

Town of Cedaredge Planning & Zoning Commission

Public Hearing

July 20, 2021

Continued from July 6, 2021

Record of Proceedings

The Cedaredge Planning and Zoning Commission continued the July 6, 2021 Public Hearing on July 20, 2021, at the Cedaredge Civic Center, 140 NW 2nd Street, Cedaredge, Colorado, with a virtual meeting option available. Chairman Cartin called to order the meeting at 6:01 p.m. and led the Pledge of Allegiance. Present were Commissioners Dick Cartin, Doug Hoggatt, Terry Jarbo and Gene Welch; Mayor Raymond F. Hanson; Trustee Jim Atkinson; Town Administrator Greg Brinck; Town Planner Davis Farrar; Town Attorney Carol Viner; and Town Clerk Kami Collins. Commissioner Bob Michael recused himself at the July 6, 2021 Public Hearing, citing a conflict of interest. He was absent and excused.

Chairman Cartin read the vision and mission statement.

Public Hearing #1: Kind Castle (Continued from 7/6/2021)

- a. Staff Presentation - This application was continued to address the following issues: the use of the adjacent property on Lot 4 and access off Highway 65; the right turn deceleration lane; and the landscaping on the property with the proposed location of the drive through lane. Mr. Farrar noted that after the July 6 Public Hearing, Staff received a significantly revised site plan by applicant Mr. John Dyet. Mr. Dyet was informed that a new site plan would not be accepted because of the scope of the changes to the original submittal; only the modifications to the original site plan would be accepted. After reviewing the updated materials, Mr. Farrar had the following additional conditions for approval: the proposed landscaping on the west side of the property currently shown in the CDOT right of way shall be moved on to the subject site; the drive-through on the west side of the building be eliminated; landscaping or another acceptable barrier be extended south onto Lot 4 to prevent Kind Castle access to State Highway 65; accommodations shall be made to the site plan to ensure compliance with the existing easement agreements on Lot 4 and on the easterly portion of the property; the applicant shall provide written agreements from the property owners affected by the easements indicated their satisfaction with compliance to the terms of the agreement; and the applicant shall submit a revised site plan showing these changes subject to staff review and approval prior to issuance of a building permit. Mr. Farrar suggested that if there was a dispute between the applicant and staff on the revised site plan, the applicant could appeal the staff decision to the Board of Trustees.
- b. Applicant Presentation – Mr. Dyet addressed the Commission and spoke to Mr. Farrar’s conditions. Mr. Dyet said he spoke with CDOT and indicated that no additional right turn deceleration lane would be needed with the amended floor plan. Regarding Lot 4 access, CDOT will mandate the property owner, not Mr. Dyet, to block access, he said. Mr. Dyet said there is a misunderstanding about the definition of “new application” versus a “revised application.” He said part of the discrepancies he was directed to revise resulted in the amended plan. Mr. Dyet noted he moved the drive-through from the west side of the building to the east side. He said he spoke to the property owner of the south lot, and said no new agreement is necessary between Mr. Dyet and the property owner, but that the easement on that property was modified.

Mr. Farrar addressed Chairman Cartin, and said Mr. Dyet's presentation included the the new substantially modified site plan that he was asked not to show because they were new items; Chairman Cartin asked Mr. Dyet to stick to his original application site plan. Mr. Dyet said the plan is only revised due to the conditions brought up from the July 6 Public Hearing. My. Dyet said he is fine with moving forward with the original floor plan.

- c. Questions from Commission to Applicant and/or Staff - Trustee Atkinson asked Staff if they had a chance to review the wording in the access agreement to make sure it satisfies the requirements; Administrator Brinck said yes. Trustee Atkinson asked Mr. Dyet if the owners of the south lot would access his property; Mr. Dyet said yes, for emergency access only; Trustee Atkinson noted the site plan only works if the easement is shifted. Trustee Atkinson asked if the RV parking was eliminated so that RVs are not backing out onto the street; Mr. Dyet said yes, the RV parking was eliminated on the lot and would be accommodated on the east property (Lot 19) that he is leasing.

Mr. Farrar clarified that the original plan showed landscaping on CDOT right of way, not on the applicant's property. Mr. Farrar noted that Staff did not ask that all access to Lot 4 be closed off with landscaping, only the northerly portion serving Kind Castle. Mr. Dyet said he and the property owner of Lot 4 agreed to erect a fence. Mr. Farrar noted the Planning Commission does not deal with the marijuana point system Mr. Dyet alluded to, and that the comments were outside of the scope of the Hearing. Mr. Farrar said if Mr. Dyet was aware of the easement issue, he should have accommodated for that in the original site plan. Mr. Farrar noted that "street line" referenced in Title 16 regarding the 15-foot landscaping buffer means "edge of the right of way."

Chairman Cartin asked if Mr. Dyet has seen the updated memo from Mr. Farrar. Chairman Cartin asked Mr. Dyet if he understood the six conditions presented by Mr. Farrar; Mr. Dyet said he understood. Chairman Cartin asked Mr. Farrar if he was satisfied with the applicant materials; Mr. Farrar said yes.

Commissioner Hoggatt asked Administrator Brinck about sidewalks at the location; Administrator Brinck said sidewalks are required as part of the site plan and the applicant must build out the sidewalk to Town standards.

Commissioner Jarbo noted that the Commission should not be looking at the floor plan, but only the site plan of the property. Mr. Jarbo said the Commission is getting sidetracked by details that will be taken care of further in the marijuana licensing process. Chairman Cartin noted that an interior floor plan was required for the site plan in association with Trustee marijuana licensing.

Mayor Hanson asked Attorney Viner if she had any comments. She said the Code is clear under "Application Requirements" that if a preliminary plan was submitted, the applicant should have provided a date for when a final plan would be presented. Attorney Viner noted that staff did not hear a proposed date for a final plan, so accepted the original plan as the final plan. Ms. Viner asked if CDOT approved the plan; Mr. Dyet said under the old plan the deceleration lane is required and with the revised plan the lane is not required. Mr. Dyet said he would do whichever plan the Commission wanted. Chairman Cartin noted the

Commission will only consider the original application submittal and plan. Ms. Viner noted that Mr. Dyet can address the Board of Trustees regarding the issue.

- d. Public Comment In Favor - No member of the Public addressed the Commission.
- e. Public Comment Against - No member of the Public addressed the Commission.
- f. Questions from Commission to Applicant and/or Staff - The Commission had no additional questions.
- g. Staff Rebuttal - Mr. Farrar had no rebuttal.
- h. Applicant Rebuttal - Mr. Dyet had no rebuttal.
- i. Commission Deliberations - Commissioner Jarbo asked if Mr. Dyet will be allowed to revise his site plan before it goes before the Board of Trustees; Attorney Viner said ultimately the Board of Trustees makes the final decision, and they can approve, deny or approve with conditions. She noted that the Board will consider any conditions the Commission implements, but can also add conditions should they choose.
- j. Commission Action - Mayor Hanson moved to approve the Conditional Use Permit for Kind Castle with the following staff recommended conditions: all exterior lighting shall utilize downcast shielded dark sky compliant fixtures; sufficient odor mitigation shall be incorporated; the applicant shall comply with all review agency comments; the Conditional Use Permit is contingent upon subsequent Board of Trustee approval of the marijuana license, and if the marijuana license is not approved, the Conditional Use Permit is null and void; all representations made by the applicant in writing or verbally at the Planning Commission or reflected in the meeting minutes are considered part of the application and are binding on the applicant; the proposed landscaping on the west side of the property currently shown in the CDOT right of way shall be moved onto the subject line; the drive-through on the west side of the building be eliminated; landscaping or another acceptable barrier be extended south onto Lot 4 to prevent Kind Castle access to State Highway 65; accommodations shall be made to the site plan to ensure compliance with the existing easement agreements on Lot 4 and on the easterly portion of the property; and the applicant shall submit a revised site plan showing these changes subject to staff review and approval prior to issuance of a building permit, and that if the applicant and staff disagree, the site plan the applicant can appeal the staff decision to the Board of Trustees; Commissioner Hoggatt seconded.

Roll Call Vote: Voting “aye” were Commissioners Cartin, Jarbo and Welch; Mayor Hanson; and Trustee Atkinson; no Commissioners voted “nay.” Motion passed unanimously.

Public Hearing #2: Topsy Twigs (Continued from 7/6/2021)

- a. Staff Presentation - Planner Farrar asked Administrator Brinck if the application was properly noticed; Administrator Brinck said yes. Mr. Farrar presented a written report. Mr. Farrar recommended approval of the Conditional Use Application with the conditions that the applicant use exterior motion activated lights; sufficient odor mitigation is installed; the applicant shall comply with the review agency

recommendations; the CUP is approved subject to the Board of Trustees' approval for the marijuana license; and all representations made by the applicant in writing or verbally at the Planning Commission or reflected in the meeting minutes are considered part of the application and are binding on the applicant.

- b. Applicant Presentation – Jessica Davis and Jade Raber, representing Topsy Twigs, addressed the Commission and presented a PowerPoint presentation.
- c. Questions from Commission to Applicant and/or Staff - Commissioner Welch asked for clarification on the location. Ms. Davis said there are three units within the building; the old restaurant was Unit A, which will be leased to another business; Units B and C will be the retail and medical marijuana establishment.

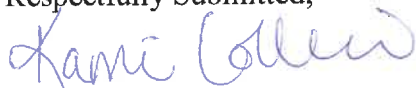
Trustee Atkinson asked for clarification on the access point on the site plan. The plan shows the Hwy. 65 access more south than it actually is. Ms. Davis said they have already applied for and been approved for highway access from CDOT.

- d. Public Comment In Favor - There was no Public Comment in favor of the proposal.
- e. Public Comment Against - There was no Public Comment against the proposal.
- f. Questions from Commission to Applicant and/or Staff - Commissioners had no additional comments.
- g. Staff Rebuttal - Staff had no rebuttal.
- h. Applicant Rebuttal - The applicant had no rebuttal.
- i. Commission Deliberations - There was no further deliberations.
- j. Commission Action - Trustee Atkinson moved to approve the Conditional Use Permit for Topsy Twigs with the staff recommendations and with the condition that a revised site plan showing substantial changes be approved by staff prior to issuance of a building permit; Mayor Hanson seconded.

Roll Call Vote: Voting “aye” were Commissioners Cartin, Jarbo and Welch; Mayor Hanson; and Trustee Atkinson; no Commissioners voted “nay.” Motion passed unanimously.

Mayor Hanson moved to adjourn the meeting; Commissioner Welch seconded. Chairman Cartin adjourned the meeting at 7:45 pm.

Respectfully Submitted,



Kami Collins
Town Clerk