Town of Oak Creek
Land Use Application
Staff Report

PETITIONER:	Nicholas Osadchuk, Electric Microgreens
PETITION:	Land Use Change of Minor Impact 100 W. Main Street, Unit C
PLANNING COMMISSION HEARING DATE:	April 19, 2023
TOWN BOARD HEARING DATE:	May 11, 2023
STAFF CONTACT:	David Torgler, Town Administrator/Clerk
ATTACHMENTS:	Cover letter Application Vicinity and Site maps Narrative and staff review Public Notice

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HISTORY AND PROJECT DESCRIPTION:

The property located at 100 W. Main Street, Lots 1-2, Block 3, Original Town of Oak Creek, and includes a multi-tenant, single story building and a fenced in rear yard. The building is being used as a marijuana retail store in Unit A, and has previously been used as an indoor marijuana grow operation in Unit B. Unit B is presently vacant. The petitioner is proposing to use Unit C and the adjacent fenced in yard as an indoor agricultural use to grow, harvest, package and store microgreens. The existing Unit C is approximately 517 square feet. A vicinity map and site map prepared by the Applicant show the location of the one-story cinder block, Unit C and the fenced in yard.

The property is approximately 0.14 acres (6,098 sq. ft.) in size.

COMPLIANCE WITH THE TOWN OF OAK CREEK COMPREHENSIVE PLAN

Section 17.01.03 (A) of the Land Use Code (Code) states that the Code is enacted to "[i]mplement the policy recommendations of the Town of Oak Creek Comprehensive Plan Update" (Plan.) Therefore any proposal should be considered in light of the applicable policies of the Plan. While the Plan contains numerous policies regarding land use, staff has selected the following checklist to highlight the policies most directly applicable to these applications. Interested parties are encouraged to review the Plan to determine if there are other policies that may be applicable to the review of these applications.

Chapter Two – Environment & Natural Resources

NATURAL RESOURCES

Complies Yes	Complies No	Section	Policies
X		2.	The Town shall develop regulations that permit and encourage the raising of food and animals (also known as urban agriculture) within all performance districts that allows a greater number and types of animals to be raised while considering potential impacts to adjacent properties. *Staff comment: The proposed use meets this policy and action.*
X		3.	The Town shall encourage the construction and use of year round growing structures, e.g. greenhouses, for the production of produce for personal consumption or resale. *Staff comment: The proposed use meets this policy and action.*

CHAPTER 3. ECONOMY, LAND USE & COMMUNITY CHARACTER
Economy

Complies Yes	Complies No	Section	Policies
X		Economy 3.	The Town shall continue to work to support existing businesses and to identify and attract new businesses needed to meet local needs for a balanced level of commercial and light industrial activities. Staff c*omment: The proposed use will occupy a vacant commercial space, attract a new business and add to light industrial activities.*
		Existing Land Use & Character 6.c	Within Performance District 1, street frontage on Main Street shall be occupied by retail or those types of institutional uses frequented by the public, such as museums, libraries, galleries or community services. Other commercial uses may be constructed in the rear, non-street-frontage portion of the buildings or upper levels. New development on street frontage in Performance District 1 not located on Main Street shall be retail, office or institutional uses. Residential uses shall be limited to the 2nd level, non-street frontage portion of buildings in Performance District 1 Staff c*omment: The Applicant proposes to provide "some" retail sales so the Commissioners and Board might find that combination of uses creates a consistency with the overall Comp Plan policies and actions.*
X		Existing Land Use & Character 7.	Promote urban agriculture opportunities to support local food production, distribution and Oak Creek's agricultural heritage. Staff c*omment: The proposed use will meet this policy and action item.*

Land Use & Community Character
Land Use Regulation

Complies Yes	Complies No	Section	Policies
____	____	1.	All new development shall be considered in light of compliance with existing master plans, adopted policies and guidelines. *Staff comment: The proposed use is consistent with some policies and actions; however the location fronting along Sharp Avenue may not be considered retail with the agricultural use. The Applicant proposes to provide "some" retail sales so the Commissioners and Board might find that combination of uses creates a consistency with the overall Comp Plan policies and actions.*

Chapter Four – Transportation & Infrastructure

Transportation - Sidewalks

Complies Yes	Complies No	Section	Policies
X	____	1.	The maintenance of sidewalks shall be the responsibility of individual property owners. *Comment: There is a sidewalk adjacent to this property.*

COMPLIANCE WITH THE TOWN OF OAK CREEK LAND USE CODE

While the Land Use Code (Code) contains numerous regulations regarding land use, staff has selected the following checklist to highlight the regulations directly applicable to these applications. Interested parties are encouraged to review the Code to determine if there are other regulations that may be applicable to the review of these applications.

Chapter 17.02 – Definitions

Section 17.02.030 – Agricultural use. "Agricultural use" means use and working of land, ground or soil for the production of food and/or fiber, including farming for food or cash crops and the raising of farm animals. The keeping or harboring of chickens in accordance with Section 6.08.020 of this Code; and medical or retail marijuana cultivation as such may be defined by the State shall not be interpreted as agricultural use by this definition.

Complies	Section	Standards
X		"Agricultural use" means use and working of land, ground or soil for the production of food and/or fiber, including farming for food or cash crops and the raising of farm animals. Staff c*omment: This proposal falls into the definition of "agricultural use."*

Chapter 17.03 – Development Applications, Review and Procedures

Section 17.03.03 – Applications for land use changes – categories No person shall engage in any land use change without first obtaining the approvals required by this code. A land use change is a change in the actual use of land or improvements thereon.

Complies	Section	Standards
X		Approvals for land use changes within the Town are divided into categories: (1) land use changes having no significant impact; (2) land use changes having minor impact; and (3) land use changes having major impact. Staff c*omment: This proposal falls into the Land Use Change of minor impact category.*

Section 17.03.06 – Land Use Changes of Minor Impact
These require one review each by the Planning Commission and the Board of Trustees and include:

Complies Yes	Complies No	Section	Standards
X		J.	Changes in use that are not exempt, have no impact or major impact. Staff c*omment: The proposed use is agricultural with some limited retail. Agricultural uses are conditional uses in Performance District 1 which requires review as a LUC-Minor Impact.*

Chapter 17.10 – Community Design Standards

Section 17.10.08 – Landscaping Standards

Complies Yes	Complies No	Section	Standards
		C.	Performance District One – Commercial, Institutional, Office and Mixed Use Landscape Standards.
X		1.	Downtown landscaping is intended to provide an attractive environment for people to walk and shop. A town-approved landscape plan shall be required of all new developments in Performance District One to include one or more of the following: window boxes, planters, parking lot landscaping, street trees, sidewalk improvements or benches as appropriate to the site to enhance building entries and the streetscape. *Staff comment: The site meets these requirements with sidewalks along Sharp Avenue and Main Street, benches along Main Street and landscaping on Lot 2.*

Section 17.10.09 – Parking standards

Complies Yes	Complies No	Section	Standards
X		A.	Commercial uses in Performance District 1 are exempt from these requirements. *Comment: This property is located in Performance District 1.*

Section 17.10.010 – Lighting

Complies Yes	Complies No	Section	Standards
_____	__X__	A.	Exterior lighting, except for overhead street lighting, warning, emergency or traffic signals; sports field lighting; temporary holiday lighting; or lighting required by the building or fire code, shall be installed in such a manner that the light source will not detract from the dark sky enjoyed by the residents of Oak Creek. The following shall be required of all lighting fixtures: 1) fixtures shall be cast downward to prevent glare on public streets, walkways or into residential areas. Light shields shall be placed on fixtures to prevent light "spillage" to public or residential areas; 2) lights should use the lowest wattage possible to sufficiently light the intended area. *Staff comment: The owner has not provided an exterior lighting plan. It will be a condition of approval that any exterior lighting fixtures shall comply with these standards.*

Section 17.10.011 – Sign standards

Complies	Section	Section	Standards
_____	__X__	A	No person shall erect, alter or relocate any sign without first obtaining approval from the town under this section. *Staff comment: The owner has not provided an exterior sign plan. It will be a condition of approval that any signs shall comply with these standards.*

Chapter 17.11 – Performance Districts

Section 17.11.01 – Performance District One
The following regulations only govern land within Performance District One.

Complies Yes	Complies No	Section	Policies
__X__	_____	A.	Character and Vision 1. Current Use: Performance District One forms the heart of the Town of Oak Creek with a majority of its retail and commercial uses located on Main Street. The uses quickly transition to residential as one moves away from Main Street. *Staff Comment: The Applicant and their predecessor had permits for marijuana grow operations*

from this space. The proposed agricultural use is similar plus there will be some retail sales.

X ____ 2. Vision for the Performance District: This district should work to achieve an active, pedestrian-oriented, retail district. Auto-oriented commercial uses shall only be allowed in Performance District One as a conditional use. Auto oriented uses permitted within Performance District One shall locate parking and automobile drive-thru facilities to the rear or side of the primary structure. Commercial uses are the preferred use for the first floor of all buildings along Main Street and Moffat and Sharp Avenues. *Staff Comment: The Applicant and their predecessor had permits for marijuana grow operations from this space. The proposed agricultural use is similar plus there will be some retail sales.*

X ____ B.2 Conditional uses:
g. Agricultural

X ____ C. Dimensional standards for properties within Performance District One: *Staff comment: All standards can be met on the lots as designed. See table below.*

Performance District 1	Commercial	Auto-oriented commercial uses
Minimum Floor Area/Dwelling Unit (square feet)	-	-
Setbacks (feet): Front Side Yard Rear Yard	 0 min 10 max 0 0	 0 min 10 max 0 0
Lot width (feet) Minimum Maximum	 25 100	 25 100
Minimum Lot Area (square feet)	2400	2400

Maximum Lot Coverage (%)	No max.	No max.
Maximum Building Height (feet)	35	35

OPTIONS

1. **Recommend approval as proposed** if it is determined that the proposal meets the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan.
2. **Recommend denial** if it is determined that the proposal changes do not meet the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan.
3. **Table action** if it is determined additional information is needed to evaluate the proposal. Specific direction must be given to applicant.
4. **Recommend approval** if it is determined that certain changes or conditions are necessary to ensure that the proposal meets the standards of the Town of Oak Creek's Land Use Code and Comprehensive Plan.

FINDINGS:

Chapter 17.03.016 – Standards by which the planning commission and the Board of Trustees will be guided.

In reviewing all applications for development approvals, the planning commission and Board of Trustees shall be guided by the compatibility of the proposed land use with adjacent land uses and by the following additional considerations:

A. Conformance of the proposed land use change with the policies and principles in the Oak Creek Comprehensive Plan Update, pursuant to C.R.S., 1973, Section 31-23-206;
B. Conformance with the requirements and performance standards established in this code;
C. Preservation of the health, safety and welfare of the citizens of the Town of Oak Creek, Colorado.

Section 17.03.017 - Conditional use review criteria.

The Town shall use the following criteria to evaluate applications for conditional uses:

A. The conditional use will satisfy all applicable provisions of the land use code unless a variance or exception is being requested.
B. The conditional use will conform with or further the goals, policies and strategies set forth in the Town of Oak Creek Comprehensive Plan Update.
C. The conditional use will be adequately served with public utilities, services, and facilities (i.e. water, sewer, electric, schools, street system, fire protection, public

transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.

D. The use shall comply with all applicable Town, county and state environmental laws. The applicant has submitted evidence that all applicable local, state and federal permits have been or will be obtained.

E. The conditional use is compatible with existing uses in the area and permitted uses in the district and will not substantially alter the basic character of the district in which it is in or jeopardize the development or redevelopment potential of the district.

F. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site. The amount and configuration of on-site parking is appropriate to the conditional use.

G. Site lighting will provide adequate security, which does not negatively impact adjacent properties and is not excessive.

H. Outdoor activity and storage areas are screened from public view and are oriented away from any existing adjacent uses that would be negatively impacted.

I. Service areas, such as trash, loading docks and delivery areas, are screened from public view, oriented away from adjacent uses that would be negatively impacted and are not the visual focal point of a driveway or parking area.

J. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods including those identified in Section 17.03.018 of this Code. The applicant shall satisfactorily address the following impacts, as applicable:

1. Traffic;
2. Parking;
3. Snow storage
4. Activity levels, intensity of use;
5. Light;
6. Noise;
7. Odor;
8. Building type, style and scale;
9. Hours of operation;
10. Emission of dust, heat, glare, vibration, smoke, and odors; and
11. Erosion control.

CONDITIONS OF APPROVAL: the following conditions are recommended to be included as part of the proposed Land Use Changes of Minor Impact for the Electric Microgreens change of use:

1. All exterior lighting on the site will be down cast, use the lowest wattage possible to sufficiently light the intended area and only provide illumination within the site in accordance with Section 17.10.010 of the Municipal Code.

2. All signs shall meet the sign standards in accordance with Section 17.10.011 of the Municipal Code.
3. Upon abandonment of the land use change, if such abandonment occurs at least three years following the effective date of the land use change permit. Abandonment shall be defined as the date one year after the last significant progress toward the construction of the development occurred. Abandonment shall be determined at the sole discretion of the Routt County Building Official and such determination may be appealed pursuant to Section 17.09.06.