



City of Apache Junction
Development Services Department



**PLANNING AND ZONING COMMISSION
PUBLIC HEARING STAFF REPORT**

DATE: August 22, 2017

CASE NUMBER: CUP-5-17

REQUEST: A Conditional Use Permit (CUP) to allow the operation of a non-profit medical marijuana dispensary.

APPLICANT: Svaccha LLC, represented by Jareb Mackin and Jenifer Corey

LOCATION: The subject site is located at 1985 W. Apache Trail, Suite #4 (Assessor parcel #101-09-001).

PROPERTY OWNER: Palo Verde Plaza LLC

**GENERAL PLAN/
ZONING DISTRICT:** Designated "Downtown Mixed Use"/Zoned B-2 (Old West Commercial)

**SURROUNDING
LAND USES:**

- NORTH: Various businesses (zoned B-2) and Recreational Vehicle Park (zoned RVP)
- SOUTH: Boila Tracts single-family residential neighborhood (zoned RS-10)
- EAST: Used cars sales business (zoned B-2)
- WEST: Various businesses and apartment homes (zoned B-2)

BACKGROUND:

The existing multi-tenant commercial building in which the Svaccha dispensary proposes to locate is known as Palo Verde Plaza, and is located at the southwest corner of W. Apache Trail and S. Palo Verde Drive. The site was developed in the early 1960s, prior to the city's incorporation and prior to the

adoption of the city's March 1985 Zoning Ordinance. The property's former CB-2 zoning was assigned by Pinal County, prior to city incorporation. The city's new zoning ordinance rezoned the property to B-2. The city's B-2 zone is one of the zoning districts where a medical marijuana dispensary may be located, subject to approval of a conditional use permit.

Other businesses presently located in Palo Verde Plaza include a restaurant, bar, gold dealer, tattoo shop and pawn shop. Over the years, various commercial and retail businesses, bars and eateries have occupied the suites in the building.

Within the last four or five years, the property owners and the city partnered to give the plaza a Spanish style "face-lift". Surrounding streets also benefitted from grant-funded improvements, which helped to improve the neighborhood in general.

PROPOSAL:

The proposed dispensary seeks to locate in the eastern-most suite of Palo Verde Plaza (see site plan). According to the submitted narrative (attached), the applicants are requesting a Conditional Use Permit to operate a non-profit medical marijuana dispensary in compliance with the state's Medical Marijuana Act and local ordinances. The proposed dispensary will not have any on-site cultivation of medical marijuana, nor will they manufacture infused products. It is a dispensary open to medical marijuana card-carrying patients only.

The operators do not propose any expansions to the building, but will be making some interior remodeling improvements. The dispensary, in Suite #4, will take up approximately 1500 square feet. In addition to interior remodeling and security improvements, they also plan to add outdoor perimeter security improvements, such as lighting and cameras. The focus of their plan is security, neighborhood compatibility and service to medical marijuana patients.

ANALYSIS:

The city's Zoning Ordinance, Section 1-6-12 (attached), is the section that allows for non-profit medical marijuana uses in the City, subject to approval of a Conditional Use Permit (CUP). There are a number of spacing and operational requirements which

the Commission should consider when evaluating this type of request. Those criteria and staff's commentary on said criteria (in grey tone) relative to this request, for the Commission's discussion and consideration, are as follows:

E. Applications. A CUP application for medical marijuana dispensaries, cultivation facilities or infusion facilities shall include all the information required on the CUP application form and the following supplemental information:

1. Signature and consent on the application form by the property owner of record that he or she is aware the property will be used for medical marijuana dispensing, cultivating or infusion. (Provided - see CUP application.)
2. A copy of the preliminary approval from the State Department of Health Services ("DHS"), such as a registration certificate, for the nonprofit medical marijuana dispensary, nonprofit medical marijuana dispensary off-site cultivation facility or stand-alone nonprofit medical marijuana infusion facility, and a written assurance that all nonprofit medical marijuana dispensary agents associated with the approved facility shall register with the Apache Junction Police Department upon final approval to operate from DHS, as well as a copy of said final approval document. (Provided - see Registration Certificate and narrative.)
3. Application and all applicable fees paid as required by Apache Junction City Code, Volume I; Chapter 8, Business, and the Apache Junction City Tax Code as amended. (CUP process fees are paid. Applicants must apply for their City business license, along with providing their non-profit status information for said business license, prior to beginning dispensary operations.)
4. A detailed site plan and floor plan for the facility prepared in accordance with Section 1-16-9, and narrative explaining the operation of the facility and

hours of operation. *(Site plan, floor plan, area maps and basic operations narrative provided.)*

F. Conditions of Approval. The conditions of approval which may be considered by the planning and zoning commission in evaluating these requests include the following:

1. Required Spacing Requirements:

- a. A minimum of 1,320 feet between another dispensary, cultivation facility or infusion facility, as measured from nearest building wall to nearest building wall. *(Complies - the nearest dispensary is over 1 mile away; the infusion facility is over two miles away.)*
- b. A minimum of 750 feet between a dispensary, cultivation facility or infusion facility and any public or private education institution, library, public park, commercial-zoned day care facility, free-standing church, or drug and/or alcohol rehabilitation center, as measured from nearest building wall of the business to the nearest building wall of the protected use. *(Complies - to the best of staff's knowledge, other protected uses do not appear to be within 750 feet. See Separation Exhibit.)*

2. Operating Requirements:

- a. Drive-through pickup windows shall not be allowed. Delivery service shall be allowed as per state statute. *(See floor plan exhibit - no pick-up windows possible, nor allowed.)*
- b. Outdoor seating areas at dispensaries, cultivation facilities or infusion facilities shall not be allowed. *(See floor plan exhibit - no such areas proposed, nor allowed.)*
- c. A medical marijuana facility shall submit a security plan containing the following information:
 - i) Proof that any cultivation and storage of medical marijuana will take place in an

- "enclosed, locked facility" equipped with locks or other security devices that permit access only by persons authorized to enter pursuant to state and local law.
- ii) A floor plan that details the security measures required by state law, including an on-site alarm system, video surveillance devices and a single secure entrance.
 - iii) Additional protections, if any, against medical marijuana diversion and theft.
 - iv) Provide and update as needed a current list of all persons who are authorized to access the dispensary, off-site cultivation site or infusion facility. *(Narrative talks extensively about these items; proposal appears to comply with this criteria; staff will review eventual permit submittal for required items, including detailed security plan.)*
- d. On-site consumption of medical marijuana at a dispensary, cultivation facility or infusion facility shall not be allowed. *(None proposed, nor allowed.)*
- e. Dispensaries selling marijuana related products such as pipes, water pipes, rolling paper, screens, vaporizers, mills, concealing devices, etc., shall be restricted to selling only to patients displaying the required Arizona Department of Health Services medical marijuana card and to be used only in conjunction with a physician's certification or recommendation. Cookbooks and educational materials are excepted from this provision. *(Dispensary must comply with this provision.)*
- f. The size of facility in terms of square footage, building height or other factors shall be consistent with the character of existing or planned surrounding development. *(Building is pre-existing, has recently constructed façade improvements and no expansion is proposed.)*

- g. Signage that will be visible from the exterior of the facility may be approved by the city if all sign code regulations have been met. The use of the marijuana leaf symbol shall not be allowed on any exterior signage. *(Dispensary must comply with this provision; staff will review eventual sign permit submittal for compliance.)*
- 3. Other Conditions. The planning and zoning commission may deem it necessary to apply other conditions to conserve and promote the public health, safety, convenience and general welfare, including:
 - a. Compliance with all city-adopted zoning, landscaping, engineering, building, design guidelines, overlay district and/or planned development district requirements. *(Permits will be needed for some of the interior and/or exterior electrical and remodeling work; staff may recommend the installation of planters to improve the curb appeal of the business. Parking is at minimum or less, but it is pre-existing. More parking intensive uses have existed in the occupancy previously, with no major problems of which staff is aware.)*
 - b. The commission shall reserve the right to revoke a CUP for noncompliance with any condition prescribed as part of the permit approval or if the use is demonstrated to be a nuisance or hazard to the neighborhood or community. *(Dispensary must comply with applicable ordinances and any conditions of approval requested by Commission.)*
 - c. Hours of operation will be addressed through the CUP process. *(Dispensary proposes hours of operation from 8am to 10pm.)*

The city's Zoning Ordinance, Section 1-16-12(D)(3) (attached), is the section that lists the criteria or findings for conditional use permits in general. The CUP criteria which the Commission should consider in evaluating any CUP request and staff's commentary on said criteria (in grey tone) relative to this request, for the Commission's discussion and consideration, are as follows:

Findings. A CUP may be granted upon a finding by the Commission that the use covered by the permit, the manner of its conduct, and any structure involved will not be detrimental to persons residing or working in the area, to adjacent property, to the neighborhood, or to the public welfare in general. The burden of proof for satisfying the aforementioned requirements shall rest with the applicant.

In arriving at the above determination, the Commission shall consider but not be limited to the following factors:

- a) Adequacy of roadways, off-street parking, public facilities and services to accommodate the proposed use. (The site is located along a major commercial corridor in the central core of the city. The surrounding streets and access points are fully improved and the site has all necessary services. The on-site improvements pre-date the city, but include paved parking and drive isles.)
- b) Negative impacts arising from the emission of odor, dust, gas, noise, lighting, vibration, smoke, heat or glare. (Although most of the remodeling work will be inside, any outside lighting being added will be required to be "dark sky" compliant. The dispensary should not generate any gas, smoke, heat or glare. The narrative states that Suite #4 is on a separate air conditioning and ventilation system than the rest of the building. Even so, staff will request that odor control devices be installed in the product room to further mitigate possible odor migration issues.)
- c) Contribution to the deterioration of the neighborhood or the negative impact on neighborhood property values. (Based on our experience with and example of the Nature's Wonder dispensary, staff expects no negative neighborhood impacts from the proposed use. The impact of these uses appears to be similar to that of a small medical clinic. If problems emerge, the City may bring the CUP back for further review, additional mitigating conditions or reconsideration at a future public hearing, should any activity allowed under the CUP become a neighborhood nuisance.)

- d) Compatibility with surrounding uses and structures. (Surrounding self-contained uses to the west, north and east are zoned commercial, so those properties should not be negatively affected. The residential neighborhood to the south should not be negatively affected either, since the site is already built out and the dispensary is a relatively low intensity use compared to, for example, the restaurant and commercial sign company which existed in the same suite in years past. By offering a closing time of 10pm, the dispensary should not conflict with the bar's peak hours. Patient visits to the dispensary should be short in nature, thus not take up parking spaces for long periods of time. If patients stay to patronize other businesses in the plaza, the synergy would benefit all.)
- e) Conformance with the General Plan and City policies. (The proposed dispensary does not conflict with the General Plan's Downtown Mixed Use land use designation, is allowed in the zoning district by CUP and appears to comply with the criteria for a CUP, as well as the criteria for a medical marijuana use.)
- f) Screening and buffering of uses. (The site was developed long before screening and buffering requirements were in place. Such improvements are not being requested by staff. And in this case, would not be practical because of the site's open-to-the-street character and all-around parking accessibility. We will ask for modest improvements to the suite itself, including a landscape planter [mentioned above] and that the stucco treatment on the east side of the building be completed.)
- g) Unique nature of the property, use and/or development's physical characteristics. (The property has driveway and parking access off of three adjacent streets; Apache Trail, Palo Verde and 1st Avenue. It is not in a major flood zone, but having been constructed under Pinal County standards many years ago as part of the Boila Tracts subdivision, it also does not have on-site retention. The property also has a service alley along its west side.)

PUBLIC NOTICE:

The CUP case was advertised for the Planning and Zoning Public Hearing of August 22, 2017, and letters were mailed to all property owners within 300 feet of the site. The applicants conducted their own neighborhood outreach meeting on May 2. Their citizen participation plan and summary is attached. Understandably, the public still has many apprehensions about this type of land use. Thus far, staff has received three inquiries/comments about the case: the competing dispensary, asked about Svaccha's proposed location and when the hearings were scheduled; one business owner at Thunderbird Plaza expressed apprehensions about the proposed dispensary and how it may affect other properties she manages in the area; and one neighbor to the south of the site called to say she was against the request.

P&Z COMMISSION DISCUSSION ON AUGUST 8:

At the Commission meeting on August 8, the Commissioners had some comments and questions about the proposal (see attached e-mail correspondence between staff and applicants dated August 16, 2017). Commissioners commented that they preferred neither the marijuana leaf symbol nor the word "marijuana" appear on any exterior signage. Applicants agree. Commissioners asked how a customer in the product room would be prevented from entering the room with the product safes. Applicants will provide a revised floor plan with a design solution. The Commissioners thought it would be fair if both of the dispensaries in the city had the same hours of operation. Applicants disagree, pointing out that the Nature's Wonder CUP approval did not specify hours of operation and they do not want to be at a disadvantage. They still request operating hours between 8am and 10pm. Commissioners asked how the dispensary was addressing the concerns of the bar owner regarding security cameras and parking. Applicants will mark their parking spaces on the east side of the building, will have their entry door on the east side and will set up cameras so as to be minimally obtrusive to Lucky Strikes. Commissioners also asked about the building space to the south of Suite 4. That space is apparently a walk in cooler for the restaurant next door and will not provide through access.

PLANNING DIVISION COMMENTS AND RECOMMENDATION:

City staff, including representatives from Police, Building, Fire and Planning, held a pre-submittal preliminary inspection meeting with the applicants and the property owner at the site. Physical improvements and procedural issues were discussed as a prelude to the CUP submittal. Concerns relative to the securing of proper building remodeling permits, providing for optimal and safe internal design, sealing up of access points or doors between Suite #4 and other suites in Palo Verde Plaza, the provision of security lighting and high resolution security cameras in and around the suite, exterior aesthetic improvements and other issues were all discussed. These issues are being addressed in the form of recommended conditions of approval below. The building permit review process will also include a review by Fire and Police personnel.

Staff has prepared recommended conditions of approval for the Commission's consideration and action. The motion contains very similar conditions as were required of the other dispensary in the city, plus new conditions specific to this site and in response to the issues raised by both staff and Commissioners. The Commissioners may also amend the recommended conditions or propose other conditions they deem prudent. Planning Staff recommends approval of case CUP-5-17 with the recommended conditions listed below.

RECOMMENDED MOTION

I move that the Planning and Zoning Commission (APPROVE/DENY) case CUP-5-17, a request for a Conditional Use Permit by Svaccha LLC, represented by Jareb Mackin and Jenifer Corey, to operate a non-profit medical marijuana dispensary at 1985 W. Apache Trail, Suite #4, subject to the conditions of approval listed below:

- 1) Upon final approval from the Arizona Department of Health Services to operate the dispensary, a copy of said final approval letter and/or certificate shall be provided to the Planning Division and the Police Department for the purpose of record keeping. Furthermore, all non-profit medical marijuana agents associated with Svaccha dispensary shall register with the city's Police Department for the purpose of background checks and record keeping (including but not

limited to, owners, employees, directors, board members, etc.).

- 2) Svaccha dispensary shall obtain their City of Apache Junction business license prior to beginning dispensary operations and shall keep their business license updated at all times.
- 3) Proper building permits shall be obtained and inspections and approvals received for any electrical, plumbing, remodeling, signage, odor control filters in the product room, dark sky compliant outdoor lighting, high resolution security cameras or other property improvements which require permits. Said improvements shall be in accordance and in substantial compliance with state requirements, the submitted plans and narrative received for CUP-5-17, prior to beginning dispensary operations. The applicants shall also submit a revised floor plan which provides for secure physical barriers between patients in the product room and access to the product safes.
- 4) In addition to the improvements required in #3 above, the dispensary operators shall also complete the stucco treatment (with matching paint) on the east exterior of the building, shall provide their main entrance on the east side of the building, shall provide above-ground landscape planters across the north side of their occupancy, shall permanently seal or secure any other exterior or interior access points to the dispensary from other suites or areas of the building. Svaccha shall also submit a detailed security plan for the dispensary, which includes perimeter lighting, and interior and exterior security cameras, but which also allows for minimal surveillance of and privacy intrusions of other businesses in the plaza. These improvements shall also be subject to review and approval by city staff.
- 5) No other non-profit medical marijuana cultivation, infusion or dispensary facilities shall be established in the Apache Junction city limits by Svaccha or any other entity without first applying through the city's conditional use permit process.

- 6) Svaccha dispensary shall not offer or allow the following: on-site medical marijuana cultivation or manufacture of infused products; pick-up or drive-through windows; outdoor seating; on-site consumption of medical marijuana; loitering in or around the premises; the sale of medical marijuana or other products to any persons who do not possess a valid, current, Arizona issued, medical marijuana card.
- 7) Exterior signage for the dispensary on the north and/or east sides of their occupancy shall be subject to proper permits. The marijuana leaf symbol and the word "marijuana" shall not appear on any signs visible from outside the dispensary.
- 8) The Svaccha dispensary in Suite #4 at Palo Verde Plaza shall not be allowed any expansions without the operators first processing a CUP amendment application.
- 9) Svaccha shall construct all building and general property improvements in substantial compliance with the drawings submitted with the CUP application and subsequent approved submittals, and in accordance with timelines established under their operating permit from the state.
- 10) The applicants shall begin operating the dispensary within 12 months of the granting of CUP-5-17, or within the timeframe prescribed by the Arizona Department of Health Services, whichever is sooner, or else the Conditional Use Permit shall become void. A CUP time extension request may be requested in a timely fashion by the operators of the dispensary if more time is needed.
- 11) The operators of the dispensary shall cooperate with local Police officials insofar as personnel updates, providing copies of agent registration cards, occasional unannounced spot checks for compliance, emergency contact information, alarm permit and other items for the reasonable, transparent and safe operation of Svaccha dispensary.
- 12) Should ownership of the dispensary change at any time after approval of the CUP, the new owners shall operate the dispensary subject to the exact same conditions of approval, including the provision of all new ownership,

operator and medical marijuana agent information (and updates) to the city's Police Department.

- 13) Svaccha LLC shall provide to the city's Planning Division a copy of their articles of incorporation, including the names of the directors and officers. As changes in directors and officers occur, Svaccha shall keep the Planning Division informed of said changes. If at any time during the operation of the dispensary, a majority of the directors and officers changes, a CUP amendment shall be required.
- 14) The Planning and Zoning Commission shall reserve the right to reconsider or overturn Svaccha's conditional use permit approval, at a new public hearing, for non-compliance with any condition prescribed as part of said CUP-5-17 permit approval and/or if the use becomes a demonstrated hazard.

Prepared by:



Rudy Esquivias
Senior Planner/Zoning Administrator

Attachments:

- E-mail response to Commissioner questions dated 8-16-17
- CUP-5-17 Application
- CUP-5-17 Aerial Exhibit
- CUP-5-17 Zoning Exhibit
- CUP Narrative, Site, Area and Elevation Exhibits
- Svaccha Registration Certificate
- Medical Director information
- Citizen Participation Plan and Summary Report
- Section 1-6-12 from City of A.J. Zoning Ordinance
- Section 1-16-12 from City of A.J. Zoning Ordinance