



Spearfish Planning Commission Agenda revised 5-3-2021

May 4, 2021 3:00 p.m.

Meeting Location: City Council Chamber, 625 Fifth Street, Spearfish SD

And by Zoom Teleconference

Join Zoom Meeting

<https://us02web.zoom.us/j/85789712992>

Meeting ID: 857 8971 2992

Or Dial In: +1 669 900 9128 and enter meeting ID: 857 8971 2992

A. Call To Order

B. Roll Call

C. Approve the Minutes from April 20, 2021

D. Declaration of Conflicts of Interest

E. Items for Action

1. **Request:** Approve a variance to the rear setback requirements of the C-2 zoning district
Location: 1700 North Avenue
Applicant: Jeramiah Johnson/Buggy Bath Car Wash
Action: Make a recommendation and set public hearing for Board of Adjustment for May 17, 2021

2. **Request:** Medical Marijuana Update
Action: Provide Input; no action required at this time

F. City Council Update

G. Public Comment - Public comments are welcome at this time, however, no action will be taken.

H. Adjournment



Spearfish Planning Commission
Regular Session Minutes
April 20, 2021 at 3 p.m.

The Spearfish Planning Commission met in regular session on Tuesday, April 20, 2021 at 3 p.m. in the council chambers of city hall and via Zoom video conference. Chairman Bordewyk called the meeting to order. Roll call was taken with the following members present: Toby Bordewyk, Meghan Byrum, Abe Kean, Greg Kruskamp (arrived at the meeting during discussion on item 1 and before vote on item 1), Bob Meyer, Larry Vavruska (arrived at the meeting during discussion on item 2 and before vote on item 2), and Barbara Zwetzig. Also present: City Planner Jayna Watson, City Attorney Ashley McDonald, City Administrator Mike Harmon.

APPROVAL OF MINUTES:

Byrum moved, Kean seconded, and all voted to approve the minutes of the April 6, 2021 Commission meeting.

DECLARATIONS OF CONFLICTS OF INTEREST:

Bordewyk called for any potential conflicts of interest to be identified. Byrum stated a conflict with item 1 and recused from discussion and voting.

- Request:** Approve a concurrent annexation and change of zoning from County AG to DRD (Development Review District) with concept plan approval
Location: A portion of the SW1/4 NE1/4, Section 33, T7N R2E BHM, Lawrence County, South Dakota
Applicant: Jason R. Ward/Spring Branch LLC
Action: Hold a public hearing and make a recommendation to City Council

Jason Ward presented the request. Watson provided a review of the staff report and recommendation. Bordewyk opened the public hearing. No testimony was received and the public hearing was closed. **Meyer moved, Zwetzig seconded, and all voted to recommend approval to the City Council with Byrum not voting.**

- Request:** Approve a preliminary plat within the 3-mile extra platting territory
Location: Lots 1 – 21 Cedar Berry Canyon, south of Homestake Rd
Applicant: Interstate Engineering
Action: Hold a public hearing and make a recommendation to City Council

Trent Walters/Interstate Engineering presented the request. Watson provided a review of the staff report and recommendation. Questions from the commission included the two points of access, condition of Moller Road maintenance, and grade of Cedar Berry Road. Bordewyk opened the public hearing. Providing testimony were Gail Schuster, Dave Ellerman, and Joel Robinson. Bordewyk closed the public hearing. **Meyer moved, Byrum seconded to recommend approval to the City Council including the three conditions as noted in the staff report. Motion passed 5-1 with Kruskamp voting no.**

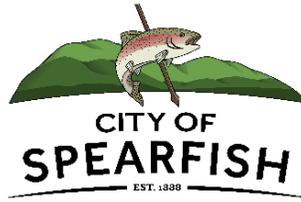
3. **Request:** Medical Marijuana - Zoning Considerations
Action: Discussion item - no action required

City Attorney Ashley McDonald provided an overview of Initiated Measure 26 pertaining to the legalization of medical use cannabis. Watson followed with an overview of how the current zoning code would view dispensaries either as a use by-right or by conditional use permit. The general consensus of the commission was to limit dispensaries to the commercial zones, and not consider them eligible as home occupations or conditional use permit type of approvals. **No action was taken.**

City Council Update – Watson noted approval of the new city employee wage scale, approval of the change of zoning for Miller Ranch and the status of the disassembly of the blue railing bridge over the creek, south of Salem Park.

Public Comment – No comments were provided.

Adjournment - Bordewyk adjourned the meeting at 4:30 p.m.



Spearfish Planning Commission Staff Report
Meeting Location: City Council Chamber, 625 Fifth Street, Spearfish SD
Zoom Online Meeting – instructions to join on page 4

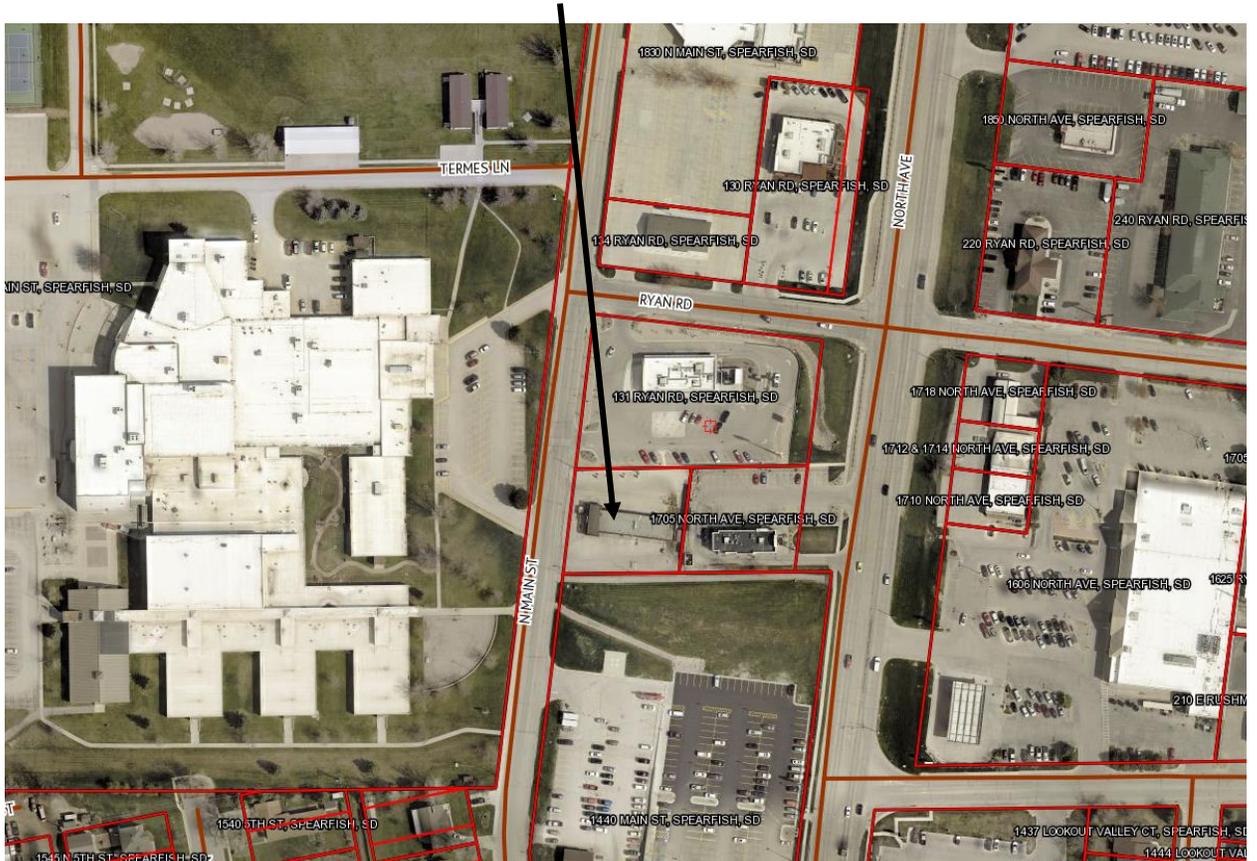
Meeting Date and Time: May 4, 2021 at 3 p.m.

Applicant: Jeramiah Johnson/Buggy Bath Car Wash

Request: Approve a variance to the rear yard setback requirements of Appendix A Zoning, Section IV. District Regulations, Section 7. C2 Highway Service Commercial

Action: Make a recommendation and set the Board of Adjustment's public hearing for May 17, 2021

Location: 1700 N Main Street



Proposal Summary: Reduce rear setback requirements from 10 feet to 8 feet-10 inches.

BACKGROUND AND HISTORY:

- This parcel is zoned C-2 Highway Service Commercial
- Developed commercial property on north and east
- Existing rear setback is +/- 8 feet
- Side setbacks in the C-2 are 0 feet (provided for reference, not the subject of this request)

REVIEW CRITERIA AND STAFF FINDINGS:

The owner wishes to update this car wash business which requires the reconstruction of the east end of the building presently located at a non-conforming setback of 8 feet from the east property line. Because of this section of the building will be demolished and re-built, the non-conforming setback cannot be continued without a variance.

In the C-2 zoning district, the 10-foot building setback requirement assumes that a minimal amount of space is needed for a visual separation between adjoining commercial buildings. Since C-2 is a more suburban type of commercial district, the rear setback standard is applied to achieve this goal. The building code prescribes the methods of construction when a building is located near a property line and other structures; this variance will not supercede what that code requires.

Variances must be evaluated according to the criteria established by the zoning code, below. Staff findings are in bold.

Article VI Administration and Enforcement, Section 2. Variances:

- D. Evaluation Criteria. A variance shall be approved only if the applicant is able to satisfy each of the following three (3) criteria:
1. The requested variance is not contrary to the public interest, as determined by the Board of Adjustment. In order to fulfill the public interest, the proposed variance must not:
 - a. Alter the essential character of the locality or
 - b. Endanger public safety.

Findings:

- 1.a: The existing building is currently non-conforming for rear setback. The variance requested is minimal and will not change the overall intensity or character of this area nor will the public perceive any change in the distance between the building and property line.**
- 1.b: Public safety would not be endangered by this proposal as no streets or sidewalks are affected.**

Criteria 1.a and 1.b are both met.

2. The requested variance must result from special physical conditions on the property, which:
- a. Are natural or man-made surroundings, shape, or topographical conditions that do not result from persons presently having an interest in the property; or
 - b. Because the property is situated within any of the following downtown core neighborhoods and has a lot width of seventy-five feet (75') or less, or a square footage of less than eight thousand (8,000) square feet
 - i. Original Town Plat
 - ii. Uhlig Addition
 - iii. Ramsdell Addition
 - iv. West Addition
 - v. Schar's Addition

Findings:

- 2.a: The applicant cites the presence of a retaining wall along the east property boundary which creates a vertical separation between the car wash parcel below and the Taco Bell restaurant to the east, and above. This change in elevation creates additional visual space between the two properties. Additionally, the Taco Bell building is 40 feet from the subject shared rear property line.**

Criteria 2.a is met. Criteria 2.b does not apply.

3. A literal enforcement of the provisions will result in unnecessary hardship.
 - a. Because of the special physical conditions of the property, unusual hardship that would serve no public purpose would result to the owner if required to act in strict conformity with the provisions of the zoning regulations and the authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - b. The hardship must be unique to a particular piece of property to justify a variance, and not shared by all property in a particular zone

Findings:

3.a: Requiring the applicant to reconstruct at an additional 1 foot-2 inches of building setback serves no public purpose and imposes a hardship on the redevelopment of the owner's business. The ten foot distance is not a publicly visible space similar to how a front setback functions. The intent of the ordinance has been satisfied in the final configuration of space between the car wash and Taco Bell buildings.

3.b While there are other retaining walls in the area, no other parcels nearby share a common rear lot line on a retaining wall condition.

Criteria 3.a and 3.b are met.

PUBLIC COMMENTS: The applicant will post a public hearing notice on the property concerning the Board of Adjustment's hearing and notice also will be sent to the newspaper.

STAFF RECOMMENDATION: Approve and set public hearing for the Board of Adjustment for May 17, 2021
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ATTACHMENTS:

Page 5 – Aerial Map

Page 6 – Site Plan showing 8 foot-10 inch rear setback

Page 7 - Applicant's responses to variance questionnaire

STAFF CONTACT:

Jayna Watson, City Planner, 605-717-1122; jayna.watson@cityofspearfish.com

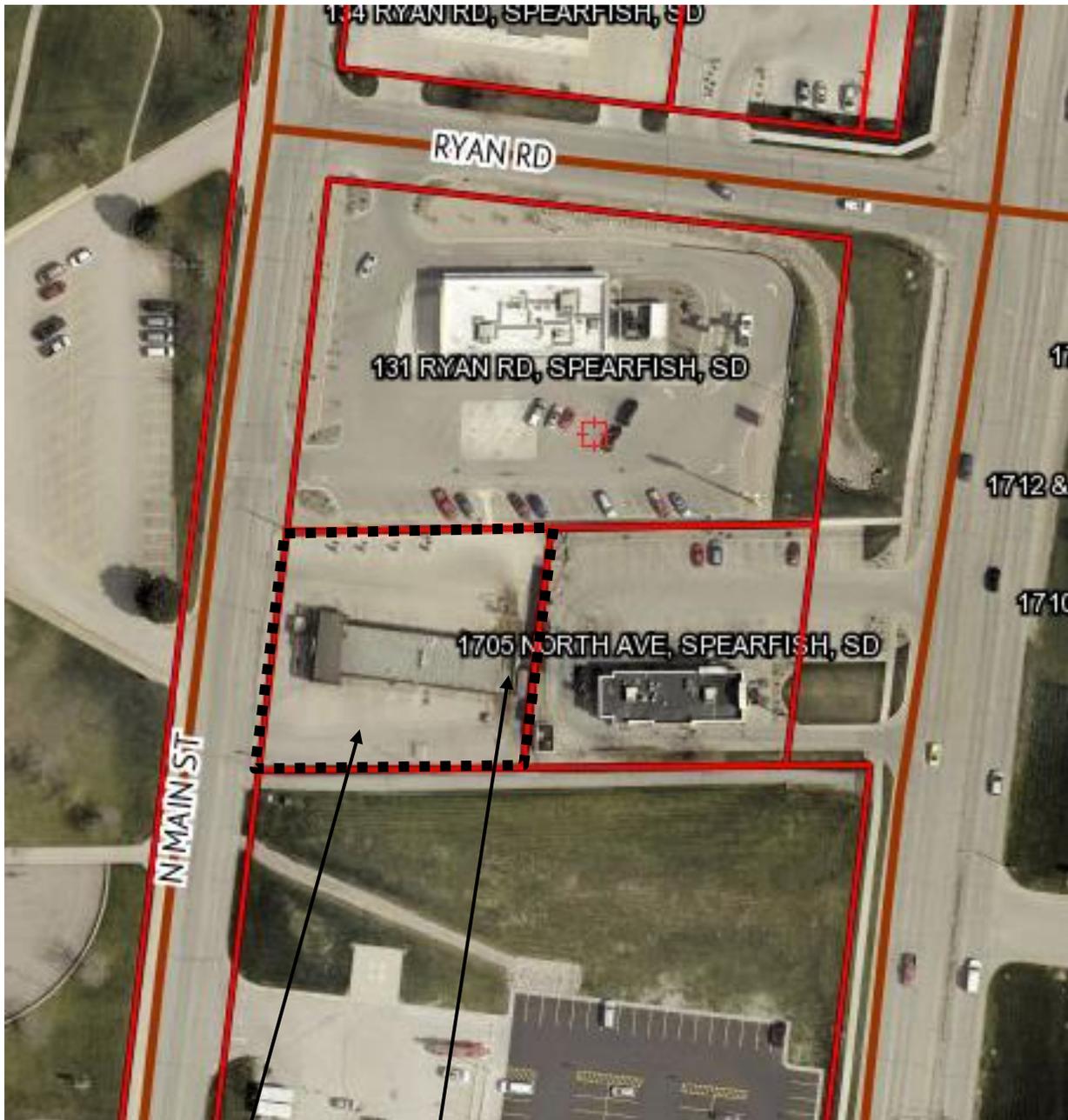
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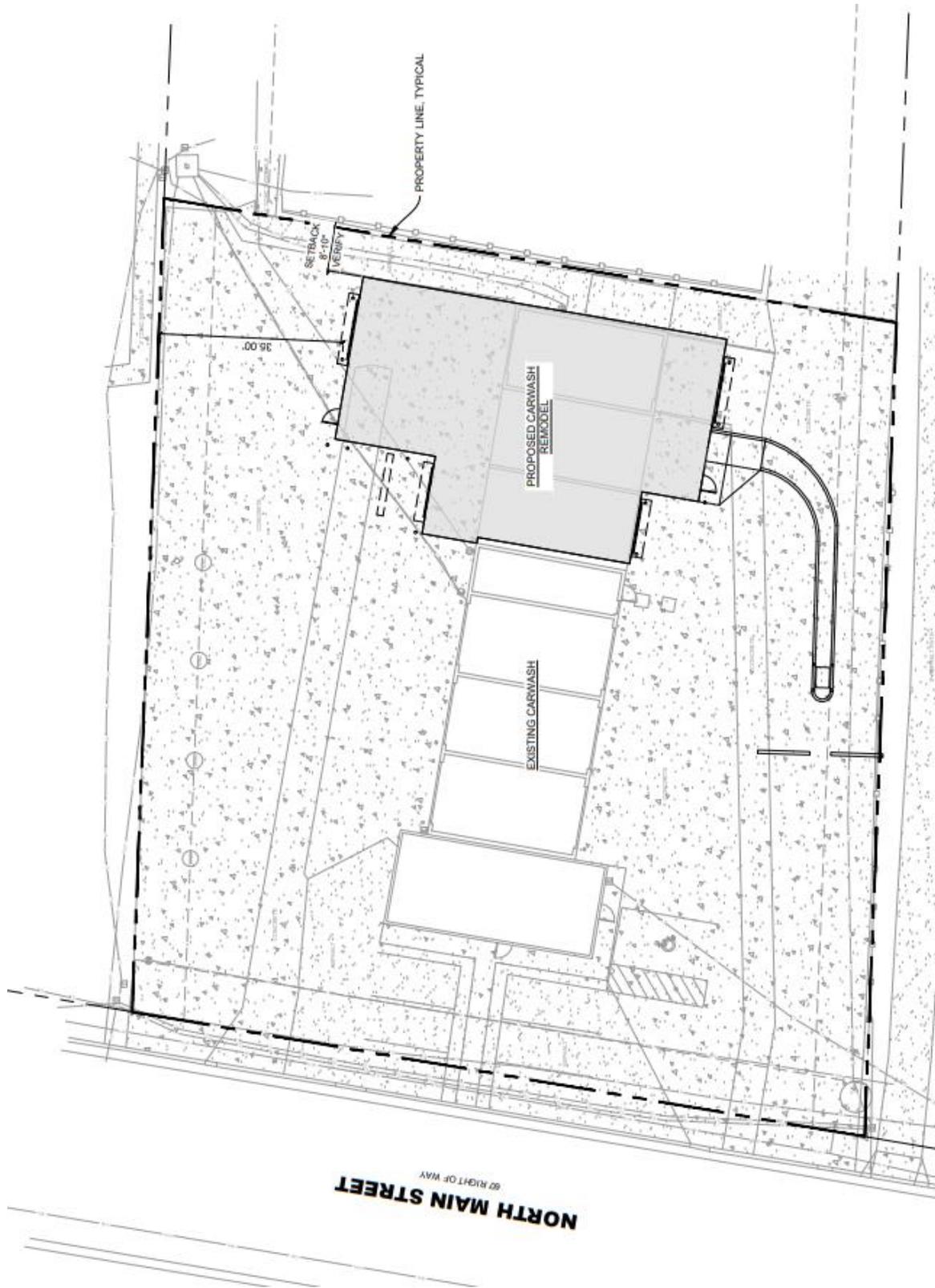
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1700 North Avenue - Location of rear setback variance request



City of Spearfish
Variance Justification

1) Describe your variance request for how it will be compatible with the surround properties and not alter the existing character of the neighborhood.

The existing building is 8' from the east property line. Because of the topography, that adjacent property (Taco Bell) contains a retaining wall and fence. All other surrounding properties contain retaining wall or fence. The current compatibility is not compromised.

2) If approved, would your request result in reduced visibility of pedestrians or approaching vehicles or other public safety concerns?

The building expansion would not impact vehicular or pedestrian traffic. There are no sidewalks on this property. The sidewalks on the north adjacent property are protected by a retaining wall. Current sightlines allow adequate pedestrian visibility and vehicular traffic.

3) Explain how the PHYSICAL CONDITIONS of your property present an unusual hardship to meeting the zoning requirements.

The adjacent property on the north requires a retaining wall because of a drop in elevation. The adjacent property on the east requires a retaining wall because of an approximate 4' rise in elevation. The "boxed in" element of the property creates a unique area of development. The retaining wall remains a viable barrier from the east property. Without a variance, the proposed building expansion pump room would be too narrow to provide adequate employee safety. The Express Tunnel expansion requires a minimum of 19' to allow for safe access to the moving equipment. The variance would be required in order to meet those safety standards.

4) Explain if the circumstances associated with your property are unique to your property and not present on similarly zoned land nearby.

The City of Spearfish prides itself on its beauty. Part of that beauty is the variation of elevations in the city. Driving from the prairie lands that surround the city into the "bowl" of the valley is an awe-inspiring sight. Many of the early property developers in Spearfish chose to use varied elevations of the existing topography to embrace that beauty. The variance property is unique because of the elevations of adjacent properties. Most business are developed in flat topography. The property requested for variance sits in a "terraced" area which requires special adaptation of retaining walls by adjacent property. That creates the unique plateau on which this property is placed. The variance requested will allow the improvement and renovation of an existing building to an enhanced aesthetic to the business neighborhood. The business expansion will create additional employment opportunities; increased sales tax revenue; and provide a service not currently available in the community. The Express Tunnel and No Touch Automatic has the potential capability of a 50 to 75 percent water reclamation in the future. The plumbing for that water reclamation system would be installed in the expanded pump room which requires the variance. If approved, we would install the reclamation system to enhance the management of our natural resources.



Spearfish Planning Commission Memorandum

DATE: May 4, 2021

TO: Planning Commission

FROM: Jayna Watson, City Planner

RE: Medical Marijuana Dispensaries

Based on the previous discussion involving where a medical marijuana dispensary may be located, staff's recommended approach is to treat these as Retail Type 1 only within the Commercial and Industrial Zoning Districts (C-1, CC, C-2, C-3, ILR, IH) and exclude them from being eligible with a conditional use permit in the residential districts.

From here, staff will develop a licensing ordinance where the applicant must meet criteria in order to obtain a city-issued marijuana dispensary license. One of the licensing criteria will be that it is issued to a business located in one of the above zoning districts. This will be adopted in a section of city code that deals with other business licensing that the city provides, and outside of the zoning ordinance.

Additional discussion and input is requested, however no action on this is required at this time.