00 p.m. The hearing will be held at Kenai City Hall in Council Chambers located at 210 Fidalgo Avenue, Kenai, AK 99611. A packet of information will be provided to you and the Board of Adjustment prior to the hearing.

Information/Evidence Deadline: The deadline to submit information, to be included in the Board of Adjustment Hearing packet, related to the appeal is Monday, October 7, 2024 at 10:00 a.m.; please submit to Kenai City Clerk, 210 Fidalgo Ave., Kenai, AK 99611 or cityclerk@kenai.city. This is your opportunity to introduce additional evidence. The Board of Adjustment Hearing packet will include the record from the Planning and Zoning Commission Hearing and will be distributed to all parties in advance of the hearing. Enclosed is information related to the hearing process.

Notice: Pursuant to KMC 14.20.290, this Notice of Hearing has been served to you. All property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties, will be mailed the Notice of Hearing at least 15 days prior to the hearing.

If you have any questions, please contact me at 283-8231 or cityclerk@kenai.city.

Kenai City Clerk's Office



Shellie Saner, MMC
Kenai City Clerk

Enclosure: Board of Adjustment Procedures



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

Acknowledgement of Receipt of Notice

I CHRISTINE WNNINGHAM certify and acknowledge the following:
(print name)

That I have received a copy of the following items:

- Notice of Hearing Scheduled for Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Notice of Hearing Scheduled for Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Mill House to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.
- Board of Adjustment Hearing Procedures

Signature

9/6/24

Date

ASSISTANT TO CITY MANAGER

Title

Copy provided to Planning & Zoning Department

From: [City Clerk](#)
To: [Terry Eubank](#); [Scott Bloom](#); [Max Best](#); [Brandon McElrea](#)
Subject: City of Kenai Board of Adjustment Hearings Scheduled
Date: Friday, September 6, 2024 3:22:00 PM
Attachments: [Letter to Appellee - Hearing Scheduled - PZ2024-18 Variance.pdf](#)
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[image003.wmz](#)
[image004.png](#)

Please see attached items:

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- Board of Adjustment Hearing Procedures

Thank you,

Meghan Thibodeau

Deputy City Clerk

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611

P: (907) 283-8249 | **W:** www.kenai.city | **E:** mthibodeau@kenai.city

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Tuesday, October 15, 2024 at 5:00 p.m.** in the Council Chambers 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Because you are a property owner within the notice periphery of the above-mentioned property or have stated an interest in the subject, you are hereby notified of the hearing date, time and place, pursuant to KMC 14.20.290(f) and 14.20.330(c). Your comments and/or attendance regarding this appeal are encouraged. Written comments will be accepted until 10:00 a.m. on Monday, October 7, 2024 and may be mailed to the Office of the City Clerk, 210 Fidalgo Ave., Kenai, Alaska 99611 or emailed to cityclerk@kenai.city. ~ Shellie Saner, City Clerk, 907-283-8231.

Thank you.

Dear Property Owner:

The Kenai City Council will convene as the Board of Adjustment on **Tuesday, October 15, 2024 at 5:00 p.m.** in the Council Chambers 210 Fidalgo Avenue, Kenai, Alaska. The following will be heard by the Board:

Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Because you are a property owner within the notice periphery of the above-mentioned property or have stated an interest in the subject, you are hereby notified of the hearing date, time and place, pursuant to KMC 14.20.290(f) and 14.20.330(c). Your comments and/or attendance regarding this appeal are encouraged. Written comments will be accepted until 10:00 a.m. on Monday, October 7, 2024 and may be mailed to the Office of the City Clerk, 210 Fidalgo Ave., Kenai, Alaska 99611 or emailed to cityclerk@kenai.city. ~ Shellie Saner, City Clerk, 907-283-8231.

Thank you.



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE



City of Kenai
Office of the City Clerk
210 Fidalgo Avenue
Kenai, Alaska 99611

IMPORTANT NOTICE

EPISCOPAL DIOCESE OF ALASKA
110 S SPRUCE ST
KENAI
AK 99611

FIRST BAPTIST CHURCH
PO BOX 3412
KENAI
AK 99611

FIVE D INVESTMENTS LLC
PO BOX 969
KENAI
AK 99611

HILCORP ALASKA LLC
1111 TRAVIS ST
HOUSTON
TX 77002

HUGHEY KIANA
1103 2ND AVE
KENAI
AK 99611

HUGHEY TYSON E
1103 2ND AVE
KENAI
AK 99611

KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI
AK 99611

KENAITZE INDIAN TRIBE
PO BOX 988
KENAI
AK 99611

LAGOUTARIS ELAINNAH
36350 MAYONI ST
SOLDOTNA
AK 99669

MADRIGAL ANDY
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MADRIGAL SOPHIA
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MARSH LYN E
106 BIRCH ST
KENAI
AK 99611

MCKEIRNAN DANIEL F
PO BOX 2365
KENAI
AK 99611

MCKEIRNAN SUSAN
PO BOX 2365
KENAI
AK 99611

MCMANAMY SHELDON D
36350 MAYONI ST
SOLDOTNA
AK 99669

MILLHOUSE TROY
PO BOX 874574
WASILLA
AK 99687

MOREY DOLLIE K
202 BIRCH ST
KENAI
AK 99611

OSTRANDER PAUL CLARK
48645 RUNNERS AVE
SOLDOTNA
AK 99669

OUR LADY OF ANGELS PARISH OF
ARCHDIOCESE OF ANCHORAGE
225 S SPRUCE ST
KENAI
AK 99611

PEREZ FRED Jr
204 BIRCH ST
KENAI
AK 99611

RININGER LACEY
511 ASH AVE
KENAI
AK 99611

RININGER ZACHARY
511 ASH AVE
KENAI
AK 99611

RONELLENFITCH SARAH M
102 BIRCH ST
KENAI
AK 99611

RR KENA LLC
2133 E RANCH RD
TEMPE
AZ 85284

SALVATION ARMY
143 E 9TH AVE
ANCHORAGE
AK 99501

SARKS GARNET M
110 BIRCH ST
KENAI
AK 99611

SARKS PAUL E
110 BIRCH ST
KENAI
AK 99611

SARKS PAUL E & GARNET M
110 BIRCH ST
KENAI
AK 99611

SHAFFER KEITH
PO BOX 853
KENAI
AK 99611

SHAFFER MAUREEN K
PO BOX 853
KENAI
AK 99611

SIPES CHERYL L & GERALDINE L
PO BOX 4472
SOLDOTNA
AK 99669

SWEARINGEN GLENNA M
PO BOX 1031
KENAI
AK 99611

VARNE THOMAS
22205 67TH PL W
MOUNTLAKE TERRACE
WA 98043

WILES MICHAEL L & NANCY L
1206 1ST AVE
KENAI
AK 99611

WILLIAMSON HOWARD J
607 E 74TH AVE
ANCHORAGE
AK 99518

WILLIAMSON TERRY K
607 E 74TH AVE
ANCHORAGE
AK 99518

WILSON RUSSELL J SR & CONSTANCE
1402 1ST AVE
KENAI
AK 99611

DENIECE ISAACS
PO BOX 3526
KENAI, AK 99611

KEN DUNBAR
PO BOX 969
KENAI, AK 99611

TEEA WINGER
1111 5TH CT.
KENAI, AK 99611

JIM GLENDENING
694 SYCAMORE CT.
KENAI, AK 99611

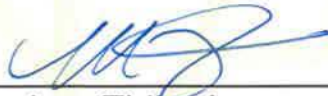
AFFIDAVIT OF SERVICE

I, Meghan Thibodeau, Deputy Clerk for the City of Kenai, Alaska, do hereby certify that on September 20, 2024, I caused to be mailed the foregoing Notice of Hearing before the Board of Adjustment on the following appeal:

Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

This notice was sent by first class mail to all property owners as required by KMC 14.20.290(f) and 14.20.330(c), as well as other interested parties. The list of recipients of the notice is attached herewith.

Further this affiant sayeth naught.



Meghan Thibodeau
Deputy City Clerk



PUBLIC NOTICE

Board of Adjustment Hearing Tuesday, October 15, 2024 - 5:00 p.m.

The Kenai City Council will convene as the Board of Adjustment on Tuesday, October 15, 2024 at 5:00 p.m. in the City Council Chambers located at Kenai City Hall 210 Fidalgo Avenue, Kenai, AK. The following items will be heard at that time:

- 1. Appeal of a Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.**
- 2. Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.**

The public is invited to attend and testimony will be taken. Any questions related to this public notice may be directed to the Kenai City Clerk's Office at 907-283-8231 or cityclerk@kenai.city.

Shellie Saner, MMC, City Clerk
Publish: 09/27/24 & 10/4/24

Affidavit of Publication & Posting

I, Meghan Thibodeau, Deputy City Clerk for the City of Kenai, Alaska do hereby certify that on the 20th day of September 2024, I electronically mailed or caused to be published the foregoing Notice of Hearing before the Board of Adjustment to the Peninsula Clarion and requested that this notice be published in September 27th and October 4th editions of their newspaper. On the 20th of September the notice was also posted at Kenai City Hall and on the internet at www.kenai.city.

Meghan Thibodeau, Deputy City Clerk



**CITY OF KENAI
PLANNING AND ZONING COMMISSION
RESOLUTION NO. PZ2024-19**

A RESOLUTION **DENYING** A CONDITIONAL USE PERMIT FOR A RETAIL MARIJUANA STORE.

APPLICANT: Sandra D. Millhouse

PROPERTY ADDRESS: 11888 Kenai Spur Highway #3

LEGAL DESCRIPTION: Government Lots 19, 20, and 21, in Section 6, Township 5 North, Range 11 West, Seward Meridian

KENAI PENINSULA BOROUGH PARCEL NUMBER: 04702001

WHEREAS, a complete application meeting the requirements of Kenai Municipal Code 14.20.150 was submitted to the City on February 28, 2024; and,

WHEREAS, the applicant has not demonstrated that the prerequisites of a Conditional Use Permit have been met pursuant to Kenai Municipal Code 14.20.150; and,

WHEREAS, the City of Kenai Planning and Zoning Commission conducted a duly advertised public hearing on August 14, 2024, following requirements outlined in Kenai Municipal Code 14.20.280 for public hearings and notifications.

WHEREAS, the Planning and Zoning Commission finds:

1. *KMC 14.20.150(d)(1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;*

Findings: The General Commercial Zoning District is described in Section 14.20.120 of Kenai Municipal Code (KMC) as follows:

The CG Zone is established to provide for areas where a broad range of retail, wholesale, and service establishments is desirable. Uses are regulated to concentrate commercial development to the greatest extent possible and to prevent any uses which would have an adverse effect upon nearby properties. New single- and two (2) family residential uses and other noncommercial uses, except as otherwise provided in this chapter, are not permitted in this zone as principal uses because it is intended that land classified in this zone be reserved for commercial purposes, and because a commercial zone is not suited to the uses excluded above.

Retail marijuana stores are a conditional use within the CG Zoning District, therefore a conditional use permit is required to operate a retail marijuana store. As proposed, the retail marijuana store would occupy as approximately 1,600 square foot unit of an approximately 9,332 square foot commercial building. The remaining units of the building are currently unoccupied.

Given the preceding Variance Permit application not meeting required criteria, staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store is consistent with the purpose of this chapter or the intent of the zoning district

2. *KMC 14.20.150(d)(2) The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired;*

Findings: The economic and noneconomic value of adjacent properties would not be adversely affected by the proposal. The applicant states that the building is currently in a state of disrepair, and improvements are planned for both the building and landscaping, thus enhancing the aesthetics of the property as a whole. Historically the building has housed an array of businesses including restaurants, billiards halls, thrift/antique stores, small engine repair, and more. A retail store would generate commercial activity on the commercial premises, and would be consistent with the existing commercial development. The operation of any commercial marijuana establishment is subject to KMC as well as AMCO standards and any code violations may be subject to the revocation of the CUP.

3. *KMC 14.20.150(d)(3) The proposed use is in harmony with the Comprehensive Plan;*

Findings: The Land Use Plan, from the 2016 Comprehensive Plan, identifies the subject property with the General Commercial (GC) land use classification. The GC Land Use Classification is defined in the Comprehensive Plan:

General Commercial is intended for retail, service, and office businesses that serve Kenai and the larger region. General Commercial is appropriate for locations along the arterial road system. General Commercial-type development requires larger parcels of land and access to a major road system. It is also intended to support smaller-scale businesses.

The subject property is surrounded by Kenai Spur Highway to the south and west, commercial and residential uses to the north, and commercial and airport light industrial uses to the east. The proposed use would be consistent with the existing commercial development on the subject property.

In *Imagine Kenai 2030 Comprehensive Plan*, Chapter 6, "Goals, Objectives, and Implementation", several goals and objectives are met from the proposed use.

Goal 1 – Quality of Life is to promote and encourage quality of life in Kenai.

Objective Q-4: Establish siting and design standards so that development is in harmony and scale with surrounding uses.

Goal 2 – Economic Development is to provide economic development to support the fiscal health of Kenai.

Objective ED-5

Promote adaptive reuse of vacant commercial buildings in the city center and along the Kenai Spur Highway.

Goal 3 – Land Use is to develop land use strategies to implement a forward-looking approach to community growth and development.

Objective LU-2

Promote the infill of existing, improved subdivision lots

4. *KMC 14.20.150(d)(4) Public services and facilities are adequate to serve the proposed use;*

Findings: City water and sewer are available along First Avenue, which is a City-maintained road. The primary access is off of Kenai Spur Highway, a State-maintained right-of-way. Staff finds there would be little to no noticeable increase to traffic on the Kenai Spur Highway. The approximately 1,600 square foot retail unit requires 1 parking space per 300 square feet for retail use, for a total of 5 parking spaces. Therefore, the proposed use would not require additional parking spaces. Staff finds that there are adequate public services and facilities to serve the proposed use.

5. *KMC 14.150(d)(5) The proposed use will not be harmful to the public safety, health or welfare;*

Findings: Given the preceding Variance Permit application not meeting required criteria (PZ2024-18), staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store consisting of approximately 1,600 square feet would be harmful to the public safety, health, or welfare.

6. *KMC 14.150(d)(6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.*

Findings: Pursuant to KMC 14.20.330 Standards for Commercial Marijuana Establishments the following conditions apply to retail marijuana stores:

1. On-site consumption is prohibited on the premises of the proposed commercial marijuana establishment.
2. The proposed retail marijuana store shall not emit an odor detectable by the public from outside establishment.
3. The proposed marijuana establishment may not conduct business on, or allow any customer or consumer to access, the licensed premises between the hours of 5:00a.m. and 8:00 a.m. daily.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA:

Section 1. That, having not met all of the requirements of KMC 14.20.150, a conditional use permit is denied to operate a retail marijuana facility on a property described as Government Lots 19, 20, and 21, in Section 6, Township 5 North, Range 11 West, Seward Meridian, located at 11888 Kenai Spur Highway #3.

PASSED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF KENAI, ALASKA, THIS 14TH DAY OF AUGUST, 2024.


JOE HALSTEAD, CHAIRPERSON

ATTEST:


Meghan Thibodeau, Deputy City Clerk



STAFF REPORT

PLANNING & ZONING DEPARTMENT

TO: Planning and Zoning Commission

FROM: Max Best, Planning Director

FROM: Brandon McElrea, Planning Technician

DATE: August 7, 2024

SUBJECT: Resolution PZ2024-19 – Conditional Use Permit to Allow a Retail Marijuana Store and Resolution PZ2024-18 – Variance Permit for Buffering Distance.

Request The applicant is requesting a conditional use permit to operate a retail marijuana store, as well a variance permit to obtain relief from the ordinance for standards for commercial marijuana establishments.

Staff Recommendation Denial of the Variance Permit for the adjustment of buffer distance as well as the Conditional Use Permit for the operation of a retail marijuana store within an approximately 1,600 square foot commercial space located at 11888 Kenai Spur Highway, #3.

Applicants	Sandra and Troy Millhouse
Property Owner	Troy Millhouse
Legal Description	Government Lots 19, 20, 21, Section 6, T5N, R11W
Building Address	11888 Kenai Spur Highway
KPB Parcel ID	04702001
Lot Size (acreage)	1.67
Zoning	General Commercial (CG)
Current Property Use	Unoccupied Commercial Buildings
Current Building Use	Unoccupied Commercial
Land Use Plan	General Commercial (GC)

SUMMARY

The applicant has requested a Conditional Use Permit (CUP) to operate a retail marijuana store on a property described as Government Lots 19, 20, and 21, Section 6, Township 5 North, Range 11 West, Seward Meridian, Kenai, located at 11888 Kenai Spur Highway. The proposed retail store will be approximately 1,600 square feet and located in unit number three (3) of an approximately 9,332 square foot existing commercial building.

The applicant has also requested a Variance Permit in order to obtain relief from Kenai Municipal Code (KMC) Subsection 14.20.330(f)(2).

It should be noted that request for a Conditional Use Permit on this same property by a separate applicant was denied on June 22, 2016, PZ16-17. This decision was upheld by the Board of Adjustment, Case No. BA-16-03.

ANALYSIS – Variance

With the authorization of property owner Troy Millhouse, Richard R. Moses has submitted a variance permit application seeking relief from of KMC Subsection 14.20.330(f), requesting the buffer distance be adjusted such that the proposed marijuana retail store be considered.

Commercial marijuana establishments must comply with KMC 14.20.330 *Standards for Commercial Marijuana Establishment*. As stated in KMC Subsection 14.20.330(f):

No portion of a parcel upon which any commercial marijuana establishment is located shall be permitted within the following buffer distances:

- (1) One thousand (1,000) feet of any primary and secondary schools (K-12) and five hundred (500) feet of any vocational programs, post-secondary schools, including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and State-licensed substance abuse treatment facilities providing substance abuse treatment; and*
- (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment.*

Within the 1,000-foot buffer map (see attachment), staff found no institutional uses. Therefore, the proposed retail marijuana store is located outside the 1,000-foot buffer from any primary and secondary schools (K-12).

The 500-foot buffer and accompanying maps (see attachments 500 ft Buffer Map, Exhibit A and Exhibit B) show that within 500 feet of the proposed retail marijuana store, two parcels contain facilities meeting the definition of recreation or youth center. KMC Section 14.20.320 *Definitions* states:

"Recreation or youth center" means a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age.

Prior to granting a variance permit, the Commission must find that all of the conditions have been met as set forth in KMC 14.20.180(c) [Variance Permit] *Review Criteria*.

Variance Criteria 1: Special conditions or circumstances are present which are peculiar to the land or structures involved which are not applicable to other lands or structures in the same land use or zoning district.

Findings: Staff finds no special conditions or circumstances peculiar to the land or structures of the subject parcel to meet this criterion.

Per the applicants' statement "The property in question was purchased after Linda Mitchell, the (former) Planning Director for the City of Kenai, called Mrs. Sandra Millhouse and told her that the property in question was outside the 500 foot buffer zone at issue here. Mr. and Mrs. Millhouse would not have purchased the property in question without Ms. Mitchell's assurance. In short, they relied upon her assurance to their detriment. Moreover, this property is currently vacant. Accordingly, its development will increase the values of surrounding properties as well as the overall aesthetic of the area."

Variance Criteria 2: The special conditions or circumstances have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary hardship or inconvenience.

Findings: Staff finds that the requested variance is intended to redress a pecuniary hardship or inconvenience caused by actions of the applicant. The applicants indicate that the building only has value as a commercial marijuana establishment. There are many other uses permitted in the General Commercial zoning district. The inability to operate a retail marijuana store does not substantially diminish economic opportunity. Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "As stated, Mr. and Mrs. Millhouse relied upon Ms. Mitchell's assurance to purchase the property. Simply put, Mr. and Mrs. Millhouse would not have purchased the subject property but for Ms. Mitchell's mistake. It was entirely reasonable for Mr. and Mrs. Millhouse to rely upon the Planning Director in this situation. Additionally, Mr. and Mrs. Millhouse were informed by Ms. Mitchell that another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance."

Variance Criteria 3: The granting of the variance shall not authorize a use that is not a permitted principal use in the zoning district in which the property is located.

Findings: Pursuant to KMC Section 14.22.010 *Land Use Table*, a retail marijuana store is not a permitted principal use in the General Commercial Zoning District, but instead requires a conditional use permit. Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "The property in question is located in the general commercial zone, which allows for conditional use permits for marijuana retail facilities per KMC 14.22.010 and KMC 14.20.330(a)."

Variance Criteria 4: The granting of a variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure.

Findings: The granting of this variance would be the minimum variance by allowing the applicant to operate a retail marijuana store within approximately 332 feet (Exhibit A) of the outer boundaries of the nearest recreation or youth center.

Per the applicants' statement "The ballfield(s) in question are actually more than 1,000 feet away from the proposed marijuana retail facility, although within 500 feet of the "buffer zone" under KMC 14.20.330(f)(1) when measured as the City of Kenai measures. So, the requested variance is minimal in all practical effect and will allow Mr. and Mrs. Millhouse to enjoy their property as they see fit and as KMC allows."

Variance Criteria 5: The granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district.

Findings: An excerpt of the applicants' statement from another section of the application states "...another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance." Therefore, the request for a variance permit does not meet this criterion.

Per the applicants' statement "Given that the property in question is zoned for general commercial and that general commercial allows for conditional use permits for retail marijuana facilities, this variance will not be based upon other nonconforming land uses or structures within the same land use or zoning district."

PUBLIC NOTICE

Pursuant to Kenai Municipal Code 14.20.280 notices of public hearing for the variance permit were mailed to property owners within a three hundred (300) foot periphery of the subject property. City staff published notice of the public hearing in the *Peninsula Clarion* on August 2, 2024. City staff submitted an Affidavit of Posting verifying a sign was placed on the parcel with information on the public hearing for the variance permit request.

As of the date of this staff report, one public comment has been received (See Public Comment Attachment).

STAFF RECOMMENDATION

Staff finds that the proposed Variance Permit application requesting buffer zone adjustment does not meet the criteria for issuance of a Variance Permit as set forth in Kenai Municipal Code Section 14.20.180(c), and hereby recommends that the Planning and Zoning Commission deny the proposed Variance Permit application. The decision of the Planning and Zoning Commission is subject to appeal, pursuant to KMC 14.20.290.

ANALYSIS – Conditional Use Permit

Pursuant to KMC 14.20.150(a), the intent of a conditional use permit is to allow some uses that may be compatible with the designated principal uses in specific zoning districts provided certain conditions are met. Prior to granting a conditional use permit, the Commission shall determine that the identified criteria as outlined in KMC 14.20.150(e) *Conditional Use Permits Review Criteria* are met.

Criteria 1: The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district.

Findings: The General Commercial Zoning District is described in Section 14.20.120 of Kenai Municipal Code (KMC) as follows:

The CG Zone is established to provide for areas where a broad range of retail, wholesale, and service establishments is desirable. Uses are regulated to concentrate commercial development to the greatest extent possible and to prevent any uses which would have an adverse effect upon nearby properties. New single- and two (2) family residential uses and other noncommercial uses, except as otherwise provided in this chapter, are not permitted in this zone as principal uses because it is intended that land classified in this zone be reserved for commercial purposes, and because a commercial zone is not suited to the uses excluded above.

Retail marijuana stores are a conditional use within the CG Zoning District, therefore a conditional use permit is required to operate a retail marijuana store. As proposed, the retail marijuana store would occupy as approximately 1,600 square foot unit of an approximately 9,332 square foot commercial building. The remaining units of the building are currently unoccupied.

Given the preceding Variance Permit application not meeting required criteria, staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store is consistent with the purpose of this chapter or the intent of the zoning district.

Criteria 2: The economic and noneconomic value of the adjoining property and neighborhood will not be significantly impaired.

Findings: The economic and noneconomic value of adjacent properties would not be adversely affected by the proposal. The applicant states that the building is currently in a state of disrepair, and improvements are planned for both the building and landscaping, thus enhancing the aesthetics of the property as a whole. Historically the building has housed an array of businesses including restaurants, billiards halls, thrift/antique stores, small engine repair, and more. A retail store would generate commercial activity on the commercial premises, and would be consistent with the existing commercial development. The operation of any commercial marijuana establishment is subject to KMC as well as AMCO standards and any code violations may be subject to the revocation of the CUP.

Criteria 3: The proposed use is in harmony with the Comprehensive Plan.

Findings: The Land Use Plan, from the 2016 Comprehensive Plan, identifies the subject property with the General Commercial (GC) land use classification. The GC Land Use Classification is defined in the Comprehensive Plan:

General Commercial is intended for retail, service, and office businesses that serve Kenai and the larger region. General Commercial is appropriate for locations along the arterial road system. General Commercial-type development requires larger parcels of land and access to a major road system. It is also intended to support smaller-scale businesses.

The subject property is surrounded by Kenai Spur Highway to the south and west, commercial and residential uses to the north, and commercial and airport light industrial uses to the east. The proposed use would be consistent with the existing commercial development on the subject property.

RELEVANT GOALS

In *Imagine Kenai 2030 Comprehensive Plan*, Chapter 6, "Goals, Objectives, and Implementation", several goals and objectives are met from the proposed use.

Goal 1 – Quality of Life is to promote and encourage quality of life in Kenai.

Objective Q-4

Promote siting and design of land uses that are in harmony and scale with surrounding uses.

Goal 2 – Provide economic development to support the fiscal health of Kenai.

Objective ED-5

Promote adaptive reuse of vacant commercial buildings in the city center and along the Kenai Spur Highway.

Goal 3 – Land Use is to develop land use strategies to implement a forward-looking approach to community growth and development.

Objective LU-2

Promote the infill of existing, improved subdivision lots.

Criteria 4: Public services and facilities are adequate to serve the proposed use.

Findings: City water and sewer are available along First Avenue, which is a City-maintained road. The primary access is off of Kenai Spur Highway, a State-maintained right-of-way. Staff finds there would be little to no noticeable increase to traffic on the Kenai Spur Highway. The approximately 1,600 square foot retail unit requires 1 parking space per 300 square feet for retail use, for a total of 5 parking spaces. Therefore, the proposed use would not require additional parking spaces. Staff finds that there are adequate public services and facilities to serve the proposed use.

Criteria 5: The proposed use will not be harmful to the public safety, health or welfare.

Findings: Given the preceding Variance Permit application not meeting required criteria (PZ2024-18), staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store consisting of approximately 1,600 square feet would not be harmful to the public safety, health, or welfare.

Criteria 6: Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.

Findings: Pursuant to KMC 14.20.330 *Standards for Commercial Marijuana Establishments* the following conditions apply to retail marijuana stores:

1. On-site consumption is prohibited on the premises of the proposed commercial marijuana establishment.
2. The proposed retail marijuana store shall not emit an odor detectable by the public from outside establishment.
3. The proposed marijuana establishment may not conduct business on, or allow any customer or consumer to access, the licensed premises between the hours of 5:00a.m. and 8:00 a.m. daily.

PUBLIC NOTICE

Pursuant to Kenai Municipal Code 14.20.330(c) notices of the public hearing for the conditional use permit amendment to allow a retail marijuana store were mailed to property owners within a five hundred-foot (500') periphery of the subject property or expanded until a minimum of 30 different property owners are available for notification. City staff published notice of the public hearing in the *Peninsula Clarion* at least seven (7) days prior to the date of the hearing. City staff submitted an Affidavit of Posting verifying a sign was placed on the parcel with information on the public hearing for the conditional use permit amendment request.

As of the date of this staff report, one (1) public comment has been received.

Resolution PZ2024-18
Variance Permit
Buffer Distance Reduction
Resolution PZ2024-19
Conditional Use Permit
Retail Marijuana Store

STAFF RECOMMENDATION

Staff finds that the proposed CUP application for the operation of an approximately 1,600 square foot retail marijuana store within the existing approximately 9,332 square foot commercial building on Government Lots 19,20, and 21, Section 6, Township 5 North, Range 11 West, Seward Meridian, Kenai, located at 11888 Kenai Spur Highway does not meet the required criteria and conditions for issuance of a Conditional Use Permit as set forth in subsections (e)(1) through (e)(6) of Kenai Municipal Code (KMC) 14.20.150 and KMC 14.20.330 *Standards for Commercial Marijuana Establishments*, and hereby recommends that the Planning and Zoning Commission deny the Conditional Use Permit application. This decision of the Planning and Zoning Commission is subject to appeal, pursuant to KMC 14.20.290.

ATTACHMENTS

- Exhibit A
- Exhibit B
- 500 ft Buffer Map
- 1000 ft Buffer Map
- CUP Application with Floor Plan
- Public Comment
- Affidavits of Posting
- Variance Permit Application
- Notice Mailing List

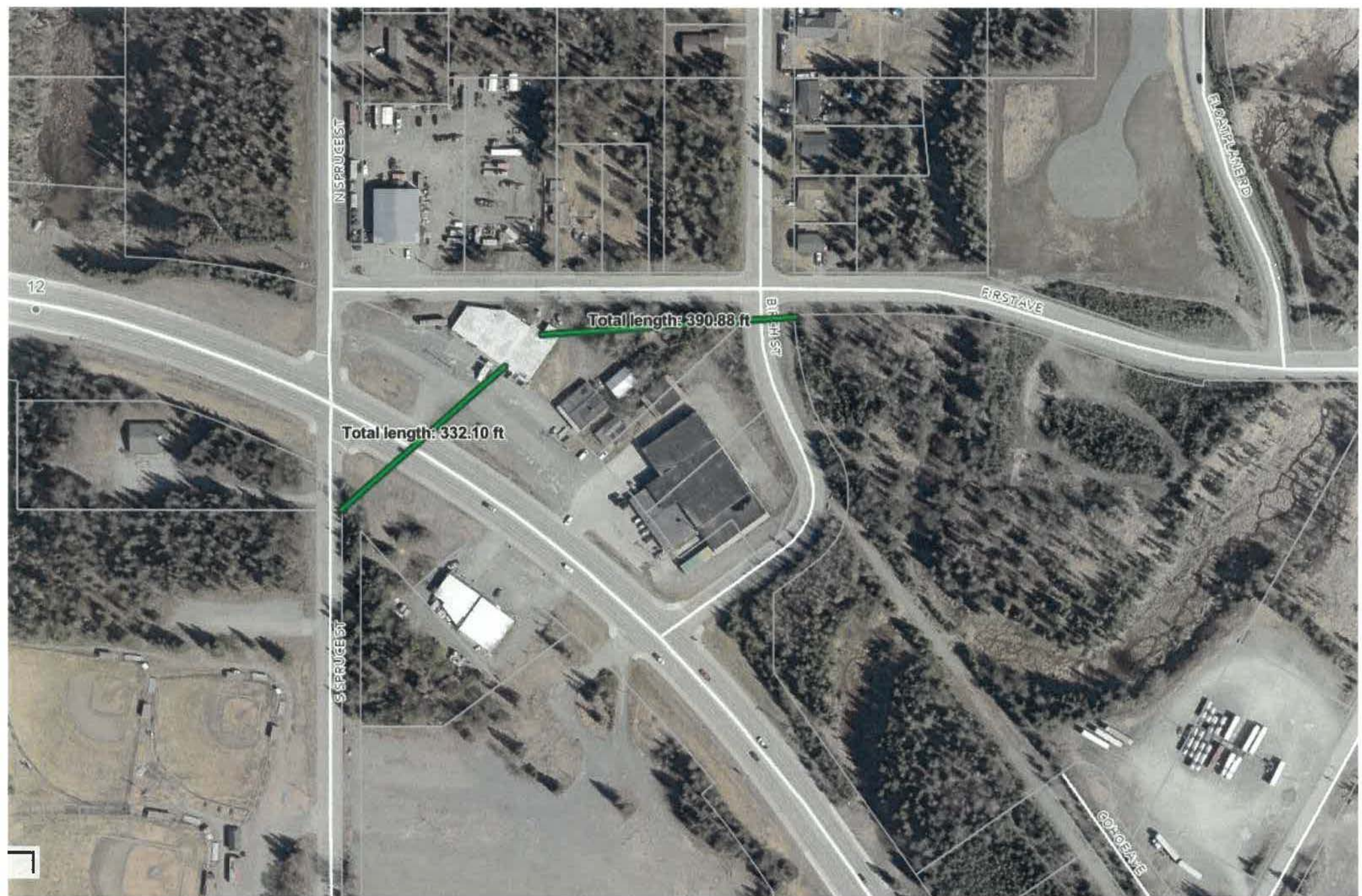
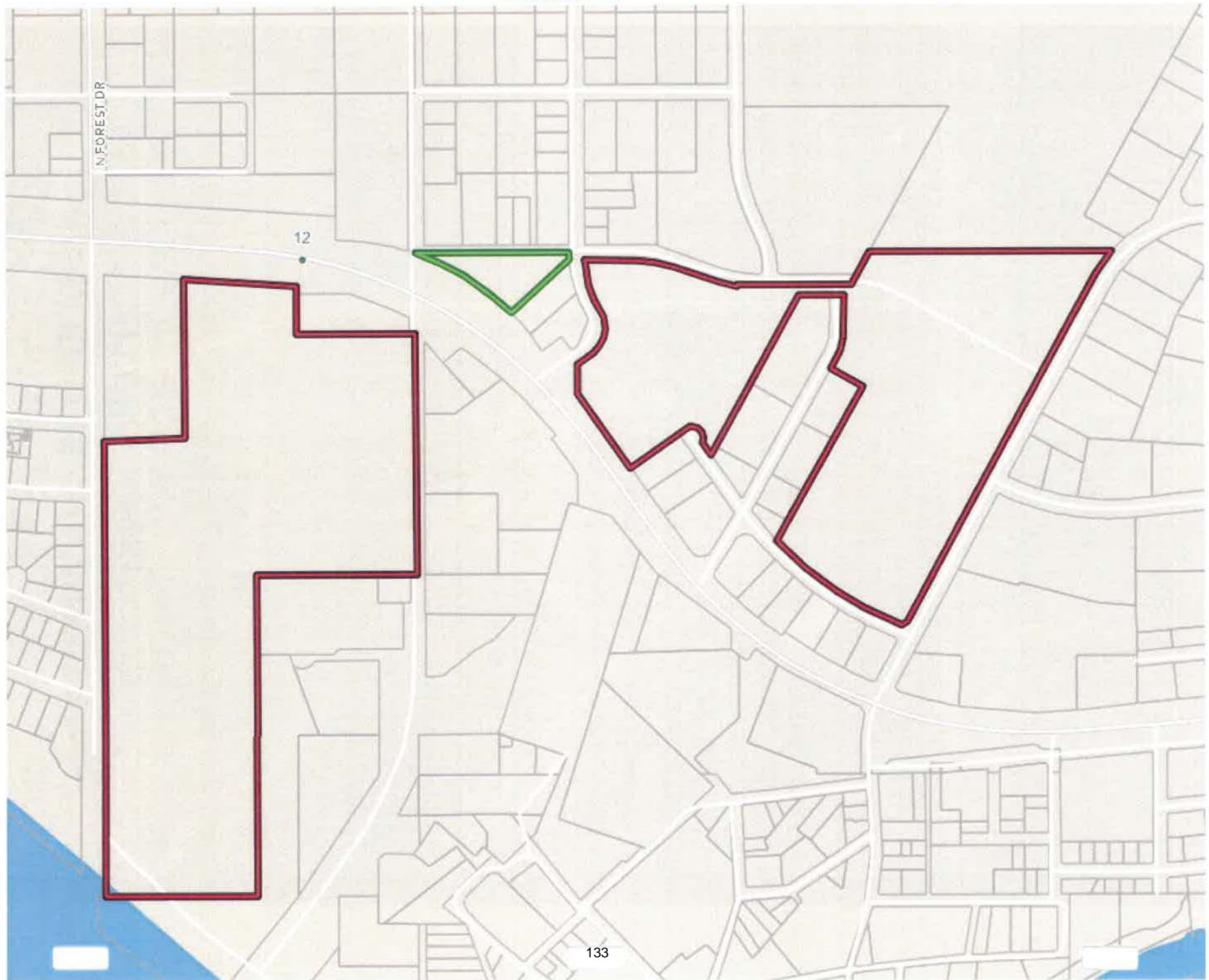
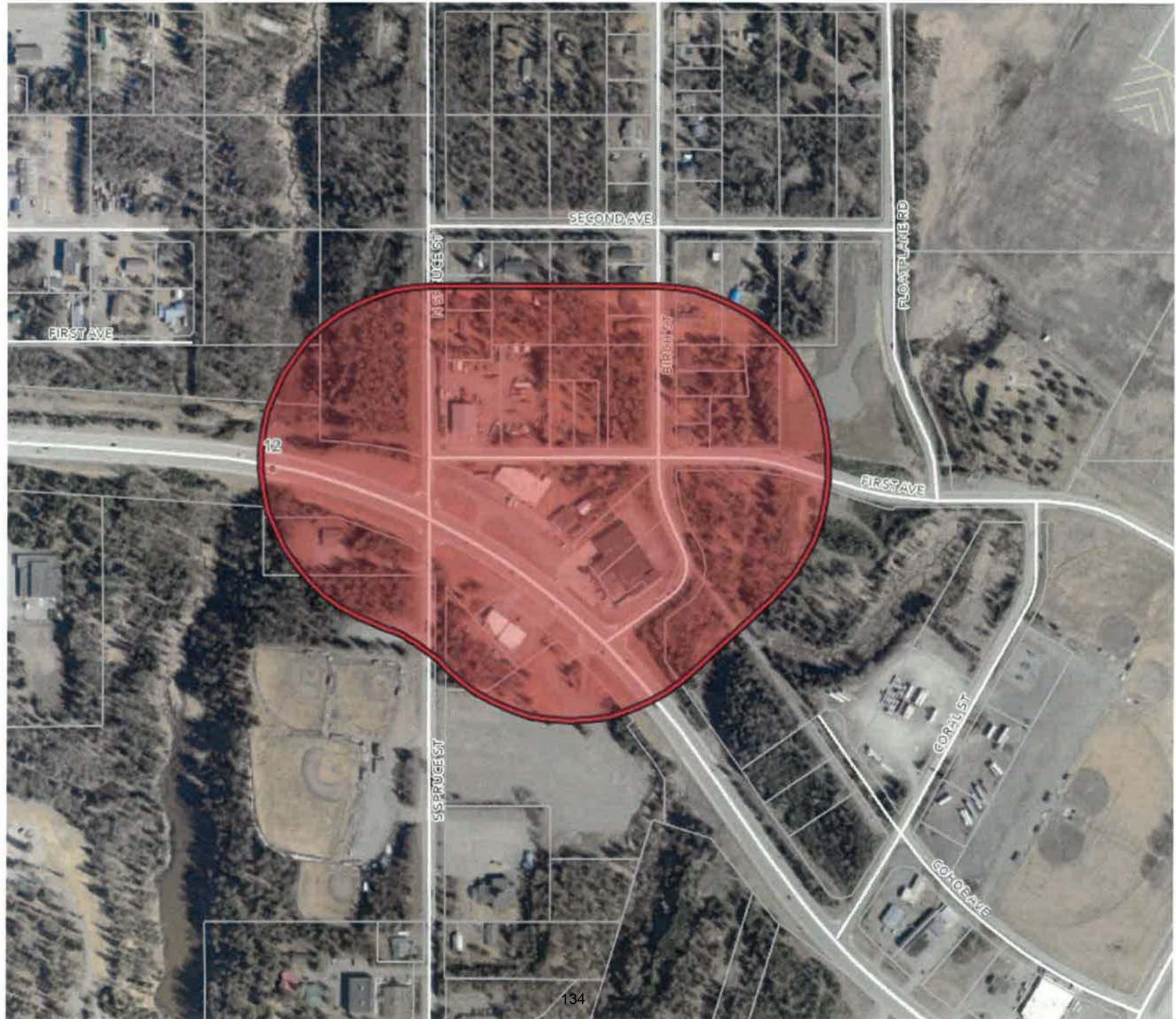


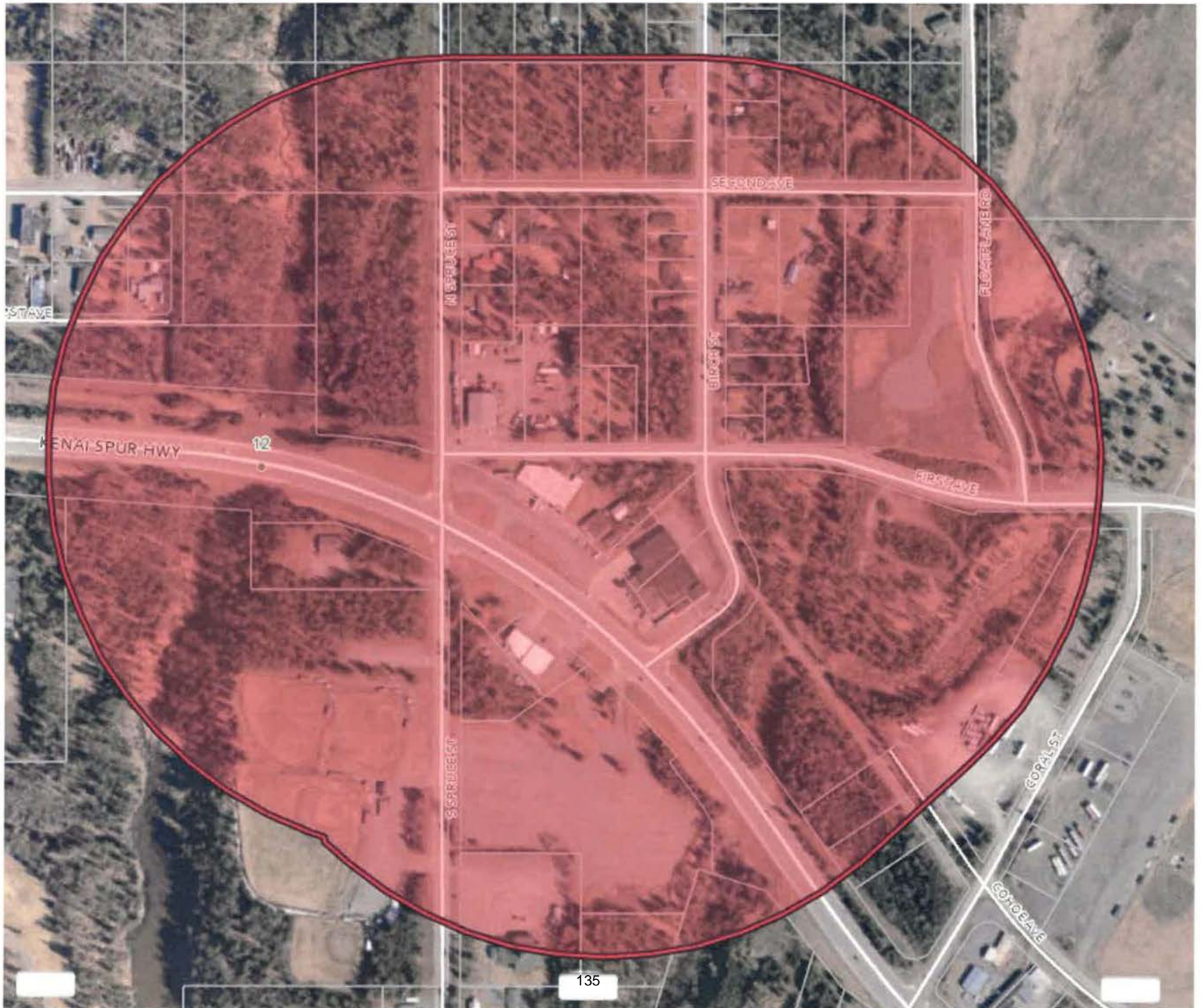
EXHIBIT B



500 foot Buffer Map



1,000 foot Buffer Map





Conditional Use Permit Application

FEB 28 2024

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

By: [Signature] Planning & Zoning

PROPERTY OWNER

Name: Troy Millhouse
Mailing Address: PO Box 874574
City: Wasilla State: AK Zip Code: 99697
Phone Number(s): 907-229-6783
Email: bigdaddyfuzzy@yahoo.com

PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)

Name: Sandra D. Millhouse
Mailing Address: PO Box 874574
City: Wasilla State: AK Zip Code: 99697
Phone Number(s): 907-373-8761
Email: sandradhica@yahoo.com

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (Property Tax ID): 04702001
Physical Address: 11888 Kenai Spur Hwy #3 Kenai AK 99611
Legal Description: T 5N R 11W Sec 6 Seward Meridian KN Govt lots 19, 20, 21
Zoning: General Commercial (C6)
Acres: 1.67

CONDITIONAL USE DESCRIPTION

(Include site plan/floor plan with square footages)
(Include State Business License and KPB Tax Compliance if applicable)

How is this property currently being used? currently vacant

Conditional Use Requested for (attach additional sheets if necessary):

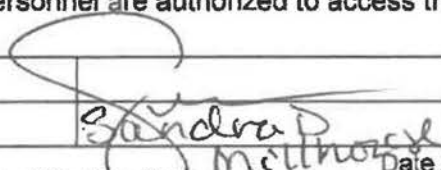
a marijuana Retail Facility as defined in municipal code 14.20.320.

Explain how the conditional use is consistent with purposes and intent of the zoning district of the property:

In the Land use code 14.22.010, the location we picked falls in the General Commercial zoning in the Land Use table, which allows conditional use permits for retail marijuana stores.

Explain how the value of adjoining property and neighborhood will not be significantly impaired by the conditional use:

we have a private access for our driveway. The property is currently vacant and unattractive. we are planning bldg improvements and plant additions or flower pots / beds to improve the look across the st.

Use of surrounding property - north:	GC - Hall Quality Bldgs & Residential		
Use of surrounding property - south:	GC - Strip mall w/ antique store		
Use of surrounding property - east:	GC & ALI - Salvation Army		
Use of surrounding property - west:	Kenai Spur & Suburban Residential - vacant		
Explain how the conditional use is in harmony with the City's Comprehensive Plan:			
In Table 16 of the Land Use Plan Classifications, GC will be used for future retail, and our location falls under GC on the map. we are planning improvements			
Are public services and facilities on the property adequate to serve the proposed conditional use?			
our location is off the main road through downtown Kenai, and all utilities and public services are available there.			
Explain how the conditional use will not be harmful to public safety, health, or welfare:			
the access to our location is off the Kenai Spur Hwy so access is out of any residential area. we have 24 hour security set in place with camera monitoring and an alarm company. the retail is not visible inside to the public			
Are there any measures with access, screening, site development, building design, or business operation that will lessen potential impacts of the conditional use to neighbors?			
we have easy access from the Kenai Spur hwy, we have a ID card screening process for all visitors. we do not allow loitering anywhere on the property, and the facility is not visible from the outside.			
AUTHORITY TO APPLY FOR CONDITIONAL USE:			
I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a conditional use permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the conditional use. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.			
Signature:			Date: 2/22/24
Print Name:	Sandra D. Melthorn	Title/Business:	Canna Get Happy
For City Use Only		Date Application Fee Received:	
		PZ Resolution Number:	

1001

Millhouse Farms & Gardens

NUVISION FCU



90-8239/3222

PAY TO THE
ORDER OF

City of Kenai

02/25/2024

\$

**265.00

DOLLARS

Security features. Details on back.

Two hundred sixty-five and 00/100*****

City of Kenai
210 Fidalgo St
Kenai, AK 99611

MEMO



AUTHORIZED SIGNATURE



33' R/W FIRST AVENUE

N 89°58'30" W 660.00

LOTS 19,20 & 21

LOT 18

AS-BUILT PLAN
SCALE: 1/8" = 1'-0"

SPECIAL NOTE
This document may not be recorded or copied without the written permission of the Surveyor. This Survey is to be used only for the purposes intended and is void for any other use. The original survey instrument must be reviewed.

SEE ANY LOCAL ZONING
AUTHORITIES OR CONTACT
THE ALASKA DEPARTMENT OF
CIVIL ENGINEERING FOR
PARCEL FOR BUILDING SETBACKS

THIS SURVEY IS SUBJECT TO ANY RIGHTS THAT MAY BE ACQUIRED BY THE STATE OR ANY OTHER ENTITY. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DESIGNED. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DESIGNED. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DESIGNED.

NOTES
THIS SURVEY IS SUBJECT TO ANY RIGHTS THAT MAY BE ACQUIRED BY THE STATE OR ANY OTHER ENTITY. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DESIGNED. THIS SURVEY IS NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS DESIGNED.

- General Notes**
- (X) KEY NOTE
 - EXISTING PARTITIONS
 - WINDOW
 - EQ-1 EQUIPMENT TAG
 - PB-1 PLUMBING FIXT. TAG
 - ELEVATION TAGS

- TRUE NORTH
- SURVEILLANCE TV
- MENU TV
- INGRESS
- EGRESS
- LICENSED PREMISES
- NON-LICENSED PREMISES

1	UPDATED	02.21.24
1	CREATED	02.08.24

DESIGNED BY:
CST DESIGNS
P.O. BOX 81454
WASILLA, AK 99687

PROJECT:
CANNA GET HAPPY, LLC
LICENSE# 36-37844
SANDRA D. MILLIGAN
11800 KENAI SPUR HWY, UNIT 3
KENAI, AK 99501

PROJECT:
CANNA GET HAPPY
DATE:
05/1/24
SCALE:
1/8"=1'-0"

3



SITE PLAN
SCALE: 1/8" = 1'-0"

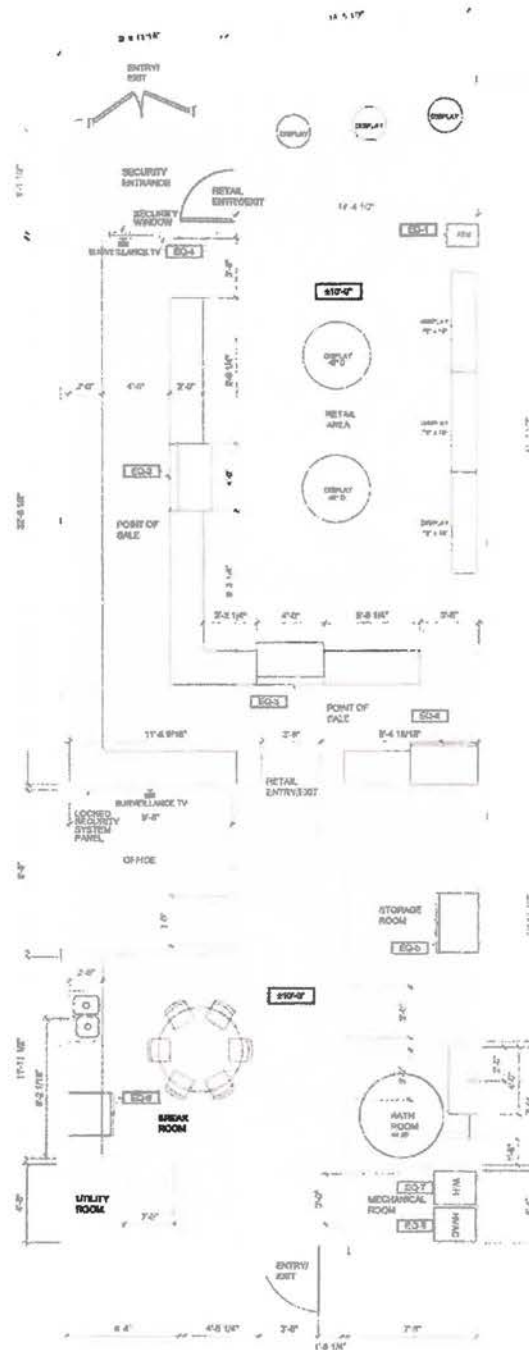
- General Notes**
- KEY NOTE
 - EXISTING PARTITIONS
 - WINDOW
 - EQUIPMENT TAG
 - PLUMBING FIXT. TAG
 - ELEVATION TAGS
 - TRUE NORTH
 - INGRESS
 - EGRESS
 - LICENSED PREMISES
 - NON-LICENSED PREMISES

1	CREATED	3.02.24
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DESIGNED BY:
OST DESIGNS
P.O. BOX 874674
VANILLA, AK 99687

PROJECT:
CHINA GET HAPPY, LLC
LICENSED 30-37044
SANDRA D. MULLHOUSE
11800 KENAI SPUR HWY, UNIT 3
KENAI, AK 99511

PROJECT: CHINA GET HAPPY	DIAGRAM:
DATE: 03/26/24	4
PROJECT: 1/8" = 1'-0"	



PROPOSED FLOOR PLAN
SCALE: 3/16" = 1'-0"

General Notes

- (X) KEY NOTE
- EXISTING PARTITIONS
- WINDOW
- EQ-1 EQUIPMENT TAG
- PB-1 PLUMBING FIXT. TAG
- ELEVATION TAGS
- PUBLIC ACCESS
- RESTRICTED ACCESS AREA
- TRUE NORTH
- TV SURVEILLANCE TV

EQUIPMENT:

- (EQ-1) ATM CASH DISPENSING MACHINE, TBD
- (EQ-2) CASH DISPENSING MACHINE, TBD
- (EQ-3) CASH DISPENSING MACHINE, TBD
- (EQ-4) SECURITY BUZZER
- (EQ-5) STORAGE REFRIGERATOR, TBD
- (EQ-6) BREAK ROOM REFRIGERATOR, TBD
- (EQ-7) WATER HEATER
- (EQ-8) HVAC
- (EQ-9) SALES FLOOR REFRIGERATOR, TBD

1	UPDATED	02.21.24
1	CREATED	02.08.24

DESIGNED BY:
CITY DESIGN
P.O. BOX 874674
WASILLA, AK 99587

PROJECT:
CANNA GET HAPPY, LLC
LICENSER: 800023
SANDRA D. MILLHOUSE
11309 KENAI BLVD NW, UNIT 3
KENAI, AK 99541

PROJECT:	DATE:	DATE:	DATE:
CANNA GET HAPPY	02/21/24	02/21/24	02/21/24
1			



Kenai Peninsula Borough, Alaska

Assessing Department

[Go Back](#)
[Property Search](#)
[Print Report](#)
[Property Taxes](#)

Property Owner:
MILLHOUSE TROY
PO BOX 874574
WASILLA AK 99687-4574

[Change of Address](#)
[Owner\(s\)](#)
Property ID

04702001

Address

11888 KENAI SPUR HWY

Transfer Date

9/13/2023

Document / Book Page

20230071490

Acreage

1.6700

Tax Authority Group

30 - KENAI CITY

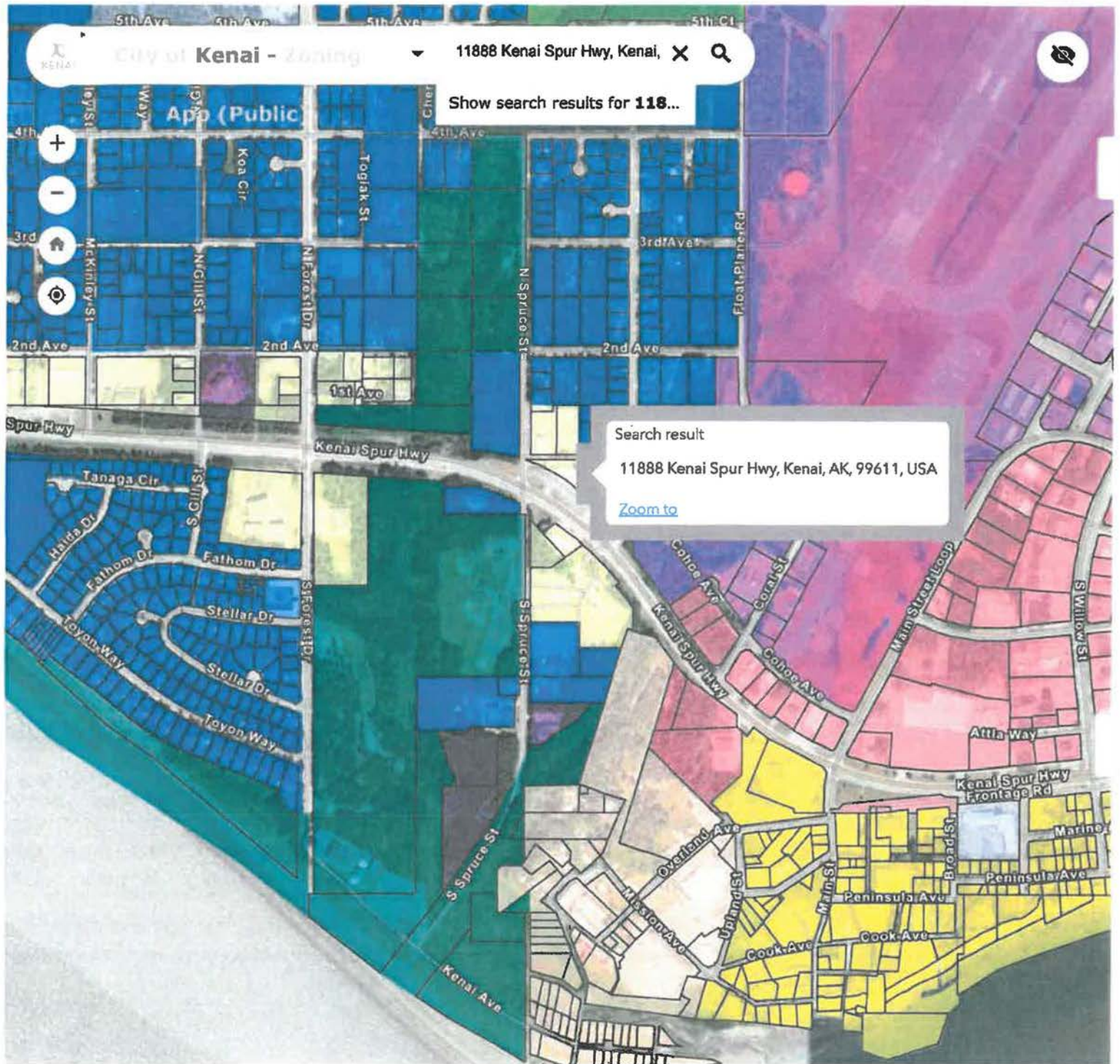
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T 5N R 11W SEC 6 Seward Meridian KN GOVT LOTS 19 20 & 21

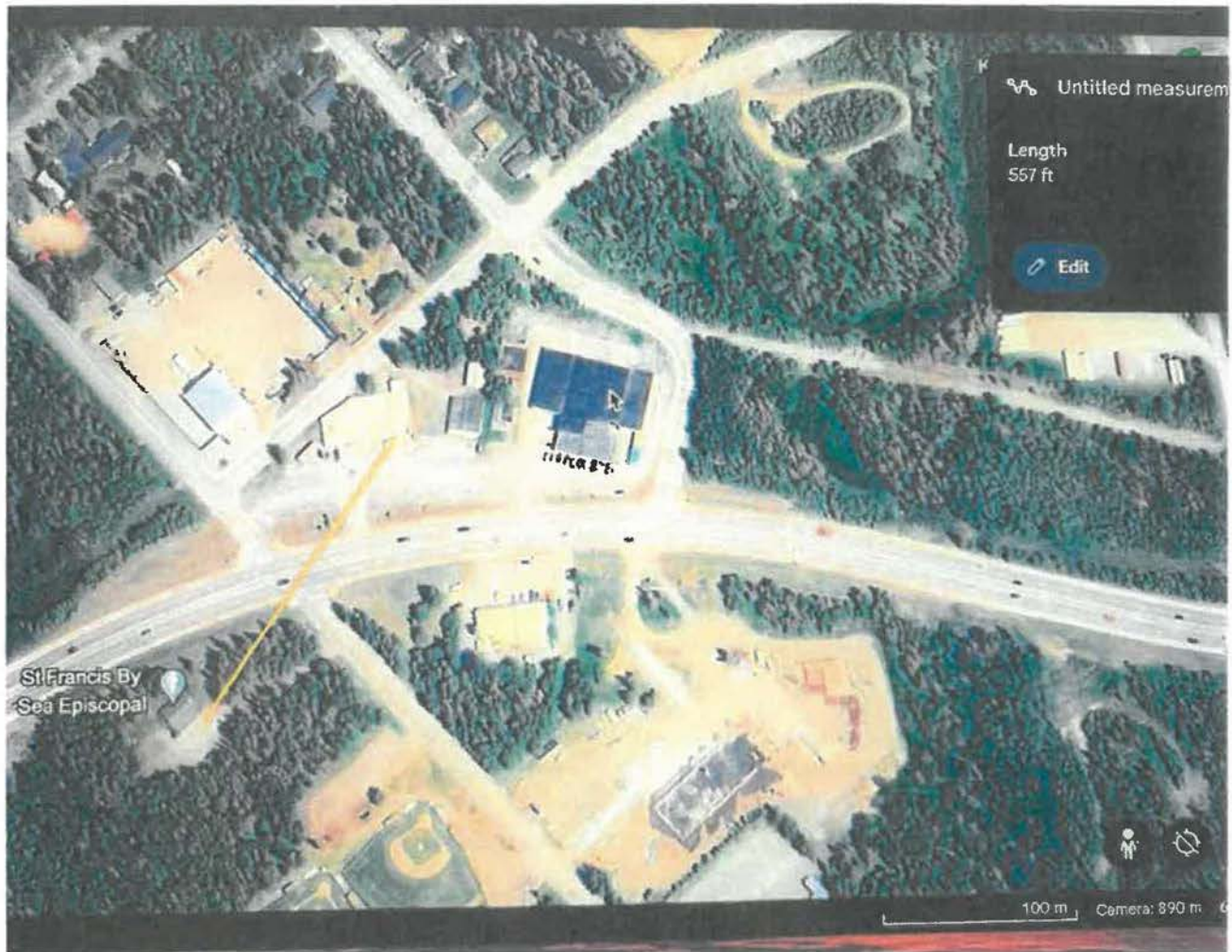
Year	2023	2022	2021	2020	2019	2018	2017	2016	2015
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$209,300	\$209,300	\$129,500	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300
Imp Assd	\$112,900	\$262,400	\$229,900	\$242,400	\$244,600	\$233,200	\$228,700	\$225,100	\$247,000
Total Assd	\$322,200	\$471,700	\$359,400	\$365,700	\$367,900	\$356,500	\$352,000	\$348,400	\$370,300

C01

C02



From: Sandra D Millhouse sandradhbic@yahoo.com
Subject: Line From kenai canna to church
Date: February 20, 2024 at 8:43 PM
To: Sandra D Millhouse sandradhbic@yahoo.com



"The Gardens"
Majestic & Magical

Deniece & Ronald Isaacs
12656 Kenai Spur Hwy Kenai AK 99611
907-3983267 Dee 9072529777 Ron 9072834872 stores

July 17, 2024

To: major Kenai, city attorney, planning and zoning, city council & any interested party.

We are expressing our dissatisfaction of the willingness to try to change code, regulations for one person and not another.

As entrepreneurs we are fully aware of due diligence. Making sure approval is in writing before giving up our life savings and hawking everything we own. Putting down deposits and paying appraisers for official documentation became a consequence of this endeavor.

We spent a lot of money finding an approved location within the city limits of Kenai. 3 Different attempts before finding closing on a location

One of those locations was Swan square. Where we leased the building after the surveys were done, then we were denied a conditional use permit. Our appeal pleading for collaboration and seeking relief, to change alter existing properties to compile with state regulations was denied.

The Airport land is leased and is vital to our community. Regulations for public safety for these airports are vital to their operations. We can only imagine the funding that is supported by the airport. Athletic fields are on that leased airport land. This land comes practically to swans square back door. The little field at Steven Shearer Memorial Park ball field is too close at 438'.

The Alaskan Native Elders made an appearance to protest the location so close to where there were developing in old town. I am sure they would have some more opinions on what is being considered, I will be bringing this to their attention as well. They have invested tons of money in our community. The church across the street protested as well, offering buckets of money to prevent a marijuana business at that location. This letter will go to them as well.

Canna Get Happy's; Millhouse should have gotten a conditional use permit BEFORE purchasing the building and gotten some legal surveys. They are experienced marijuana businesses owners.

Swan Square owners knew full well a marijuana business could not go there, as two had already tried, they received revenue from those attempts and were denied. Vivian the owner at the time was over seen by her guardian daughter, Vivian as since passed, they were both aware as they received copies of necessary documents. Vivian did attended a meeting as I recall.

The city would not change, amend or help in any way to approve our conditional use permit, we were not giving the option to change anything, in fact we begged for help and consideration in collaborating to find a solution. NONE WAS GIVEN TO US.

The community, board members and the city officials made that decision not to have marijuana businesses in that location therefore it should stand. It was financially and emotionally draining to say the least. We have evaluated what this denial this has cost us and will be considering our options if this building is considered for a marijuana establishment of any kind. Something is not right it is fishy or feels corrupt to change for one and not another.

Thank you
Deniece & Ronald



KENAI

City of Kenai | 210 Fidalgo Ave, Kenai, AK 99611-7794 | 907.283.7535 | www.kenai.city

AFFIDAVIT OF POSTING PUBLIC HEARING NOTICE

I hereby certify that I have posted a Notice of Public Hearing as prescribed by Kenai Municipal Code 14.20.280 (d) on the property that

SANDRA D. MILLHOUSE (Name of Applicant) has petitioned for a

CONDITIONAL USE PERMIT FOR A RETAIL MARIJUANA STORE

The notice was posted on the date of 02 AUG 2024, which is at least 10 days prior to the public hearing on this petition. I acknowledge this Notice must be posted so as to be visible from each improved street adjacent to the property and must be maintained and displayed until all public hearings have been completed. I acknowledge that the Notice must be removed within 5 days after the hearing.

Affirmed and signed by:

Brandon M. Elger
Signature

BRANDON M^EELGER
Printed Name

02 AUG 2024
Date

Property:

Address: 11888 KENAI SPRING HWY

Legal Description: Government Lots 19, 20, 21, Sec 6, T5N, R11W

KPB Parcel #: 04702001

P&Z Resolution #:

PZ-2024-19



CITY OF KENAI
PLANNING & ZONING COMMISSION
Notice of Meeting

City of Kenai Council Chambers
210 Fidalgo Avenue, Kenai, AK 99611

The following agenda items will be before the City of Kenai Planning and Zoning Commission at their meeting starting at 7:00 p.m. on **Wednesday, August 14, 2024**.

PUBLIC HEARINGS

1. **Resolution PZ2024-18** – Consideration of a Variance Permit for Reduced Buffer Distances on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.
2. **Resolution PZ2024-19** – Consideration of a Conditional Use Permit to Operate a Retail Marijuana Store on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

The public is invited to attend the meeting and to participate virtually/telephonically. Additional information is available through the Planning and Zoning Department at planning@kenai.city, (907) 283-8237, or on the City's website at www.kenai.city.

Brandon McElrea, Planning & Zoning Administration

Publish: August 2, 2024



Variance Permit Application

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

PROPERTY OWNER

Name:	Troy D. Millhouse				
Mailing Address:	P.O. Box 874574				
City:	Wasilla	State:	AK	Zip Code:	99687
Phone Number(s):	907.229.6783				
Email:	bigdaddyfuzzy@yahoo.com				

PETITIONER REPRESENTATIVE (LEAVE BLANK IF NONE)

Name:	Richard R. Moses (Alaska Bar No. 1311096)				
Mailing Address:	701 W. 8th Ave., Ste. 700				
City:	Anchorage	State:	AK	Zip Code:	99501
Phone Number(s):	907.274.0666				
Email:	rmoses@hwb-law.com				

PROPERTY INFORMATION

Kenai Peninsula Borough Parcel # (Property Tax ID):	04702001
Physical Address:	11888 Kenai Spur Hwy., #3, Kenai, AK 99611
Legal Description:	Government Lots 19, 20, and 21, in Section 6, Township 5 North, Range 11 West, Seward Meridian
Zoning:	General Commercial (GC)
Acres:	1.67

VARIANCE DESCRIPTION

(include site plan with square footages and elevations of all existing/proposed buildings)
(use additional pages if necessary to answer questions)

A variance permit is the relaxation of the development requirements to provide relief when the literal enforcement would deprive a property owner of the reasonable use of their real property. The requirements for a variance permit in City Code must be met for a variance to be granted.

How is this property currently being used?	Currently vacant.
Use of surrounding property - north:	General Commercial – Hall Quality Builders.
Use of surrounding property - south:	General Commercial – Strip mall with antique store.
Use of surrounding property - east:	General Commercial and Airport Light Industrial – Salvation Army.
Use of surrounding property - west:	Suburban Residential – currently vacant.

Variance Requested for (attach additional sheets if necessary):

A marijuana retail facility as defined by KMC 14.20.320 to be located within the 500 foot buffer from ball field(s) that potentially qualify as a "recreation or youth center" under KMC 14.20.320.

Explain the special conditions or circumstances present which are peculiar to the land or structure involved which are not applicable to other land or structures in the same land use or zoning district:

The property in question was purchased after Linda Mitchell, the Planning Director for the City of Kenai, called Mrs. Sandra Millhouse and told her that the property in question was outside of the 500 foot buffer zone at issue here. Mr. and Mrs. Millhouse would not have purchased the property in question without Ms. Mitchell's assurance. In short, they relied upon her assurance to their detriment. Moreover, this property is currently vacant. Accordingly, its development will increase the values of surrounding properties as well as the overall aesthetic of the area.

Explain the special conditions or circumstances present that have not been caused by actions of the applicant and such conditions and circumstances do not merely constitute pecuniary (monetary) hardship or inconvenience:

As stated, Mr. and Mrs. Millhouse relied upon Ms. Mitchell's assurance to purchase the property. Simply put, Mr. and Mrs. Millhouse would not have purchased the subject property but for Ms. Mitchell's mistake. It was entirely reasonable for Mr. and Mrs. Millhouse to rely upon the Planning Director in this situation. Additionally, Mr. and Mrs. Millhouse were informed by Ms. Mitchell that another marijuana retail facility was granted a variance to operate within 250 feet of a recreation or youth center. Accordingly, there is precedent for the grant of such a variance.

Explain how this variance will not authorize a use that is not a permitted principal use in the zoning district in which the property is located:

The property in question is located in the general commercial zone, which allows for conditional use permits for marijuana retail facilities per KMC 14.22.010 and KMC 14.20.330(a).

Explain how the variance shall be the minimum variance that will provide for the reasonable use of the land and/or structure:


The ballfield(s) in question are actually more than 1,000 feet away from the proposed marijuana retail facility, although within 500 feet of the "buffer zone" under KMC 14.20.330(f)(1) when measured as the City of Kenai measures. So, the requested variance is minimal in all practical effect and will allow Mr. and Mrs. Millhouse to enjoy their property as they see fit and as the KMC allows.

Explain how the granting of a variance shall not be based upon other nonconforming land uses or structures within the same land use or zoning district:

Given that the property in question is zoned for general commercial and that general commercial allows for conditional use permits for retail marijuana facilities, this variance will not be based upon other nonconforming land uses or structures within the same land use or zoning district.

AUTHORITY TO APPLY FOR A VARIANCE:

I hereby certify that (I am) (I have been authorized to act for) owner of the property described above and that I petition for a variance permit in conformance with Title 14 of the Kenai Municipal Code. I understand that payment of the application fee is nonrefundable and is to cover the costs associated with processing this application, and that it does not assure approval of the variance. I also understand that assigned hearing dates are tentative and may have to be postponed by Planning Department staff of the Planning and Zoning Commission for administrative reasons. I understand that a site visit may be required to process this application. City of Kenai personnel are authorized to access the above-referenced property for the purpose of processing this application.

Signature:		ABA# 13110910	Date:	05/21/2024
Print Name:	Richard R. Moses	Title/Business:	Holmes Weddle & Barcott, PC	
For City Use Only		Date Application Fee Received:		
		PZ Resolution Number:		



Variance Permit Application CHECKLIST

City of Kenai
Planning and Zoning Department
210 Fidalgo Avenue
Kenai, AK 99611
(907) 283-8200
planning@kenai.city
www.kenai.city/planning

- ☐ Evaluate if your property has special conditions or circumstances peculiar to the property that prevent reasonable use of the property that are not merely a pecuniary inconvenience.
- ☐ Evaluate uses allowed in your zoning district. Information on zoning is available at kenai.city/planning/page/zoning.
- ☒ Submit completed application form. The application form must include an attached site plan/floor plan with square footages of all structures on the property and parking areas. If applicable, include a State Business License and a KPB Tax Compliance Form with the application.
Intents of zoning districts are at kenai.municipal.codes/KMC/14.20.
- ☐ Pay the \$265 fee as outlined in the Fee Schedule (\$250 + 6% tax).
- ☐ City staff will evaluate your application following Kenai Municipal Code 14.20.180- Variance Permits (kenai.municipal.codes/KMC/14.20.180). Please answer questions from City staff about your application.
- ☐ Post sign on your property and confirm the posting with the City. Planning staff will contact you and provide a sign stating a conditional use permit application has been submitted. The sign must be posted at least 10 days before the Planning & Zoning Commission meeting.
- ☐ Attend Planning & Zoning Commission meeting (not mandatory, but recommended). Attendance is beneficial so you are able to answer questions of the Commission.
- ☐ 15-day appeal period of the Planning & Zoning Commission's decision.

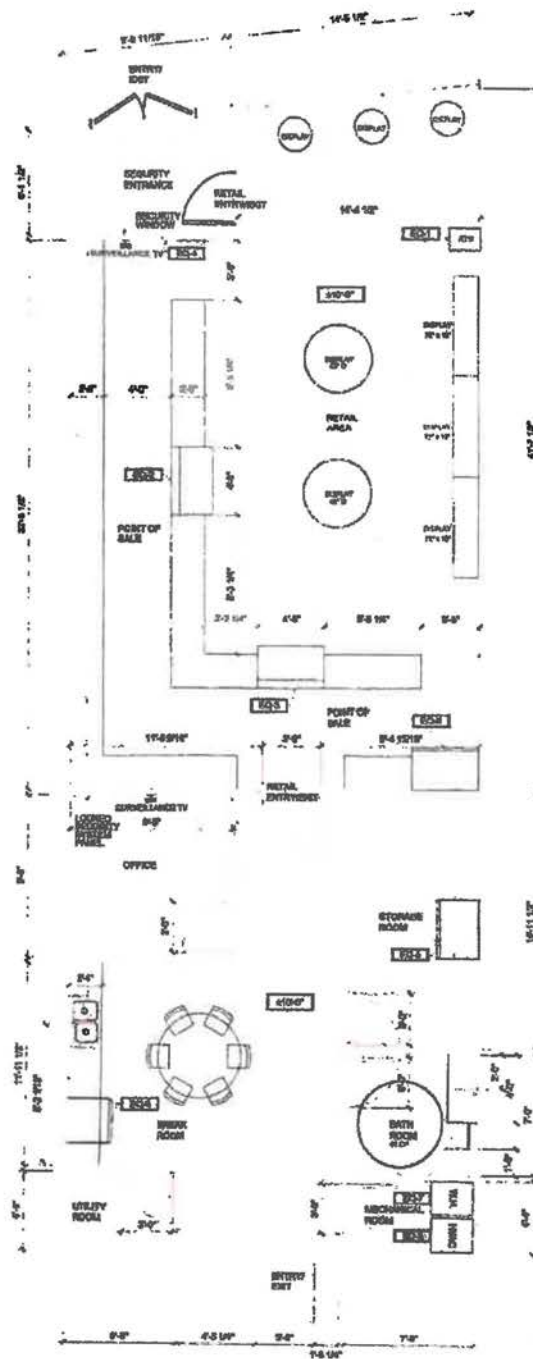
Thank you for choosing the City of Kenai!

Please contact the Planning & Zoning Department with application questions.



SITE PLAN
SCALE: 1/8" = 1'-0"

General Notes	
(X)	KEY NOTE
---	EXISTING PARTITIONS
---	WINDOW
EQ-1	EQUIPMENT TAG
PL-1	PLUMBING FXT. TAG
X X X X	ELEVATION TAGS
⊙	TRUE NORTH
→	INGRESS
→	EGRESS
■	LICENSED PRELIMINARY
■	NOT LICENSED PRELIMINARY
1	CREATED 11/01/24
DESIGNED BY: DAVE GOSWAMI P.O. BOX 5070 VANILLA, AK 99671	
PROJECT: COWA GET HAPPY, LLC LICENSED: 10-0000 SANDRA L. MULLER 1100 KENAI BLVD, UNIT 3 KENAI, AK 99501	
DESIGNED BY: DAVE GOSWAMI P.O. BOX 5070 VANILLA, AK 99671	DRAWN: 4



PROPOSED FLOOR PLAN
SCALE: 3/16" = 1'-0"

EQUIPMENT

- (E0-1) AT&T CASH DISPENSING MACHINE, TWO
"W" X "D" X "H"
- (E0-2) CASH DISPENSING MACHINE, TWO
"W" X "D" X "H"
- (E0-3) CASH DISPENSING MACHINE, TWO
"W" X "D" X "H"
- (E0-4) SECURITY BUZZER
"W" X "D" X "H"
- (E0-5) STORAGE REFRIGERATOR, TWO
"W" X "D" X "H"
- (E0-6) BREAK ROOM REFRIGERATOR, TWO
"W" X "D" X "H"
- (E0-7) WATER FOUNTAIN
"W" X "D" X "H"
- (E0-8) SALES FLOOR REFRIGERATOR, TWO
"W" X "D" X "H"

General Notes

- (X) KEY NOTE
- EXISTING PARTITION
- WINDOW
- EQUIPMENT TAG
- PLUMBING PKT. TAG
- ELEVATION TAGS
- PUBLIC ACCESS
- RESTRICTED ACCESS AREA
- TRUE NORTH
- SURVEILLANCE TV

1	UPDATED	02.21.24
1	CREATED	02.08.24

DESIGNED BY:
OUT DESIGN
P.O. BOX 8000
NORFOLK, VA 23507

PROJECT:
CIVIL ENGINEERING LLC
LAWRENCE BROWN
MANUAL BUILDING
1000 10TH ST. N. UNIT 3
DENVER, CO 80202

DATE 02.08.24	CHARGE 1
------------------	-------------



Kenai Peninsula Borough, Alaska

Assessing Department

[Go Back](#)
[Property Search](#)
[Print Report](#)
[Property Taxes](#)

Property Owner:
MILLHOUSE TROY
PO BOX 874574
WASILLA AK 99687-4574

[Change of Address](#)

[Owner\(s\)](#)

Property ID

04702001

Address

11888 KENAI SPUR HWY

Transfer Date

9/13/2023

Document / Book Page

20230071490

Acreage

1.6700

Tax Authority Group

30 - KENAI CITY

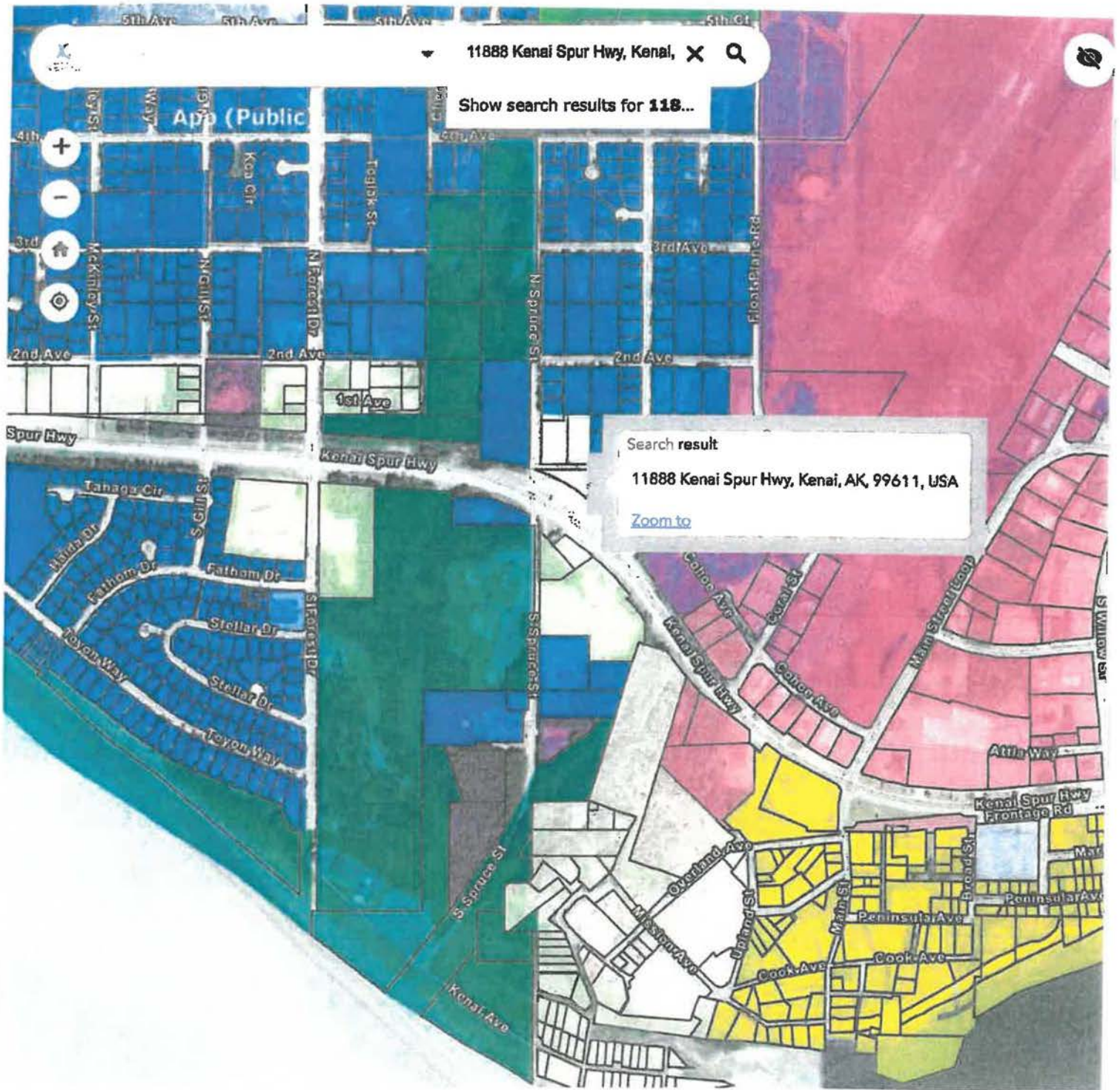
Description

T 5N R 11W SEC 6 Seward Meridian KN GOVT LOTS 19 20 & 21

Year	2023	2022	2021	2020	2019	2018	2017	2016	2015
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$209,300	\$209,300	\$129,500	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300	\$123,300
Imp Assd	\$112,900	\$262,400	\$229,900	\$242,400	\$244,600	\$233,200	\$228,700	\$225,100	\$225,100
Total Assd	\$322,200	\$471,700	\$359,400	\$365,700	\$367,900	\$356,500	\$352,000	\$348,400	\$348,400

C01

C02



From: Sandra D Millhouse sandradhbic@yahoo.com
Subject: Line From kenai canna to church
Date: February 20, 2024 at 8:43 PM
To: Sandra D Millhouse sandradhbic@yahoo.com



City of Kenai - Planning and Zoning Department

Inv#	Amt	Inv#	Amt	May 22, 2024
8952-035214	\$265.00			Check Total \$265.00

Variance Permit Application (Millhouse)
Fee \$250.00 (+) Additional \$15 for 6% KPBTax

HOLMES WEDDLE & BARCOTT, PC		WAFO BANK SEATTLE, WASHINGTON 98101 19-7098/3250		91079	
Two hundred sixty-five Dollars 00/100*****		DATE		AMOUNT	
		May 22, 2024		\$265.00	
PAY TO THE ORDER OF	City of Kenai - Planning and Zoning Department 210 Fidalgo Ave Kenai, AK 99611		VOID AFTER 90 DAYS		Security features. Details on back.
			 AUTHORIZED SIGNATURE		

EPISCOPAL DIOCESE OF ALASKA
110 S SPRUCE ST
KENAI
AK 99611

HILCORP ALASKA LLC
1111 TRAVIS ST
HOUSTON
TX 77002

KENAI CITY OF
210 FIDALGO AVE STE 200
KENAI
AK 99611

MADRIGAL ANDY
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MCKEIRNAN DANIEL F
PO BOX 2365
KENAI
AK 99611

MILLHOUSE TROY
PO BOX 874574
WASILLA
AK 99687

OUR LADY OF ANGELS PARISH OF
ARCHDIOCESE OF ANCHORAGE
225 S SPRUCE ST
KENAI
AK 99611

RININGER ZACHARY
511 ASH AVE
KENAI
AK 99611

SALVATION ARMY
143 E 9TH AVE
ANCHORAGE
AK 99501

SARKS PAUL E & GARNET M
110 BIRCH ST
KENAI
AK 99611

FIRST BAPTIST CHURCH
PO BOX 3412
KENAI
AK 99611

HUGHEY KIANA
1103 2ND AVE
KENAI
AK 99611

KENAITZE INDIAN TRIBE
PO BOX 988
KENAI
AK 99611

MADRIGAL SOPHIA
4785 BUCKNELL CT
SACRAMENTO
CA 95841

MCKEIRNAN SUSAN
PO BOX 2365
KENAI
AK 99611

MOREY DOLLIE K
202 BIRCH ST
KENAI
AK 99611

PEREZ FRED Jr
204 BIRCH ST
KENAI
AK 99611

RONELLENFITCH SARAH M
102 BIRCH ST
KENAI
AK 99611

SARKS GARNET M
110 BIRCH ST
KENAI
AK 99611

SHAFFER KEITH
PO BOX 853
KENAI
AK 99611

FIVE D INVESTMENTS LLC
PO BOX 969
KENAI
AK 99611

HUGHEY TYSON E
1103 2ND AVE
KENAI
AK 99611

LAGOUTARIS ELAINNAH
36350 MAYONI ST
SOLDOTNA
AK 99669

MARSH LYN E
106 BIRCH ST
KENAI
AK 99611

MCMANAMY SHELDON D
36350 MAYONI ST
SOLDOTNA
AK 99669

OSTRANDER PAUL CLARK
48645 RUNNERS AVE
SOLDOTNA
AK 99669

RININGER LACEY
511 ASH AVE
KENAI
AK 99611

RR KENA LLC
2133 E RANCH RD
TEMPE
AZ 85284

SARKS PAUL E
110 BIRCH ST
KENAI
AK 99611

SHAFFER MAUREEN K
PO BOX 853
KENAI
AK 99611

SIPES CHERYL L & GERALDINE L
PO BOX 4472
SOLDOTNA
AK 99669

SWEARINGEN GLENNA M
PO BOX 1031
KENAI
AK 99611

VARNE THOMAS
22205 67TH PL W
MOUNTLAKE TERRACE
WA 98043

WILES MICHAEL L & NANCY L
1206 1ST AVE
KENAI
AK 99611

WILLIAMSON HOWARD J
607 E 74TH AVE
ANCHORAGE
AK 99518

WILLIAMSON TERRY K
607 E 74TH AVE
ANCHORAGE
AK 99518

WILSON RUSSELL J SR & CONSTANCE
1402 1ST AVE
KENAI
AK 99611

**KENAI PLANNING & ZONING COMMISSION
REGULAR MEETING
AUGUST 14, 2024 – 7:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVE., KENAI, AK 99611
CHAIR JOE HALSTEAD, PRESIDING**

MINUTES

A. CALL TO ORDER

A Regular Meeting of the Kenai Planning & Zoning Commission was held on August 14, 2024, in City Hall Council Chambers, Kenai, AK. Chair Halstead called the meeting to order at approximately 7:00 p.m.

1. Pledge of Allegiance

Chair Halstead led those assembled in the Pledge of Allegiance.

2. Roll Call

There were present:

Joe Halstead, Chair
Glenese Pettet
Jeff Twait
Gwen Woodard

John Coston, Vice Chair
Sonja Earsley
Diane Fikes

A quorum was present.

Also in attendance were:

Max Best, Interim Planning Director
Brandon McElrea, Planning Technician
Alex Douthit, City Council Liaison
Meghan Thibodeau, Deputy City Clerk

3. Approval of Agenda and Consent Agenda

MOTION:

Commissioner Woodard **MOVED** to approve the agenda and consent agenda. Commissioner Fikes **SECONDED** the motion.

The items on the Consent Agenda were read into the record.

Chair Halstead opened the floor for public comment on consent agenda items; there being no one wishing to be heard, the public comment period was closed.

UNANIMOUS CONSENT was requested.

There being no objection; **SO ORDERED**.

All items listed with an asterisk () are considered to be routine and non-controversial by the Commission and will be approved by one motion. There will be no separate discussion of these items unless a Commission Member so requests, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders.

B. APPROVAL OF MINUTES

1. *Regular Meeting of June 26, 2024

Approved by the consent agenda.

C. **SCHEDULED PUBLIC COMMENTS** - None.

D. **UNSCHEDULED PUBLIC COMMENTS** - None.

E. **CONSIDERATION OF PLATS** - None.

F. **PUBLIC HEARINGS**

1. **Resolution No. PZ2024-18** – Consideration of a Variance Permit for Reduced Buffer Distances on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

It was noted that the resolution was denying an application for a variance permit.

MOTION:

Commissioner Twait **MOVED** to approve Resolution PZ2024-18. Commissioner Fikes **SECONDED** the motion.

Interim Planning Director Best provided an overview of the staff report as included in the packet and attached to Resolution No. PZ2024-18; he noted that the application was for a variance permit for buffering distance within a conditional use permit (CUP) to allow a retail marijuana store; the CUP would be addressed in a separate public hearing on Resolution PZ2024-19. The criteria for a variance were reviewed; and it was reported the application did not meet the criteria for a variance and City staff recommended denial.

Chair Halstead opened the floor for public hearing.

Deneise Isaacs spoke in opposition to the applications; stating that she had previously been denied a conditional use permit to operate a marijuana store in the same location.

Nancy Wiles spoke in opposition to the applications; highlighted her family's involvement in sports at the nearby fields; explained that tournaments are large family events and a marijuana establishment should not be close to the fields.

Ken Dunbar spoke in opposition to the applications and stated that the applicants should have put the property in escrow subject to receiving all necessary permits.

Tea Winger spoke in opposition to the applications; stating that she conducted a neighborhood poll on the subject and the results showed the majority of respondents were not in support; expressed concerns about drugs, homelessness, traffic, ATV use and child safety in the neighborhood.

Jim Glendening spoke in opposition to the applications; provided a history of the City's development of marijuana laws through community, City and State involvement; and stated there was no reason to deviate from the established system.

Richard Moses, representative of the applicant, spoke in support of the applications; emphasized that this was an issue of fairness; stated that a previous City employee had provided assurances that the applicant was compliant with code.

Sandra Millhouse, applicant, stated that she was unaware the Isaacs had previously been denied a retail marijuana CUP when she purchased and remodeled the property; she lived in close proximity to the marijuana store she operated in Wasilla and had not experienced public trespassing; and the previous Planning Director had told her she had measured wrong.

There being no one else wishing to be heard, the public hearing period was closed.

[Clerk's note: Chair Halstead passed the gavel to Vice Chair Coston and disclosed a potential conflict with Resolution No. PZ2024-19 and Resolution No. PZ2024-19, as he had received a comment from the

public on the proposed marijuana business. Vice Chair Coston ruled he had no conflict and returned the gavel.]

Clarification was provided on the City's buffer distance requirements; previous Planning decisions on other marijuana properties; and the City's method of distance measurement.

Commissioner Twait noted that he had not observed homelessness issues related to marijuana properties, and the City has code in place for handling these issues.

Commissioner Fikes stated that she agreed with staff's finding, and did not support approving a variance from the established marijuana laws.

VOTE:

YEA: Fikes, Twait, Woodard, Earsley, Coston, Halstead

NAY: None

ABSENT: Pettey

MOTION PASSED WITHOUT OBJECTION.

Chair Halstead noted the 15-day appeal period.

2. **Resolution PZ2024-19** – Consideration of a Conditional Use Permit to Operate a Retail Marijuana Store on the Property Described as Govt. Lots 19, 20 & 21, Section 6, T5N, R11W, Located at 11888 Kenai Spur Highway Suite #3, in the General Commercial (CG) Zone.

It was noted that the Resolution was denying a Conditional Use Permit for a Retail Marijuana Store.

MOTION:

Commissioner Twait **MOVED** to approve Resolution PZ2024-19. Commissioner Fikes **SECONDED** the motion.

Interim Planning Director Best provided an overview of the staff report as included in the packet and attached to Resolution No. PZ2024-19; he noted that the application was for a CUP to operate a retail marijuana store. The criteria for a CUP were reviewed; and it was reported that the application did not meet the criteria for a CUP and City staff recommended denial.

Richard Moses, representative of the applicant, stated that he was available for questions.

Chair Halstead opened the floor for public hearing.

Deniece Isaacs spoke in opposition to the application; emphasized due diligence and abiding to rules; and discussed history of previous tenants and owners of the property.

Nancy Wiles spoke in opposition to the application; expressed concerns about increased traffic and drug activity; and spoke of previous issues with other businesses near the property.

Teea Winger spoke in opposition to the application; expressed concerns about drug activity among the homeless and in her neighborhood; noted there was no written evidence of what the previous Planning Director told the applicant; and stated that the neighborhood was not in support of the proposed business.

There being no one else wishing to be heard, the public hearing period was closed.

MOTION TO AMEND:

Commissioner Twait **MOVED** to amend Criteria 5 to read as following:

Given the preceding Variance Permit application not meeting required criteria (PZ2024-18), staff believes that pursuant to KMC 14.20.330(f)(2) the findings cannot be made and that the proposed retail marijuana store consisting of approximately 1,600 square feet would [NOT] be harmful to the public safety, health, or welfare.

Commissioner Woodard **SECONDED** the motion.

Commissioner Twait expressed sympathy for the applicant's position; stated that the Commission's role is to consider the application within Code; and said he was in support of Staff's recommendation to deny the permit.

Commissioner Halstead stated that the situation is unfortunate; noted that the City's zoning regulations were developed in the best interest of the community.

VOTE:

YEA: Coston, Earsley, Halstead, Woodard, Fikes, Twait

NAY: None

ABSENT: Pettey

MOTION PASSED WITHOUT OBJECTION.

Chair Halstead noted the 15-day appeal period.

G. UNFINISHED BUSINESS

1. **Discussion/Recommendation** – Proposal to Reduce the Number of Meetings for Planning and Zoning Commission. *[On 6/12/24 this item was postponed.]*

Deputy Clerk Thibodeau reviewed the memo provided in the packet, and noted that the City Clerk recommended postponing this item indefinitely.

MOTION:

Commissioner Twait **MOVED** to postpone the discussion to reduce the number of Planning and Zoning Commission Meetings indefinitely. Vice Chair Coston **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

There being no objection; **SO ORDERED.**

H. NEW BUSINESS

1. ***Action/Approval** – Requesting an Excused Absence for the June 26, 2024 Regular Meeting – Halstead

Approved by the consent agenda.

I. REPORTS

1. Planning Director – Interim Planning Director Best reported on the following:
 - The August 28, 2024 Regular Meeting will be cancelled due to lack of agenda items.
 - Thanked Planning Technician Brandon McElrea and Administrative Assistant Beth McDonald on their help during his time as Interim Director.
2. Commission Chair – None.
3. Kenai Peninsula Borough Planning – Commissioner Fikes reported on recent actions of the Kenai Peninsula Borough Planning Commission Meeting.
4. City Council Liaison – Council Member Douthit reported on recent actions of the City Council.

J. ADDITIONAL PUBLIC COMMENT

Jim Glendening thanked the Commission for their work on the public hearing items.

K. NEXT MEETING ATTENDANCE NOTIFICATION

1. Next Meeting: August 28, 2024

It was noted this meeting had been cancelled.

L. COMMISSION COMMENTS AND QUESTIONS

Commissioner Woodard thanked Max Best for returning as Interim Planning Director.

Commissioner Twait asked about the Board of Adjustment Hearing date.


M. PENDING ITEMS – None.

N. ADJOURNMENT

O. INFORMATIONAL ITEMS – None.

There being no further business before the Planning & Zoning Commission, the meeting was adjourned at 8:24 p.m.

I certify the above represents accurate minutes of the Planning & Zoning Commission meeting of August 24, 2024.



Meghan Thibodeau
Deputy City Clerk

LAW OFFICES OF
HOLMES WEDDLE & BARCOTT
A PROFESSIONAL CORPORATION

FOUNDED IN 1914

OVER A CENTURY OF SERVICE TO OUR CLIENTS

701 WEST EIGHTH AVENUE, SUITE 700 • ANCHORAGE, ALASKA 99501-3408
TELEPHONE (907) 274-0666 • FAX (907) 277-4657

RICHARD R. MOSES
rmoses@hwb-law.com

October 7, 2024

VIA EMAIL

Shellie Saner, MMC
Kenai City Clerk
cityclerk@kenai.city

RE: *Additional Information for Board of Adjustment Hearing Packet*
Board of Adjustment Hearing – Appeal of a Planning and Zoning Commission Action
Denying an Application of a Variance Permit for a Marijuana Retail Store
to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska
Date of Hearing: Tuesday, October 15, 2024
Our File No.: 8952-35214

Dear Ms. Saner:

Enclosed please find for inclusion in the Board of Adjustment Hearing packet, the written statement of Linda Mitchell, Former City of Kenai Planning Director.

Sincerely,

HOLMES WEDDLE & BARCOTT, P.C.
Attorneys for Troy Millhouse



Richard R. Moses

RRM/san

Enclosure: As stated.

October 4, 2024

City of Kenai
Attn: Scott Bloom, City Attorney
210 Fidalgo Avenue
Kenai, AK 99611

Mr. Bloom,

At your request, I am providing my account of the initial communication with Sandra Millhouse regarding the property located at 11888 Kenai Spur Highway. She had called inquiring about the zoning for the subject property and whether a retail marijuana establishment would be allowed. I relayed to Mrs. Millhouse that a retail marijuana establishment is subject to a conditional use permit (CUP) and meeting the requirements outlined in Kenai Municipal Code (KMC) 14.20.330 *Standards for Commercial Marijuana Establishments*. I went over the basic requirements, such as the criteria of a CUP and then the 1000-foot and 500-foot buffering distances, which have different measurements based on whether the retail marijuana is conducted in a standalone structure or in a multi-tenant building. The subject property has an existing multi-tenant building and Mrs. Millhouse stated it would be in the 2nd tenant space from the right (east) side of the building. I shared that code [KMC 14.20.330(f)(2)] states the buffer distances for a multi-tenant building *"are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment."* Mrs. Millhouse inquired about the buffer distances and I utilized the Kenai Peninsula Borough's GIS Parcel Viewer (known as viewKPB) to obtain estimated measurements. To the southwest across the Kenai Spur Highway of the subject property is a church and I measured to the church's closest exterior from the exterior wall of the proposed tenant space and concluded it exceeded 500 feet. Next, I measured to the outer boundary of the nearby "recreation or youth center", Kenai Little League field, located at 220 S. Spruce Street to the exterior of the proposed unit and the distance exceed 500 feet. I measured to outer edge of the athletic field since "recreation or youth center" is defined as *"a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age."* I informed Mrs. Millhouse that it appears that the basic buffering requirement are met but a conditional use is a discretionary permit, meaning there are no guarantees, subject to meeting the criteria for approval. I offered to Mrs. Millhouse that when she is ready to submit a Conditional Use Permit application, I can assist with a submittal requirement as outlined in KMC 14.20.330(b) for an area map since it is a very specific map and generally requires assistance/guidance from staff.

Sincerely,



Linda Mitchell
Former City of Kenai Planning Director

October 4, 2024

City of Kenai
Attn: Scott Bloom, City Attorney
210 Fidalgo Avenue
Kenai, AK 99611

Mr. Bloom,

At your request, I am providing my account of the initial communication with Sandra Millhouse regarding the property located at 11888 Kenai Spur Highway. She had called inquiring about the zoning for the subject property and whether a retail marijuana establishment would be allowed. I relayed to Mrs. Millhouse that a retail marijuana establishment is subject to a conditional use permit (CUP) and meeting the requirements outlined in Kenai Municipal Code (KMC) 14.20.330 *Standards for Commercial Marijuana Establishments*. I went over the basic requirements, such as the criteria of a CUP and then the 1000-foot and 500-foot buffering distances, which have different measurements based on whether the retail marijuana is conducted in a standalone structure or in a multi-tenant building. The subject property has an existing multi-tenant building and Mrs. Millhouse stated it would be in the 2nd tenant space from the right (east) side of the building. I shared that code [KMC 14.20.330(f)(2)] states the buffer distances for a multi-tenant building *"are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, or a substance abuse treatment facility providing substance abuse treatment."* Mrs. Millhouse inquired about the buffer distances and I utilized the Kenai Peninsula Borough's GIS Parcel Viewer (known as viewKPB) to obtain estimated measurements. To the southwest across the Kenai Spur Highway of the subject property is a church and I measured to the church's closest exterior from the exterior wall of the proposed tenant space and concluded it exceeded 500 feet. Next, I measured to the outer boundary of the nearby "recreation or youth center", Kenai Little League field, located at 220 S. Spruce Street to the exterior of the proposed unit and the distance exceed 500 feet. I measured to outer edge of the athletic field since "recreation or youth center" is defined as *"a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under twenty-one (21) years of age."* I informed Mrs. Millhouse that it appears that the basic buffering requirement are met but a conditional use is a discretionary permit, meaning there are no guarantees, subject to meeting the criteria for approval. I offered to Mrs. Millhouse that when she is ready to submit a Conditional Use Permit application, I can assist with a submittal requirement as outlined in KMC 14.20.330(b) for an area map since it is a very specific map and generally requires assistance/guidance from staff.

Sincerely,



Linda Mitchell
Former City of Kenai Planning Director

From: [Scott Bloom](#)
To: [Brandon McElrea](#)
Subject: FW: Linda Mitchell's Statement
Date: Monday, October 7, 2024 8:57:33 AM

Brandon, please include this as well

From: Linda <kenaiplanning@gmail.com>
Sent: Monday, October 7, 2024 8:54 AM
To: Scott Bloom <SBloom@kenai.city>
Subject: Re: Linda Mitchell's Statement

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Scott,

I offered to provide a map with the measurements when she was ready or preparing to submit a CUP application. I did not tell her that I would confirm the measurement and get back to her. I did mention to her that people usually place a condition on a purchase when a proposed use requires a CUP, similarly to the Salamatof CUP off Kiana Lane, I suggested that they do the same thing because they needed a CUP. I was anticipating that she would submit for a CUP and wait for a decision before she closed on the property.

On Mon, Oct 7, 2024 at 7:45 AM Scott Bloom <SBloom@kenai.city> wrote:

Linda,

I recall you telling me that you had told her you would confirm your measurements and follow up with her later, but she purchased the property before you had a chance to follow up?

From: Linda <kenaiplanning@gmail.com>
Sent: Friday, October 4, 2024 7:19 PM
To: Scott Bloom <SBloom@kenai.city>
Subject: Linda Mitchell's Statement

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Scott,

Attached is my statement.

Sorry it took so long, it has been a busy week at work with priority projects.

Sincerely,

Linda Mitchell

Scott Bloom

From: Brandon McElrea
Sent: Friday, March 29, 2024 3:02 PM
To: Linda Mitchell
Subject: FW: Maps & Parcel Lists
Attachments: Millhouse CUP.jpg; isaacs_board_of_adjustment_decision.pdf

From: Planning Department
Sent: Monday, March 25, 2024 12:37 PM
To: 'Sandra D Millhouse' <sandradsbic@yahoo.com>
Cc: Linda Mitchell <lmitchell@kenai.city>
Subject: RE: Maps & Parcel Lists

Mrs. Millhouse,

Attached is the measurement from the southwest corner of the proposed CME to the northeast corner of parcel 04701008, as well as from the northeast corner of the proposed CME to the western corner of parcel 04327036. Also attached is the Board of Adjustment decision ruling upholding the denial of a CUP on the same property in 2016. Page 6 of this document describes the method of measurement used to determine eligibility. I hope this helps.

Regards,
Brandon

Brandon McElrea
Planning Technician

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
O: (907)283-8233 | bmcelrea@kenai.city



From: Sandra D Millhouse <sandradsbic@yahoo.com>
Sent: Friday, March 22, 2024 1:01 PM
To: Planning Department <planning@kenai.city>
Subject: Fwd: Maps & Parcel Lists

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

I had turned in paperwork for a CUP at 11888 Kenai Spur #3.
I was told I was too close to the ball fields.
Can you please tell me which parcel it is that I am too close to.

Can you also please send me an explanation of how the distance is measured.
Is it measured from the front door or the furthest edge of the property.
Because it is located in a strip mall, is it from the front door or the edge of the property.

Thank you,
Sandra D Millhouse
907-373-8761

Begin forwarded message:

From: "jwbrowning424@aol.com" <jwbrowning424@aol.com>
Subject: Fw: Maps & Parcel Lists
Date: March 22, 2024 at 12:52:04 PM AKDT
To: <Sandradhbic@yahoo.com>

Hey Sandra here is those engineers email!!

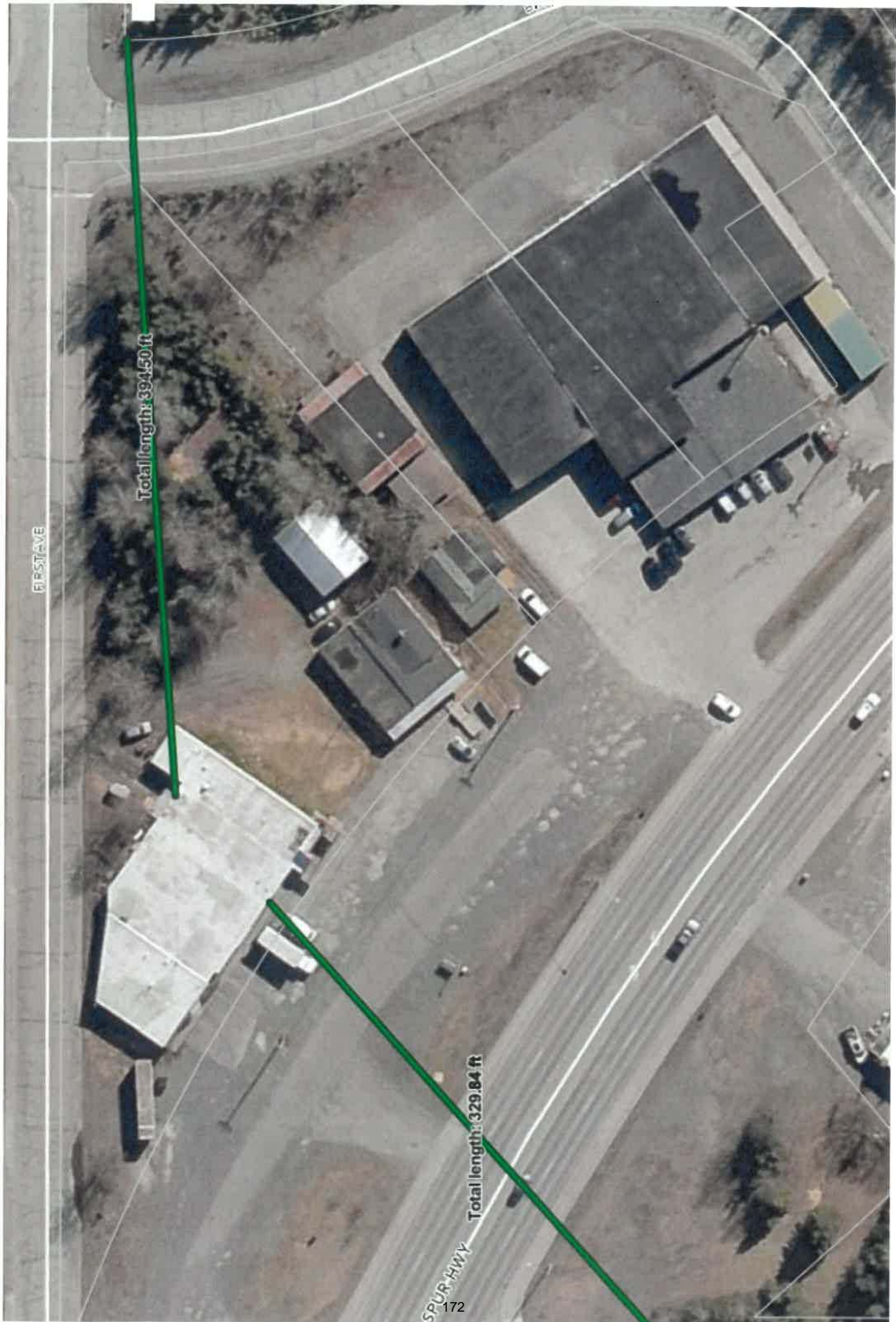
[Sent from the all new AOL app for iOS](#)

Begin forwarded message:

On Friday, March 15, 2024, 9:28 AM, Ben Benson <BBenson@mclanecg.com> wrote:

Wes, I put together some parcel offset maps and lists for you that should work for code 14.20.330 (b). The code calls for you to show all lots within 500' of the parcel. I ran one for 300', 500', & 1000'. I thought this will get the ball rolling for you.

Ben
907-398-3069



Total length: 394.50 ft

Total length: 329.84 ft

FIRST AVE

SPUR HWY

**BEFORE THE BOARD OF ADJUSTMENT FOR THE
CITY OF KENAI, ALASKA**
210 Fidalgo Avenue
Kenai, Alaska 99611

**IN THE MATTER OF THE APPEAL
OF RONALD AND DENIECE ISAACS:
APPEAL OF PLANNING AND
ZONING COMMISSION ACTION
DENYING A CONDITIONAL USE
PERMIT FOR A MARIJUANA
RETAIL STORE AND LIMITED
CULTIVATION LOCATED AT
1188 KENAI SPUR HIGHWAY
SWANSON SQUARE #3
KENAI, ALASKA**

Case No. BA-16-03

DECISION ON APPEAL

I. INTRODUCTION

Ronald and Deniece Isaacs (the "Isaacs") appealed the DECISION of the City of Kenai Planning and Zoning Commission ("Commission") denying a Conditional Use Permit for the Isaacs to operate a Marijuana Retail Store and Limited Cultivation, located at 1188 Kenai Spur Highway, Swanson Square #3, Kenai, Alaska. For the reasons set forth below, the Isaacs' Appeal for a Conditional Use Permit is DENIED by the Board of Adjustment.

II. PROCEDURAL HISTORY

On May 24, 2016, the City of Kenai Planning Department received an application from the Isaacs requesting a Conditional Use Permit to operate a Marijuana Retail Store and Limited Cultivation. [R. 116-128] Pursuant to KMC 14.20.330-Standards for Commercial Marijuana Establishments, a Conditional Use Permit is required for all Commercial Marijuana Establishments in the City.

In the Matter of the Appeal of Ronald & Deniece Isaacs, Case No. BA-16-03
Decision On Appeal

1

On June, 22 2016, the Commission held a public hearing on the Conditional Use Permit. [R. 138-142] At that public hearing, the City Planner presented a Staff Report recommending the Commission deny the application for a Conditional Use Permit due to the proposed locations proximity to two parcels containing baseball and softball fields. [R. 74-76 and R. 139-140] At the public hearing three members of the public spoke in opposition to the Isaacs' application stating: the proposed business was located close to the Episcopal Dioceses of Alaska that was against the proposed marijuana establishment; that business would hurt surrounding property values; and that the business would negatively impact a neighboring restaurant. [R. 140] The Isaacs spoke in favor of their application at the hearing, noting that they were complying with all State requirements and questioned the City's method of measuring the buffer distances and definition of "outer boundary" as used in KMC 14.20.330(f)(2). [R. 140] Commission Members acknowledged the unique parcel conditions and configurations, but noted their obligation to follow the City Code in relation to buffer distances which the Commission found required buffer measurements to property lines of the parcels containing the ball fields. [R. 141] After the public hearing, the Commission unanimously voted against Resolution PZ16-17, because the proposed business location was too close to the two parcels with the ball fields. [R. 141]

The Isaacs timely appealed the Decision of the Commission to the Board of Adjustment (the "Board"). [R. 60] The Board scheduled a hearing for the Appeal on August 23, 2016. [R. 61] The record before the Commission was submitted for the Board's consideration. [R. 71-167]

On August 23, 2016, Board Members Brian Gabriel, Robert Molloy, Henry Knackstedt, Tim Navarre and Mike Boyle were present for the hearing. At the hearing, public comment was allowed and three members of the public spoke against the Conditional Use Permit due to the proposed locations proximity to a church of which they were members, noting that their church held Twelve Step meetings twice a week. One member of the public spoke in favor of the Conditional Use Permit stating that the business would be good for the local economy and create jobs. The City Planner reviewed his Staff Report and the Isaacs testified in support of their application for a Conditional Use Permit.

III. STANDARD OF REVIEW

Kenai Municipal Code provides that "...the Board of Adjustment may reverse, remand or affirm, wholly or partly, or may modify the order, requirement, decision or determination, as ought to be made, and to that end shall have all the powers of the body from whom the appeal is taken."¹ The Board reviews the appeal *de novo*.² Therefore, no deference is given to the decision by the Commission. While public testimony does hold evidentiary weight, the Board cannot base its decision solely on support or opposition by the public.³

The function of the Board is to determine whether the requirements for a Conditional Use Permit have been met and grant or deny the Conditional Use Permit on the conditions supported by the substantial evidence before it.⁴ Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.⁵ The Board must make specific findings supporting its conclusions.⁶

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Conditional Use Permit Requirements.

Kenai Municipal Code 14.20.330-Standards for Commercial Marijuana Establishments, provides in subpart (a) that Commercial Marijuana Establishments such as the retail and cultivation businesses applied for by the Isaacs are only allowed pursuant to a Conditional Use Permit under KMC 14.20.150-Conditional Use Permits. Kenai Municipal Code 14.20.150(a) states in relevant part that: "[t]he conditional use permit procedure is intended to allow flexibility in the consideration of the impact of the proposed use on surrounding property and the application of controls and safeguards to assure that the proposed use will be compatible with the surroundings." Conditional Use Permits must meet the following six criteria:

¹ KMC 14.20.290(f)(2).

² *Id.*

³ *South Anchorage Concerned Coalition, Inc. v. Coffey*, 862 P.2d 168, 172 n.11(Alaska 1993)

⁴ *Id.* At 931-932.

⁵ *Id.* Citing *Kiener v. City of Anchorage*, 378 P.2d 406, 411(Alaska 1963).

⁶ *Fields*, at 932. And KMC 14.20.180(c).

- (1) The use is consistent with the purpose of this chapter and the purposes and intent of the zoning district;
- (2) The value of the adjoining property and neighborhood will not be significantly impaired;
- (3) The proposed use is in harmony with the Comprehensive Plan;
- (4) Public services and facilities are adequate to serve the proposed use;
- (5) The proposed use will not be harmful to the public safety, health or welfare; and
- (6) Any and all specific conditions deemed necessary by the Commission to fulfill the above-mentioned conditions should be met by the applicant. These may include, but are not limited to, measures relative to access, screening, site development, building design, operation of the use and other similar aspects related to the proposed use.⁷

B. A Conditional Use Permit Can Not Be Approved due to the Proximity of the Proposed Business Location to Two Parcel Containing Recreation Centers.

While it is the intent of the Conditional Use Permit process to allow flexibility in uses, this flexibility must be considered in light of the impact of the proposed use on surrounding properties.⁸ In reviewing the six criteria required for the issuance of a Conditional Use Permit as provided in KMC 14.20.150(d), the Board finds that the first four are met. First, the use is consistent with the purpose of Conditional Use Permits and the intent of the zoning district in which the business is proposed. The proposed business is located within the General Commercial Zone. [R. 72] The City's Land Use Table provides that Limited Marijuana Cultivation Facilities and Marijuana Retail operations are allowed in the General Commercial Zone with a Conditional Use Permit.⁹ Second, the Board did not receive any convincing evidence that value of the surrounding properties or neighborhoods would be significantly impaired. However, the Board does note that there was testimony before the Planning and Zoning Commission in the record that raised this concern. Third, the proposed use is in harmony with the City's Comprehensive Plan. [R. 74] Fourth, the public services and facilities are adequate to serve the proposed use, as City water and sewer are available, along with City police and fire protection. [R. 74]

⁷ KMC 14.20.150(d)(1-6).

⁸ KMC 14.20.150(a).

⁹ KMC 14.22.010.

The fifth condition requires that the proposed use is not harmful to the public safety, health and welfare.¹⁰ In enacting Ordinance 2870-2016, which created the City's regulations on Commercial Marijuana Establishments, the City Council found that "some uses are especially susceptible to the potential negative impacts of marijuana-related activities and land-uses, requiring buffering in addition to the standard Zoning Regulations."¹¹ This concern expressed by the City Council was codified in KMC 14.20.330(f) which provides:

- (f) No portion of a parcel upon which any Commercial Marijuana Establishment is located shall be permitted within the following buffer distances:
- (1) 1,000 feet of any primary and secondary schools (K-12) and 500 feet of any vocational programs, post-secondary schools including but not limited to trade, technical, or vocational schools, colleges and universities, recreation or youth centers, correctional facilities, churches, and state licensed substance abuse treatment facilities providing substance abuse treatment; and,
 - (2) Buffer distances shall be measured as the closest distance from the perimeter of a stand-alone commercial marijuana establishment structure to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church, correctional facility, or a substance abuse treatment facility providing substance abuse treatment. If the commercial marijuana establishment occupies only a portion of a structure, buffer distances are measured as the closest distance from the perimeter of the closest interior wall segregating the commercial marijuana establishment from other uses, or available uses in the structure, or an exterior wall if closer, to the outer boundaries of the school, recreation or youth center, or the main public entrance of a church or correctional facility, a substance abuse treatment facility providing substance abuse treatment.

There are two parcels of concern in this matter with regard to buffer distances.¹² Both parcels contain ball fields. [R. 75] Kenai Municipal Code 14.20.320-Definitions, defines "Recreation or Youth Center" to include "a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or

¹⁰ KMC 14.20.050(d)(5)

¹¹ Ordinance 2870-2016, 8th WHEREAS Clause.

¹² While there was public testimony at the hearing from several members of a church opposed to the location of the proposed business, there is no evidence in the record that the Church falls within the prohibited buffer distance of 500 feet. The Isaacs submitted evidence that the Church is 547 feet from their proposed business. [R.152]

leisure activities for minors, or operated by a public or private organization, licensed to provide shelter, training, or guidance for persons under 21 years of age.” Based on the testimony and evidence before it, the Board finds that the ball fields are athletic playing fields run or created by the City (local government), and thus fall under the definition of “Recreation or Youth Center.” Therefore the ball fields must be buffered from as required in KMC 14.20.330(f). There was no testimony by the Isaacs that disputed this. Instead the focus of the Isaacs’ testimony and evidence presented at the hearing was on the method of measuring the buffer distances and the appropriateness of such methods. [R. 143-144] In order to comply with the buffer requirements for Commercial Marijuana Establishments in KMC 14.20.330(f) the location of the business be 500 feet or greater from the outer boundaries of the ball fields.

On South Forest Drive the City maintains baseball fields that are located on 12 separate parcels with one Kenai Peninsula Borough Parcel Number. [R. 75] Government Lot 86, is the closest parcel to the proposed business that contains part of the ball fields. [R. 75]. Also, on Main Street Loop, bounded by First Avenue and Birch Street, the City maintains ball fields. This parcel is identified by the Kenai Peninsula Borough as Parcel No. 04327036.

As to the ball fields on South Forest, testimony was presented by the Isaacs that they retained a surveyor who measured the distance from the proposed business to the actual parking area for the ball fields or edge of grass of the playing fields and this distance was over 500 feet. This distance itself is not disputed. However, for buffer purposes the City Planner measured the distance from the proposed business to the closest edge of the parcel containing the ball fields (Government Lot 86) using a Geographic Information System (“GIS”) and found this distance to be less than 500 feet. [R. 75-76] With regard to the ball fields adjacent to Main Street, the Isaacs testified and the City Planner agrees that the actual ball fields are over 1,000 feet from the proposed business, however, due to the large size of the parcel on which the ball fields are on, the closest edge of the parcel containing the ball fields is approximately 438 feet from the proposed business. [R. 76] The Isaacs did not dispute that the closest edge of the parcel is within 500 feet, but instead argued that the measurement should not be to the closest edge of the parcel, but instead to the edge of the ball fields themselves.

During the hearing and in the evidence presented by the Isaacs, the Isaacs argued that the City Planner's measurement to the ball fields on South Forest did not account for topographical features, the curvature of the earth, an easement for South Forest Drive which is in between the ball fields from the edge of Government Lot 86 closest to their proposed business, and that the Planners' measurement should be to the closest part of the ball fields, and not the outer perimeter of the parcel itself. [R. 143-167] As to the ball fields on Main Street, the Isaacs argued that the ball fields themselves were over a thousand feet from their proposed business location, the lot containing the ball fields was very large and oddly shaped in such a manner to make application of a measurement to the edge of the parcel and not the ball fields themselves unfair. The Isaacs further provided testimony and evidence that the City should adopt a method of measuring buffers based on pedestrian routes, like the State of Alaska, instead of a lineal measurement. [R. 143-167] The Isaacs contend that with current technology, pedestrian routes are simple to measure and would not lead to disputes.

The Board finds that the issue related to the buffer distances for both parcels containing ball fields turns on the meaning of "outer boundary" with regard to its use in KMC 12.20.330(f). If "outer boundary" means to the edge of the ball fields themselves then the Isaacs' proposed business would be within the allowable buffer distance, however if "outer boundary" means the closest edge of the parcel on which the ball fields are on, then the proposed use violates the 500 foot buffer requirements. The Board finds that the City Planner's measurements using the GIS system were sufficient given the circumstances. The Board concludes that the discussion of buffer distances by the City Council and City Staff at the January 20, 2016, Council Meeting, at which the relevant code section on buffers was enacted, clearly shows that it was the intent of the City Council that "outer boundary" was intended to mean the outer edge or boundary of the parcel on which the use buffered from is located. This conclusion leads to the finding that the proposed business is located within 500 feet of the outer boundary of two parcels containing ball fields and does not meet the buffer requirements in KMC 14.20.330(f). Because the buffer requirements were established by the City Council as provided in Ordinance No. 2870-2016, out of a concern for public health, safety and welfare, the Board finds that the fifth element required in KMC

14.20.150(d) for granting a Conditional Use Permit, that the proposed use will not be harmful to the public safety, health or welfare, cannot be met.

While not directly relevant to the outcome of this decision at this time, the Board notes that the unusual and particular size, shapes and roadway easements on the lots at issue in this case may lead to unforeseen consequences and encourages a review of the method of measurement of the City's buffer distances that might provide for future changes to the City's Code.

V. CONCLUSION

City Code requires that Commercial Marijuana Establishments be located at a distance of 500 feet or greater from the outer boundary of Recreation or Youth Centers. The Board finds that based on the City Council's intent, this requires a measurement from the closest edge of the parcel on which the Recreation or Youth Center is located to the Commercial Marijuana Establishment. The Board finds that the location of the Isaacs' proposed Marijuana Retail Store and Limited Cultivation facility is within 500 feet of two City parcels that contain ball fields, or athletic playing fields, which by definition are Recreation or Youth Centers. Because the Board finds that the proposed location of the Isaacs' business does not meet the buffer requirements of City Code, the Conditional Use Permit applied for is DENIED and the decision of the Commission is UPHOLD.

DATED this 22 day of September, 2016.

BY: 
Brian G. Gabriel, Chair

Robert J. Molloy, Board Member
Tim Navarre, Board Member
Henry Knackstedt, Board Member
Mike Boyle, Board Member

Notice of Right to Appeal

This decision constitutes the final decision of the City of Kenai Board of Adjustment in this matter. An appeal of this decision to the Alaska Superior Court must be filed within thirty (30) days of the date of this decision, in accordance with Kenai Municipal Code Section 14.20.300, Alaska Statute 22.10.020(d), and Alaska Rule of Appellate Procedure 602(a)(2).

CERTIFICATE OF DISTRIBUTION

I certify that on 22 day of September, 2016, a copy of this DECISION ON APPEAL was distributed by Certified and/or First Class Mail to each of the following:

Ronald and Deniece Isaacs
P.O. Box 3526
Kenai, Alaska 99611

Matthew Kelley, City Planner
City of Kenai
210 Fidalgo Avenue
Kenai, Alaska 99611


Sandra Modigh, City Clerk
City of Kenai, Alaska



In the Matter of the Appeal of Ronald & Deniece Isaacs, Case No. BA-16-03
Decision On Appeal

Scott Bloom

From: Brandon McElrea
Sent: Monday, March 25, 2024 5:11 PM
To: Linda Mitchell
Subject: FW: CUP Refund

From: Sandra D Millhouse <sandradsbic@yahoo.com>
Sent: Monday, March 25, 2024 4:36 PM
To: Brandon McElrea <bmcclrea@kenai.city>
Subject: Re: CUP Refund

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please wait, we are in the process of requesting an amendment to the code.

On Mar 25, 2024, at 1:44 PM, Brandon McElrea <bmcclrea@kenai.city> wrote:

Mrs. Millhouse,

I'm processing the refund for your Conditional Use Permit application fee. Would you like it mailed to P.O. Box 874574, or to the 2321 E. Palmer Highway address?

Thank you,

Brandon McElrea
Planning Technician

City of Kenai | 210 Fidalgo Avenue | Kenai, AK 99611
O: (907)283-8233 | bmcclrea@kenai.city
<image003.jpg>

From: [Nancy Wiles](#)
To: [City Clerk](#)
Subject: Conditional Use Permit at 11888 Kenai Spur Hwy #3
Date: Thursday, October 3, 2024 10:50:34 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Board of Adjustment -

I am in adamant opposition to a retail Marijuana store being allowed at the above referenced property!

I live directly behind that building at 1206 1st Avenue. I also own two additional lots 1204 and 1202 1st Avenue. We have lived at that location for 40 years come February.

The City thought long and hard before they created their zoning plan, and the comprehensive plan was the work of years.

There is no valid reason for overturning the consideration and effort made by the members of the previous committees and City Council, as well as the wishes of the citizens of the City of Kenai.

There are many other locations within the City to operate a retail Marijuana store that are not in close proximity to Little League Fields and Adult Softball Fields. Both of these recreational locations are used for large gatherings of families during tournaments as well as being used for family camping during the dipnet fisheries as overflow parking.

Please DO NOT grant a Conditional Use Permit.

Nancy Wiles
1206 1st Ave
Kenai, AK 99611