



PLANNING COMMISSION MEETING

Thursday, June 20, 2024, 7:30 PM

CITY HALL

301 SYCAMORE STREET, BROOKVILLE, OHIO 45309

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Meeting number: 2633 029 3681 Password: 2rRbNJRpd53

Join by phone: +1-415-655-0001 US Toll Access code: 263 302 93681

Agenda

I. Opening

- a. Call to Order
- b. Pledge of Allegiance
- c. Roll Call

II. Adoption of Agenda

III. Approval of Minutes

- a. Approval of May 16, 2024 Regular Meeting Minutes

IV. Reports

- a. Law Director

V. Old Business

VI. New Business

- a. Final recommendation on proposed Ordinance No. 2024-09 entitled "AN ORDINANCE AMENDING CHAPTER 1170 MEDICAL MARIJUANA AND CHAPTER 1145 I-2 GENERAL INDUSTRIAL DISTRICT OF THE CODE OF ORDINANCES OF THE CITY OF BROOKVILLE, OHIO."

VII. Adjournment

Chairperson Ryan Henderson • Mayor Chuck Letner

Members: • Ken Claggett • Tony Ezerski • Damian Kristof • Curt Schreier • Jeff Wright

Brookville Planning Commission
Regular Meeting
May 16, 2024

The Regular Meeting of the Brookville Planning Commission was called to order by Chairperson Henderson at 7:30 p.m. on May 16, 2024. The meeting was held in the City Council Chambers and virtually using Webex. The Pledge of Allegiance was recited. Mayor Letner, Members Claggett, Ezerski, Kristof, and Schreier; Law Director Stephan, Manager Kuntz and Clerk Duncan were present. Member Wright arrived later.

Roll call by Clerk Duncan.

Motion by Kristof, second by Schreier to approve the minutes of the March 21, 2024 Planning Commission Meeting. All yeas, motion carried.

Law Director Stephan reported Deborah Brumback has filed a Special Use Application to operate a mobile produce vendor, selling flowers and vegetables, at the municipal parking lot adjacent to Arlington Road.

Motion by Kristof, second by Claggett to approve a Special Use Application for Deborah Brumback to operate a mobile produce vendor in the municipal parking lot adjacent to Arlington Road. All yeas, motion carried.

Law Director Stephan reported Jessica Serrano, of El Diablo Grill, has filed a Special Use Application to operate a mobile food vendor at the municipal parking lot adjacent to Arlington Road. Ms. Serrano has operated a mobile food truck in Brookville for several years.

Motion by Claggett, second by Schreier to approve a Special Use Application for El Diablo Grill, to operate a mobile food vendor in the municipal parking lot adjacent to Arlington Road.

Law Director Stephan reported on April 15, 2024, Mark Mancuso, of 523 Sterling Meadows Drive, was issued a zoning permit for a portable storage unit on his property to hold property while his property is rehabilitated after some water damage. Mr. Mancuso is requesting an extension, under Section 1157.09 of our codified ordinances, as the restoration is taking longer than expected. Law Director Stephan requested Planning Commission approve a 60-day extension on this permit.

Motion by Schreier, second by Kristof to approve a 60-day extension on the zoning permit for a portable storage unit at 523 Sterling Meadows Drive. All yeas, motion carried.

Law Director Stephan reported Evergreen Trace, LLC has filed a Final Subdivision Application for the Evergreen Trace Subdivision. The property is Located on Wolf Creek Street across from the Brookville Wastewater Treatment Plant. The property is zoned R-2. Single-family housing is a permitted use in this zoning district. The minimum lot frontage is 70 feet and the minimum floor area in this zoning district is 1300 square feet. The proposed subdivision will establish 32

lots for single-family housing. The subdivision meets all of the requirements for this zoning district. The subdivision will have an HOA for maintenance of common areas, and covenants and restrictions will be filed with the subdivision and applicable to each lot within the subdivision. Stephan requested that Planning Commission approve the Evergreen Trace Subdivision as presented. Lance Oakes, from Evergreen Trace, LLC, is present to answer any questions.

Member Claggett inquired whether covenants and restrictions are enforceable by the City?

Law Director Stephan replied covenants and restrictions are not enforceable by the City, but we are requiring them in situations where stormwater management is necessary. The City will not issue any housing permits until the covenants and restrictions have been approved by the city and are legally filed.

Member Schreier asked if this development will have Planned Development Overlay so that we can control the frontage?

Law Director Stephan replied this property was annexed to Brookville in 1988 and zoned R-2 at that time. Planned Development Overlay is not part of the R-2 zoning on this property.

Member Claggett commented when this was initially zoned, single-story homes for senior citizens was proposed for this property. Claggett stated he hates to vote for anything that may add burden to the schools and expressed concern about the building materials that may be used for these homes. Claggett inquired how they can get a guarantee the homes will be non-vinyl?

Mr. Oakes replied he prides himself on building quality developments. The average square footage of these homes will be 1,600 to 3,200 square feet with a price point of mid \$300,000 to low \$400,000. Oakes commented that Brookville is very desirable. There are not that many vacant lots or housing developments available. Oakes stated he did not say the homes would be non-vinyl. There are different grades of vinyl and most builders do not use low-grade vinyl. These homes will be single-family, with a mix of two-story homes and ranch homes.

Member Ezerski asked if anyone knows how many new dwellings have been approved in Brookville, including this development?

Law Director Stephan replied there are approximately 200 approved dwellings in Brookville that have not been built yet, including apartments and single-family homes.

Manager Kuntz commented this is not a rezoning application or an application for a development project. It is an application for the final plat, which means Planning Commission is reviewing the street design and the lot layouts to ensure they meet the requirements of the zoning district, which they do. Legally speaking, Planning Commission has no legal reason to deny this as the zoning district allows single-family homes on this property. The zoning district does not allow the city to put material requirements on the property.

Member Schreier commented material requirements would be part of the covenants.

Mr. Oakes replied only to a certain extent. He does want to be a good neighbor to the City of Brookville and bring high quality housing developments.

Member Kristof reported he looked at some numbers regarding the school population. The population is actually down and has been a straight line since 2000. The highest population Brookville schools has ever had was in 1978. Kristof commented that teachers have told him the classrooms are getting crowded, but this is likely due to the state making changes to classroom size requirements. Kristof also commented on birth statistics for the household income level that can afford a \$400,000 home, stating the rate is 45 children per 1,000 mothers which shows the idea that our schools are on the precipice of explosion is not necessarily indicative of the data.

Chairperson Henderson inquired whether the Fire Department has reviewed the turning radius in the cul-de-sac?

Law Director Stephan replied the Fire Department has reviewed the turning radius in the cul-de-sac and found it to be sufficient.

Chairperson Henderson commented that the open spaces on the plat plan are for detention, not for green space.

Law Director Stephan advised our engineer is reviewing the stormwater management part of this project.

Member Claggett inquired whether the covenants and restrictions can specify building materials and quality of the homes?

Law Director Stephan replied that is correct, however, the city cannot specify any Planned Development requirements for building materials.

Chairperson Henderson inquired about the construction plan timeline?

Mr. Oakes replied he just got the comments back from the engineers, and he will make any recommended changes and submit the plans for final approval. He hopes to go out to bid next week and start construction of the infrastructure in late June or early July. Oakes stated he anticipates a 90-to-120-day timeline for construction, with paving in October. The homes will be constructed as the lots are sold.

Member Ezerski stated he calculated 203 new homes have recently been approved, which will grow this city past our 2004 Comprehensive Land Use Plan projection. Ezerski stated that while Brookville is pro-growth, this growth seems pretty quick to him.

Mr. Oakes commented Brookville has limited ground left with sanitary sewer accessibility. Not many developers will come through these days because the cost to add septic versus what the market will bear is prohibitive.

Member Ezerski stated he is being told our WWTP has tons of capability.

Mr. Oakes stated that may be true, however, there are no sanitary sewer lines available to new properties to put communities on. Because of the market conditions, new houses are a great tax benefit to the community and give the existing community members options to move into within the city, where five to ten years ago they would have to leave the city and go elsewhere. It takes a developer a minimum of two years to go from acquisition to home construction. The idea that waiting until you are ready and then expecting it to happen immediately is not feasible.

Mr. Wright asked if Mr. Oakes' net perspective is that residential development will bring a financial benefit to the city?

Mr. Oakes replied absolutely from a property tax standpoint.

Mr. Wright asked if Mr. Oakes had an analysis of the expenses a residential development will bring?

Mr. Oakes stated he has not run an analysis, but the cost to maintain the small section of street for 32 lots, versus the property tax it will generate, will be net positive to the city. Oakes stated the City of Brookville has been very successful in bringing jobs to the community over the last few years. However, there is no housing for those jobs. Most people spend their disposable income within the communities they live in, and these workers are living in other communities and spending their money there.

Discussion followed regarding analyzing the cost/benefit of development within the City of Brookville. Mr. Oakes stated he would be happy to meet with any of the Planning Commission members and city staff to do a cost/benefit analysis.

Member Schreier commented Harper Creek is the only new development that was not on the books from years ago. There was a lull in the building of the developments that were approved years ago.

Member Ezerski stated he wants Planning Commission to consider any existing proposed development when new land is zoned and annexed. Based on the national average of three people per household, we are going to expand this city faster than any decade in its history in the course of five years. Ezerski stated he would like everyone to consider this information as they move forward with their votes.

Chairperson Henderson stated although he hears the community's message loud and clear about not wanting more homes in Brookville, his job as a volunteer on the Planning Commission is to make sure that developments that come before them adhere to the codes, regulations and standards that the city has in place. If it does comply, then he cannot vote no. Chairperson Henderson stated the voting process is not a feeling vote, it is a vote based on the decision whether the development complies or does not comply with the code.

Member Wright commented while he does not disagree with Chairperson Henderson, what he finds awkward is coming out of the public hearing a few weeks ago and now having a debate on a topic that already meets the codes and the obligations.

Law Director Stephan stated the code requires a vote by Planning Commission.

Chairperson Henderson stated he hears Member Wright loud and clear, that Planning Commission needs to spend additional time on anything moving forward, but Planning Commission has an obligation tonight to decide whether this development complies or does not comply.

Member Claggett commented in the future, Planning Commission needs to add Planned Development to the zoning so there is greater control over the quality of homes.

Discussion followed about balancing future annexations with zoning requirements.

Motion by Schreier, second by Letner to approve the Evergreen Trace, Subdivision Final Subdivision as presented. Member Wright abstained, Ezerski abstained, Kristof yea, Claggett yea, Letner yea, Schreier yea, Henderson yea. Motion carried with five yeas and two abstentions.

Law Director Stephan reported Planning Commission is now tasked with making a final recommendation pursuant to 4.11 of the Charter on Ordinance 2024-07, establishing the zoning classification of lots 2798, 2799, and 2800 of the City of Brookville. A Public Hearing was held at the City Council meeting on May 7, 2024 on this proposed zoning ordinance. The proposed ordinance provides zoning for an annexed territory on Upper Lewisburg Salem Road. The proposed zoning would provide approximately 27.465 acres of General Business and 58.416 acres of R-1A with Planned Development overlay. After Planning Commission's recommendation, the proposed ordinance will go back to City Council for further action.

Member Schreier commented the question is whether to keep the General Business zoning in the front of this property or recommend that it be zoned all residential. Schreier stated if it is all zoned R-1A and the market does not support it, it cannot be changed to R-1B without a referendum.

Member Ezerski stated zoning these lots conservation would give us time to decide how fast and how far we grow this city.

Chairperson Henderson asked what type of zoning the property owner requested and whether they would have an issue with a zoning classification of conservation.

Law Director Stephan replied the property owner requested zoning that would make the property marketable with a realtor. They annexed in order to sell the property for residential or commercial use. Law Director Stephan commented that we have never assigned conservation to annexed property in the past. We have always assigned zoning in order to make a decision as to where the community is going to go. We have annexed areas in the past and allowed the property to continue to be farmed, with the property owner continuing to receive CAUV. Zoning the

property conservation is not what the property owner requested, and it does not address the issue of applying a zoning category.

Member Wright commented the property owner wants to increase their property value by zoning it residential or commercial. Wright stated his point is not to not develop the property, but not to fly by the seat of our pants and not take the position of the developer who is in the room. Wright stated we need to run an objective analysis and gain a better understanding of what it means to develop that property. Wright stated he takes the exact opposite stance as Member Kristof and wants to continue to increase the value of our community, which is proud and progressive.

Member Kristof responded he never said he was against anything but feels there is a problem when prices are skyrocketing.

Member Schreier if a property is zoned conservation, does that limit the options if the zoning is changed later to match the updated Comprehensive Land Use Plan.

Law Director Stephan replied re-zoning would be required for future development, and it would be subject to referendum. The property owner would not be able to market it until it goes through the rezoning process. Stephan stated this is not just about the property owner, it is about us making decisions about where we want to go as a community. While he understands we need to possibly take a pause and update the Comprehensive Land Use Plan, he also doesn't think we should be afraid to make decisions about where we are headed.

Member Wright stated he feels like what he is saying is not being acknowledged. The developer in the room says it will be damaging to our community to not allow new houses to come in, which is a bold statement. Wright asked if we can just step back and run an analysis, talk to Council, have the developer bring someone in and look at what it actually means to bring housing in.

Chairperson Henderson inquired whether Planning Commission can recommend to Council to pause any more annexations?

Mayor Letner stated he would like to discuss this in New Business.

Law Director Stephan stated although it would not be binding, Planning Commission can make that recommendation until the Comprehensive Land Use Plan update is completed. This would be reasonable in light of Planning Commission's role in the plan update.

Mr. Oakes commented as the head of the Dayton Homebuilders Association, there is a small community of single-family residential builders in the area. If a pause on annexations is enacted or if referendums keep occurring, the developers take notice and will not come back. Brookville is a larger city than just the people in the room tonight.

Law Director Stephan stated as he reads the code, Planning Commission needs to place a zoning category on this site. Planned Development overlay can be placed on both the General Business and residential area.

Member Kristof asked if we could limit the General Business to where the new Market Street would be? This would allow current residents not to have a business right across the street from them.

Member Ezerski wondered how there can be a conceptual plan if the property has not even been sold.

Law Director Stephan stated the concept is that Market Street would be extended across the street. Member Kristof's point is that we could adopt a smaller General Business area so that the businesses would not be in front of the residential homes on the other side of the street, which is an option.

Member Kristof asked if Planning Commission recommends conservation, and Council turns it down, does it come back before Planning Commission for a new recommendation?

Law Director Stephan stated his recollection is that if two-thirds of the City Council members are in agreement, they can move forward with a zoning classification of their choosing.

Member Wright stated he thinks it is odd that Member Kristof is making the assumption that City Council would turn it down. Wright stated he thought City Council relied on Planning Commission to make these decisions.

Member Kristof stated it was a hypothetical question and Member Wright should stop putting words into his mouth.

Member Schreier stated if the property is zoned Conservation, there is the potential for re-zoning not to be allowed and the property will sit vacant forever with no development.

Member Ezerski wondered if zoning the property Conservation would give Planning Commission the ability to re-examine all of our zoning classifications and potentially alter them or add new ones.

Member Schreier asked what the deadline is to assign a zoning classification to this property?

Law Director Stephan replied we had three months from the effective date of the annexation, and we are at three months now.

Member Claggett stated if we expand the R-1A portion, are we placing more of a burden on the schools?

Chairperson Henderson stated the property next to it does have General Business zoning in-line with this proposed General Business zoning.

Member Claggett asked if we have gotten any hits on the commercial lots on the Market Street extension?

Mayor Letner stated he should ask the owner, indicating he is present at the meeting.

Mayor Letner stated his recommendation is to be consistent with the present zoning on the adjacent property.

Chairperson Henderson stated he agrees but thinks that Planned Development Overlay should be applied to both the General Business area and the residential area.

Member Schreier asked about the process to add Planned Development Overlay to the adjacent existing General Business property.

Law Director Stephan stated we would have to discuss that with the property owner and go back through the re-zoning process if we wanted to change the zoning.

Member Wright asked Manager Kuntz if it is possible to have city staff look at the net-benefit versus net-impact of this development.

Manager Kuntz replied some of Member Wright's points are well taken, however it would not be appropriate for establishing this zoning classification. It would make more sense for us to do this when we actually have a project to consider. What is important is to put the Planned Development Overlay on the zoning so that future projects have to come back before Planning Commission. Kuntz stated without having any idea of what a project might be, it would be almost impossible to do that study. Once we have an actual project, we can have an intelligent conversation.

Discussion followed about R-1A versus R-1B zoning, lot sizes, frontage, possible new classifications zoning classifications, and Planned Development Overlay.

Law Director Stephan advised city staff is recommending a required landscape buffer in front of the property adjacent to the houses on Upper Lewisburg Salem Road.

Member Wright asked if the types of businesses that would come in can be controlled with Planned Development Overlay?

Law Director Stephan Planned Development replied it will give us a greater ability to reject a business project that would have a negative impact on the community through traffic or other issues. It will also give us greater control over how it is laid out.

Member Wright stated his question was more about controlling the type of business that come in by how much revenue their products and services would generate for the city.

Motion by Schreier, second by Claggett to make a final recommendation to Council to establish the zoning classification of lots 2798, 2799, and 2800 as 27.465 acres of General Business with Planned Development Overlay and 58.416 acres of R-1A with Planned Development overlay with the recommendation of a required landscape buffer. Kristof yeas, Claggett yeas, Letner yeas, Schreier yeas, Wright yeas, Ezerski yeas, Henderson yeas. Motion carried with five yeas and two nays.

Law Director Stephan reported in 2017, City Council adopted Ordinance No. 2017-05 which prohibited medical marijuana cultivators, processors and retail dispensaries. In 2023, an initiative passed in the State of Ohio permitting adult use cannabis. In December, the City Council passed a moratorium on issuance any zoning permits related to adult use cannabis businesses. The moratorium is expiring June 5, 2024. Proposed Ordinance No. 2024-09, which received a first reading from City Council at its meeting on May 7, 2024 will permit marijuana cultivation, processing and laboratory testing for both adult use cannabis and medical marijuana in the 1-2 General Industrial District. Retail dispensaries for both medical and adult use cannabis would be prohibited in the City of Brookville. A public hearing on this Ordinance will be held on June 4, 2024. Stephan reported we do have interest from an end user for a prospective project for cultivation and processing in one of our industrial buildings. Planning Commission will be tasked with making a recommendation to Council on this proposed Ordinance after the public hearing.

Member Wright inquired whether there is any data regarding a revenue stream that would result from allowing this end user.

Law Director Stephan replied that local jurisdictions do receive tax revenue from this type of business, particularly from dispensaries, which could be significant.

Member Schreier stated the proposed ordinance is not just for this potential project, but to guide us when potential projects come forward in the future.

Motion by Letner, second by Kristof to recommend that City Council place an 18-month moratorium on any annexations into the city until the Comprehensive Land Use Plan update is completed. All yeas, motion carried.

Member Ezerski inquired about the process of adding a new zoning classification to our zoning code.

Discussion followed regarding the process.

Motion by Claggett, second by Kristof to adjourn. All yeas, motion carried.

Kimberly Duncan, Clerk

Ryan Henderson, Chairperson

MEMORANDUM:

DATE: JUNE 11, 2024

TO: CITY OF BROOKVILLE PLANNING COMMISSION

FROM: RODNEY L. STEPHAN, LAW DIRECTOR

RE: ORDINANCE 2024-09

Ordinance 2024-09 is before Planning Commission for a final recommendation to City Council. A copy of Ordinance 2024-09 is attached. The public hearing on this ordinance was held at the June 4 City Council meeting.

The proposed ordinance amends the zoning code to permit the cultivation, processing and laboratory testing of medical marijuana and adult use cannabis in the I-2 General Industrial District. The business must be licensed by the State of Ohio to operate in the City of Brookville.

The proposed ordinance expressly prohibits the issuance of a zoning permit for a retail dispensary for either medical marijuana or adult use cannabis in any zoning district in the City of Brookville.

Ohio Revised Code 3780.25 expressly authorizes local municipalities and townships to prohibit any type of marijuana business or to limit the number of permits that may be issued in their jurisdiction.

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-6094 FORM NO. 30043

Ordinance No. 2024-09 Passed , 20

AN ORDINANCE AMENDING CHAPTER 1170 MEDICAL MARIJUANA AND CHAPTER 1145 I-2 GENERAL INDUSTRIAL DISTRICT OF THE CODE OF ORDINANCES OF THE CITY OF BROOKVILLE, OHIO.

WHEREAS, Section 1170.01 of the Code of Ordinances currently prohibits medical marijuana cultivators, processors and retail dispensaries from operating in the City of Brookville; and

WHEREAS, the Code of Ordinances does not currently address the cultivation, processing, testing and retail dispensaries for adult use cannabis which have recently been authorized in Ohio; and

WHEREAS, the Planning Commission and City Council desire to amend the zoning code to permit marijuana cultivators, processors and laboratory testing facilities for medical marijuana and adult use cannabis to locate in the I-2 General Industrial District in the City of Brookville; and

WHEREAS, the Planning Commission and City Council desire to retain the current prohibition of medical marijuana retail dispensaries in the City of Brookville and to also prohibit adult use retail dispensaries in the City of Brookville; and

WHEREAS, after public hearing on this amendment to the zoning code of the City of Brookville, Ohio as required by Section 4.11 of the Charter, and upon recommendation of the Planning Commission, Council hereby adopts this Ordinance to amend the zoning code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE, OHIO THAT:

SECTION I: Chapter 1170 Medical Marijuana of the Code of Ordinances is hereby repealed and replaced with in its entirety with Chapter 1170, Medical Marijuana, as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION II: Section 1145.02(a) Permitted Uses is hereby amended to add 1145.02(a) (10) as set forth below and to renumber the current Section 1145.02(a) (10) to 1145.02(a) (11):

1145.02(a)(10) Medical Marijuana and Adult Use Cannabis Cultivation, Processing and Laboratory Testing

1145.02(a)(11) Accessory buildings and uses incidental to the principal use.

SECTION III: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council were in meetings open to the public and in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

RECORD OF ORDINANCES

BEAR GRAPHICS 800-325-8094 FORM NO. 30043

Ordinance No. _____ Passed _____, 20____

SECTION IV: This Ordinance shall take effect thirty (30) days after passage by the Council of the City of Brookville as provided by the Charter of the City of Brookville.

PASSED this _____ day of _____, 2024.

ATTEST:

Kimberly Duncan, Clerk

Charles Letner, Mayor

CERTIFICATE

The undersigned, Clerk of the City of Brookville, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2024-09, passed by the Council of the City of Brookville, Ohio, on the _____ day of _____, 2024.

Kimberly Duncan, Clerk

CERTIFICATE OF POSTING

The undersigned, Clerk of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2024-09 was posted at the City Building, US Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio, on the _____ day of _____, 2024, to the _____ day of _____, 2024, both days inclusive.

Kimberly Duncan, Clerk

EXHIBIT "A"

CHAPTER 1170 MEDICAL MARIJUANA AND ADULT USE CANNABIS

Section 1170.01 MEDICAL MARIJUANA

(a) The cultivation, processing and laboratory testing of medical marijuana shall be a permitted use in the I-2 General Industrial District and shall not be permitted in any other zoning district in the City of Brookville. A license as described in Ohio Revised Code Section 3796.09 shall be required to operate a cultivation, processing or laboratory testing facility for medical marijuana in the City of Brookville.

(b) The operation of a retail medical marijuana dispensary as described in Ohio Revised Code Section 3796.10 shall be prohibited in the City of Brookville, and a zoning permit shall not be issued for a retail medical marijuana dispensary.

Section 1170.02 ADULT USE CANNABIS

(a) The cultivation, processing and laboratory testing of adult use cannabis shall be a permitted use in the I-2 General Industrial District and shall not be permitted in any other zoning district in the City of Brookville. A license as described in Ohio Revised Code Section 3780.10 shall be required to operate a cultivation, processing or laboratory testing facility for adult use cannabis in the City of Brookville.

(b) The operation of a retail adult use cannabis dispensary as described in Ohio Revised Code Section 3780.10 shall be prohibited in the City of Brookville, and a zoning permit shall not be issued for a retail adult use cannabis dispensary.