

# Kenai Peninsula Borough


## Planning Department

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### MEMORANDUM

TO: Brent Johnson, Assembly President  
Kenai Peninsula Borough Assembly Members

THRU: Charlie Pierce, Borough Mayor

FROM: Melanie Aeschliman, Planning Director 

DATE: November 9, 2021

RE: Application for a New Retail Marijuana Store License; Applicant: Black Alley Vapes;  
Land Owner: Jesse Spurgeon; Location: 51698 Kenai Spur Highway; Nikiski Area

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The Kenai Peninsula Borough Planning Commission reviewed the subject application during their regularly scheduled November 8, 2021 meeting.

A motion to recommend approval of the *Back Alley Vapes* a retail marijuana store license application passed by unanimous vote (8-Yes, 3-Vacant) subject to the following conditions:

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in the borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020 (A).
4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 am.

Attached are the unapproved minutes of the subject portion of the meeting.

November 8, 2021 Planning Commission Draft Meeting Minutes

## \*7 Minutes

- a. October 18, 2021 Planning Commission Hearings
- b. October 25, 2021 Plat Committee Meeting
- c. October 25, 2021 Planning Commission Meeting

Chair Ruffner asked if anyone present wanted to speak to any of the items on the consent or regular agendas. He then asked Ms. Shirnberg to read the items under the consent agenda into the record.

Hearing no one else wishing to comment, Chair Ruffner returned the discussion to the Commission.

**MOTION:** Commissioner Gillham moved, seconded by Commissioner Bentz to approve the consent agenda and the regular agenda.

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	8	No	0	Absent	0	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin Morgan, Ruffner, Venuti						

Chair Ruffner asked Ms. Shirnberg to read the procedures for public testimony.

**AGENDA ITEM E. NEW BUSINESS****1. Retail Marijuana Store License**

**Applicant:** Back Alley Vapes

**Landowner(s):** Jesse Spurgeon and Rebecca Spurgeon

**Parcel ID#:** 012-090-04

**Legal Description:** T07N, R12W, SEC 1, S.M., KN 0001400 NIKISHKA SUB NO 2 LOT 4 BLK 2

**Location:** 51698 KENAI SPUR HWY, Nikiski, AK

Staff report given by Bryan Taylor.

**BACKGROUND INFORMATION:** On March 4, 2021, the borough received notification from the Alcohol and Marijuana Control Office (AMCO) that the applicant had initiated the application to the state for a Retail Marijuana Store license. On March 15, 2021, the applicant supplied the borough with a signed acknowledgement form and a site plan of the proposed marijuana retail store on the above-described parcel. The AMCO notified the borough that the application was complete on October 1, 2021. Staff has reviewed the completed license application that has been submitted to the state and the site plan submitted to the borough and has found the following concerning the standards contained in KPB 7.30.020:

1. The Borough finance department has been notified of the complete application and they report that the applicant is in compliance with the borough tax regulations.
2. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 1,000 feet from any school.
3. Borough planning department staff has evaluated the application and has determined that the proposed facility will be located greater than 500 feet from all recreation or youth centers, and all buildings in which religious services are regularly conducted, and all correctional facilities.
4. The proposed facility is not located within a local option zoning district.
5. The proposed facility is located where there is sufficient ingress and egress for traffic to the parcel.
  - KPB 7.30.020(C)(1)(a) requires that, except for limited cultivation facilities, marijuana establishments shall be located where an approach meeting a borough right-of-way had a minimum width of 24 feet.

- The signed acknowledgement form indicates that there will not be any parking in borough rights-of-way.
  - The site plan indicates a clear route for delivery vehicles which allows vehicles to turn safely.
  - On-site parking and loading areas are designated at a location that would preclude vehicles from backing out into the roadway.
6. The signed acknowledgement form indicates that the proposed facility will not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

KPB 7.30.020(E) allows the recommendation of additional conditions on a license to meet the following standards:

- protection against damage to adjacent properties,
- protection against offsite odors,
- protection against noise,
- protection against visual impacts,
- protection against road damage,
- protection against criminal activity, and
- protection of public safety.

The Alaska Marijuana Control Board will impose a condition that a local government recommends unless the board finds the recommended condition is arbitrary, capricious, and unreasonable (3 ACC 306.060b). If the Planning Commission recommends additional conditions, additional findings must be adopted to support the conditions.

**PUBLIC NOTICE:** Public notice of the application was mailed on October 22, 2021, to the 12 landowners of the parcels within 300 feet of the subject parcel. Public notice of the application was published in the October 28, 2021, & November 4, 2021, issues of the Peninsula Clarion.

Staff recommends that the Planning Commission forward this application to the assembly with the findings contained in this staff report and with the recommendation that the following conditions be placed on the state license pursuant to 3 AAC 306.060(b):

1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020(A).

Mr. Taylor then noted that he needed to add a fourth condition to the recommendation:

4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 a.m.

#### **END OF STAFF REPORT**

Chair Ruffner opened the meeting for public comment.

Jesse Spurgeon, Applicant; 51698 Kenai Spur Hwy., Suite D, Nikiski, AK 99635: Mr. Spurgeon made himself available for any questions the commission may have.

Hearing no one else wishing to comment, public comment was closed and discussion was opened among the commission.

**MOTION:** Commissioner Bentz moved, seconded by Commission Morgan to forward to the Assembly the application for a retail marijuana store license for Back Alley Vapes with staff's findings and recommending the following four conditions be placed on the license:



1. The marijuana establishment shall conduct their operation consistent with the site plan submitted to the Kenai Peninsula Borough.
2. There shall be no parking in the borough rights-of-way generated by the marijuana establishment.
3. The marijuana establishment shall remain current in all Kenai Peninsula Borough tax obligations consistent with KPB 7.30.020 (A).
4. The marijuana establishment shall not conduct any business on, or allow any consumer to access, the retail marijuana store's licensed premises, between the hours of 2:00 a.m. and 8:00 am

Seeing and hearing no objection or further discussion, the motion was carried by the following vote:

**MOTION PASSED BY UNANIMOUS VOTE:**

Yes	8	No	0	Absent	0	Vacant	3
Yes	Bentz, Brantley, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti						

**AGENDA ITEM F.**      **PLAT COMMITTEE REPORT** – Plat Committee did not meet.

**AGENDA ITEM I.**      **DIRECTOR'S COMMENTS**

**AGENDA ITEM J.**      **COMMISSIONER COMMENTS**

**AGENDA ITEM M.**      **ADJOURNMENT** – Commissioner Morgan moved to adjourn the meeting at 7:50 p.m.

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Ann E. Shirnberg  
Administrative Assistant