Staff Report – Public Hearing #3

Conditional Use Permit for a Vape Store in a GB1 (Gateway Business 1) Zoning District at 5842 E. Franklin Rd. for Vape Strong, LLC, D.B.A. - Vape (CUP 136-19).

Applicant/Owner: Vape Strong, LLC, D.B.A. – Vape / Cameron S-Sixteen Retail LLC

File No: CUP 136-19

Prepared by: Norman L. Holm
Date: May 20, 2019

Requested Action: Conditional Use Permit
Purpose: Vape Store

GENERAL INFORMATION

Status of Applicant: Renting

Existing Zoning: GB1 (Gateway Business 1)

Location: 5842 E. Franklin Rd. and part of tax 05814 in Lot 1, Block 8 Idaho Center situated in the SW ¼ of Section 7, T3N, R2W, BM.

Size of Property: A portion of a 1.1-acre parcel.

Surrounding Land Use and Zoning:
North- Hampton Inn and Suites, GB1
South- Walmart, GB1
East- Office and Retail, GB1
West- Office and Retail, GB1
Comprehensive Plan Designation: Highway Commercial – Page 105 Nampa

Comprehensive Plan 2035, Section 5.9.3 Highway Commercial: This land use would be located off highway interchanges, major arterials and some collectors, based upon design and function, which provide access to major commercial development that accommodates large volumes of traffic (traffic ordinate business). These land uses will be more intense than other commercial land uses. Portions of these areas could be redeveloped over time into Transit-Oriented Developments that would also include residential uses, design and development standards are recommended that would help to make developments within existing commercial districts more attractive, engaging and accessible places. This would include development of multiple access points to disperse traffic, and a complete system of internal streets, sidewalks and pedestrian and bicycle paths to provide circulation within the district and connections to the surrounding roadway and bicycle route system. Examples include: big box projects, major shopping center, hospitals, retail, services, drive-in restaurants, office complexes, institutes of higher learning and other destination land uses.

Zoning & Planning History: Location always zoned GB1 and previously occupied for retail purposes.

Applicable Regulations: Section 10-3-2 Schedule of District Land Use Controls allows Tobacco Shops by conditional use permit in GB1 districts. Though not specifically listed, staff has determined that Vape Stores be considered the same as Tobacco Shops. Section 10-3-2 B. Unlisted Land Uses: The director or his/her designee shall interpret the appropriate district for land uses not specifically listed by determining the district in which similar uses are permitted. ... Where a use is proposed and ambiguity exists concerning the appropriate district or procedure for the establishment of that particularly proposed use, said use may be established by obtaining a conditional use permit...

Chapter 25 sets forth the criteria of approval. These criteria require that the use be compatible with and not adversely affect the livability or appropriate development of the surrounding neighborhood.

Description of Existing Land Use: Vacant commercial unit within an existing retail/office building.

Description of Proposed Land Use: A Vape Store is a retail outlet specializing in the selling of electronic cigarette products.

Definition of Vaping: Vaping is the act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by an e-cigarette or similar device. When the device is used, the battery heats up the heating component, which turns the contents of the e-liquid into an aerosol that is inhaled into the lungs and then exhaled.

Parking: Existing off-street parking exists at the location for store customers.

SPECIAL INFORMATION

Public Utilities:
12" water main in E. Franklin Rd.
8" sewer main along the northerly property boundary
10" irrigation main along the northerly subdivision boundary

**Public Services:** All available.

**Transportation:** The business access is from E. Franklin Rd. into the parking lot.

**Physical Site Characteristics:** Developed vacant, available commercial unit.

**Environmental:** No areas of concern.

**Aesthetics/Landscaping:** Existing landscaped commercial area.

**Correspondence:** No correspondence from any area property owners, businesses or residents have been received for or against the establishment of a Vape Store at the subject location.

## STAFF FINDINGS AND DISCUSSION

In the attached letter the applicant argued that a CUP for a Vape Store should not be required in a GB1 zone. Vape shops are an unlisted land use in Section 10-3-2 B. In such instances the Planning Director is entitled to interpret the appropriate district for a use by determining the district in which similar uses are permitted. In addition, where ambiguity exists concerning the appropriate district or procedure for a use, the use may be established by obtaining a conditional use permit.

Tobacco Shops or Smoke Shops are retailers of tobacco produces in various forms. Tobacco Shops are specifically listed as a Conditional Use in the GB1 zone. Vape Shops specialize in the selling of electronic cigarette products. I understand that nicotine is the primary agent in both regular cigarettes and electronic cigarettes. For these reasons I determined that a Vape Store should be treated the same as a Tobacco Shop and that a CUP should be required for their establishment in the GB1 zone.

The location is reasonable for an Vape Store because of its’ proximity to other commercial retailers in the area. From a land use standpoint, the location is shown on the comprehensive plan for highway commercial land use and the requested use is an eligible conditional use in the GB1 zone.

With regards the conditional use permit, use of the commercial unit for a Vape Shop is compatible with the surrounding commercial and professional neighborhood.

If the Commission votes to approve of the CUP, the following findings are recommended:

1) The location, size and design of the proposed Vape Store will be reasonably compatible with and not adversely affect the livability or appropriate development of the surrounding neighborhood if the below conditions are required.

2) The location, design, and site planning of the proposed Vape Store will be as attractive as the nature of the use and its location and setting warrants.

3) The proposed Vape Store will enhance the successful operation of the surrounding area in its basic community function and provide an essential service to the community.
SUGGESTED CONDITIONS OF APPROVAL

If the Commission votes to issue a conditional use permit the following Planning and Engineering conditions are recommended to be attached:

1) All requirements of the Nampa fire and building departments regarding Vape Store use shall be satisfied.
2) The conditional use permit is issued for the life of the commercial unit as a Vape Store.

ATTACHMENTS

1) Application and Letter (Pages 5-6)
2) Vicinity zoning and location map (Page 7)
3) Aerial/street view of parcel and neighborhood (Page 8)
4) Legal description (Page 9)
5) Agency and other correspondence (Page 10+)
APPLICATION FOR CONDITIONAL USE PERMIT
PLANNING AND ZONING DEPARTMENT
411 3RD STREET S., NAMPA, IDAHO 83651
P: (208) 468-4487 F: (208) 465-2261

Nonrefundable Fee: $234.00 (1 acre or less) Nonrefundable Fee: $463.00 (more than 1 acre)

Applicant Name: Vape Strong, LLC, D.B.A. - Vape
Home Number: (208) 468-4487
Street Address: 5118 N. Sawyer Ave
City: Boise
State: Idaho
Zip code: 83714
Mobile Number: (208) 465-2261
Email: Ryan@lotusecigs.com

Property Owner Name: Cameron S-Sixteen Retail
Home Number: (208) 477-2831
Street Address: 225 N 9th st, 83702
City: Boise
State: Idaho
Zip code: 83702
Mobile Number: (208) 850-7450
Email: Ben@campurllc.com

Applicant’s interest in property: ( ) Own (X) Rent ( ) Other

ADDRESS OF SUBJECT PROPERTY: 5842 E. Franklin Rd, Nampa Idaho 83687

Please provide the following REQUIRED DOCUMENTATION to complete the CUP
☑ A copy of one of the following: Warranty Deed Proof Of Option Earnest Money Agreement
☑ A sketch drawing of the site & any adjacent property affected, showing all existing & proposed
locations of streets, easements, property lines, uses, structures, driveways, pedestrian walks, off-street
parking & off-street loading facilities and landscaped areas, preliminary or final building plans & building
elevations, together with any other information considered pertinent to the determination of this matter.
☑ Signed & Notarized Affidavit of Legal Interest (attached). Form must be completed by the legal
owner (If owner is a corporation, submit a copy of the Articles of Incorporation or other evidence to
show that the person signing is an authorized agent)
☑ Original Legal description of property AND a legible WORD formatted document. (Must have for final
recording) Old or illegible title documents will need to be retyped in a WORD formatted document.

Project Description
☑ State (or attach a letter stating) the reason for the proposed Conditional Use Permit:

Vape Store in a GB1 Zone

Dated this 2nd day of May, 2019

Applicant Signature

NOTICE TO APPLICANT

This application will be referred to the Nampa Planning Commission for its consideration. The Planning Commission shall hold
a public hearing on the application and it shall be granted or denied. Notice of public hearing must be published in the Idaho Press-
Tribune 15 days prior to said hearing. Notice shall also be mailed on the premises not less than 1 week prior to the hearing. Hearing
notices will also be mailed to property owners or purchasers of record within 300 feet of the subject property. You will be given notice
of the public hearing and should be present to answer any questions.

If a Conditional Use Permit is granted by the Planning Commission, it shall not become effective until after an elapsed period of 15
days from the date of Planning Commission action. During this time any interested person may appeal the action to the City Council.
You will be notified of any pending appeals.

If the conditional use permit is denied by the Planning Commission, you may appeal the decision to the City Council within 15 days
from the date such action is taken by the Planning Commission. At the time the Conditional use permit becomes effective you will be
sent a document which constitutes an official "Conditional Use Permit". This document will enumerate the conditions attached to the
issuance of the permit and state the consequences of failure to comply.

OFFICE USE ONLY
FILE NUMBER: CUP - 136 - 2019
PROJECT NAME: Vape Store in GB1 Zone

12/11/13 Revised

05.03.2019
To whom it may concern,

Vape Strong LLC., doing business as Vape, recently submitted application to occupy a commercial unit addressed as 5842 E. Franklin rd, Nampa, Idaho. We have since been informed from Nampa city planning and zoning that a conditional use permit is necessary for us to obtain an occupancy permit. The need for the conditional use permit arises from the arbitrary decision to label our business as a tobacco store. We feel that this decision needs reconsideration because it is inconsistent with the nature of our business and products offered.

A tobacco store or smoke shop would offer, for sale, many items related to smoking tobacco. Pre-rolled tobacco cigarettes, bulk tobacco, cigars, and smokeless tobacco such as chew are items that make up the greatest volume of sales in tobacco stores. Additionally, they sell many products that are used in the practice of smoking. Such as lighters, matches, tobacco pipes, and other smoking accessories. As a vapor store, none of these items are offered for sale in our store. We do not believe that there is any commonality between the products sold in our stores vs the products sold in smoke shops aside from the smoke shops that do sell vapor products. As there is no definition for a tobacco store in the planning and zoning handbook, we are confused about the label of tobacco store being applied to us.

There are many companies in the immediate vicinity to our proposed unit that sell vapor products. This indicates to us that there is a need for our use to be permitted to the zone. Vape would be the fifth company at that intersection of the GB1 zone that sells vapor products. Our company prides itself on the level of professionalism, level of knowledge, and variety of vapor products. Allowing our use in the proposed unit would benefit the citizens of Nampa in the area by allowing them a more convenient option and a more diverse offering of products. Our permitted use would additionally benefit the local businesses in the area. We are a growing company of 20 locations focused mainly in Southwestern Idaho. We have an excellent brand reputation that consumers seek out, bringing more traffic to the area for local businesses. We maintain high standards in our stores and with our employees.

After reading through definitions of permitted uses in a GB1 zone, I was unable to find a definition for our proposed use as a vapor store. I also could not find the definition for a tobacco store to justify the label that was given to us. I recognize that there are many uses that are left undefined, but some of these other undefined uses seem to be more in line with our nature of business and products sold. A novelty store, a drug store, an electronic store, or even a hobby store.

In summary, we operate an extremely well-run company that has a strong focus on customer service. We add value to areas where we open stores and are compatible with many other current businesses in the area. Our store is ready to open as soon as we are given approval. Shelves are stocked, and employees are hired. Therefore, we are submitting for reconsideration of our use and be permitted occupancy. We are ready to proceed with submitting for a conditional use permit but hope that we can open our doors in the interim. If there are any questions or possible solutions, we are eager to help.

Thank you

Ryan Muckenthaler
General Manager, Vape
5842 E. Franklin Rd.

Conditional Use Permit for a Vape Store in a GB1 (Gateway Business 1) Zone

Visit Planning & Zoning at cityofnampa.us for more info.

CUP-00136-2019

5/8/2019

For identification purposes only

subject area
buffer - 325 ft

zoning parcels

0 30 60 90 120 Feet

E. Franklin Rd.

GB1

Idaho Center Blvd

CWI Micron Center

5842 E. Franklin Rd.
Legal Description for 5840 E. Franklin Road

A portion of Lot 8 in Block 1 of The Idaho Center, as shown on the official plat thereof on file in the office of the Canyon County Recorder in Book 23 of Plats at Page 40, more particularly described as follows:

Commencing at the Southeast corner of said Lot 8 in Block 1 and running North 89°22'45" West 300.77 feet along the Southerly boundary of said Lot 8 to the Point of Beginning; thence continuing North 89°22'45" West 163.06 feet along said Southerly boundary of Lot 8 to a point; thence North 86°34'30" West 79.26 feet along said Southerly boundary of Lot 8 to a point; thence North 0°37'15" East 196.90 feet to a point; thence South 89°22'45" East 242.22 feet to a point; thence South 0°37'15" West 200.78 feet to the Point of Beginning.
Date: May 20, 2019

Rev:

To: Planning and Zoning
Cc: Caleb LaClair, P. E., Assistant City Engineer Development
Cc: Daniel Badger, P.E., City Engineer
Cc: Tom Points, P. E., Nampa City Public Works Director

From: Jim Brooks – Engineering Division

Subject: Vape Store in a GB-1 Zoning District

Applicant: Vape Strong, LLC., DBA - Vape

Applicant Address: 5118 Nor. Sawyer Avenue, Boise, Idaho 83714

Owner: Cameron S-Sixteen

Owner Address: 225 Nor. 9th Street, Boise, Idaho 83702

Parcel Address: 5842 E. Franklin Road, Nampa, Idaho 83687

CUP-00136-2019 for the May 28, 2019 Planning & Zoning Commission Meeting

The Engineering Division does not oppose granting of this Conditional Use Permit.