

**PLANNING AND ZONING COMMISSION ACTION ITEM
STAFF SUMMARY
JULY 1, 2020 PLANNING AND ZONING COMMISSION MEETING**

DATE: June 26, 2020

AGENDA ITEM NUMBER: 5

ACTION TO BE CONSIDERED:

Consideration of Resolution No. PZ 09-20, Series of 2020. (PUBLIC HEARING)

**A RESOLUTION APPROVING A LEVEL III DEVELOPMENT
APPLICATION FOR A CONDITIONAL USE PERMIT FOR A
WHOLESALE TRADE CLASS 1 BUSINESS AT 124 MAIN STREET.**

TOPIC:

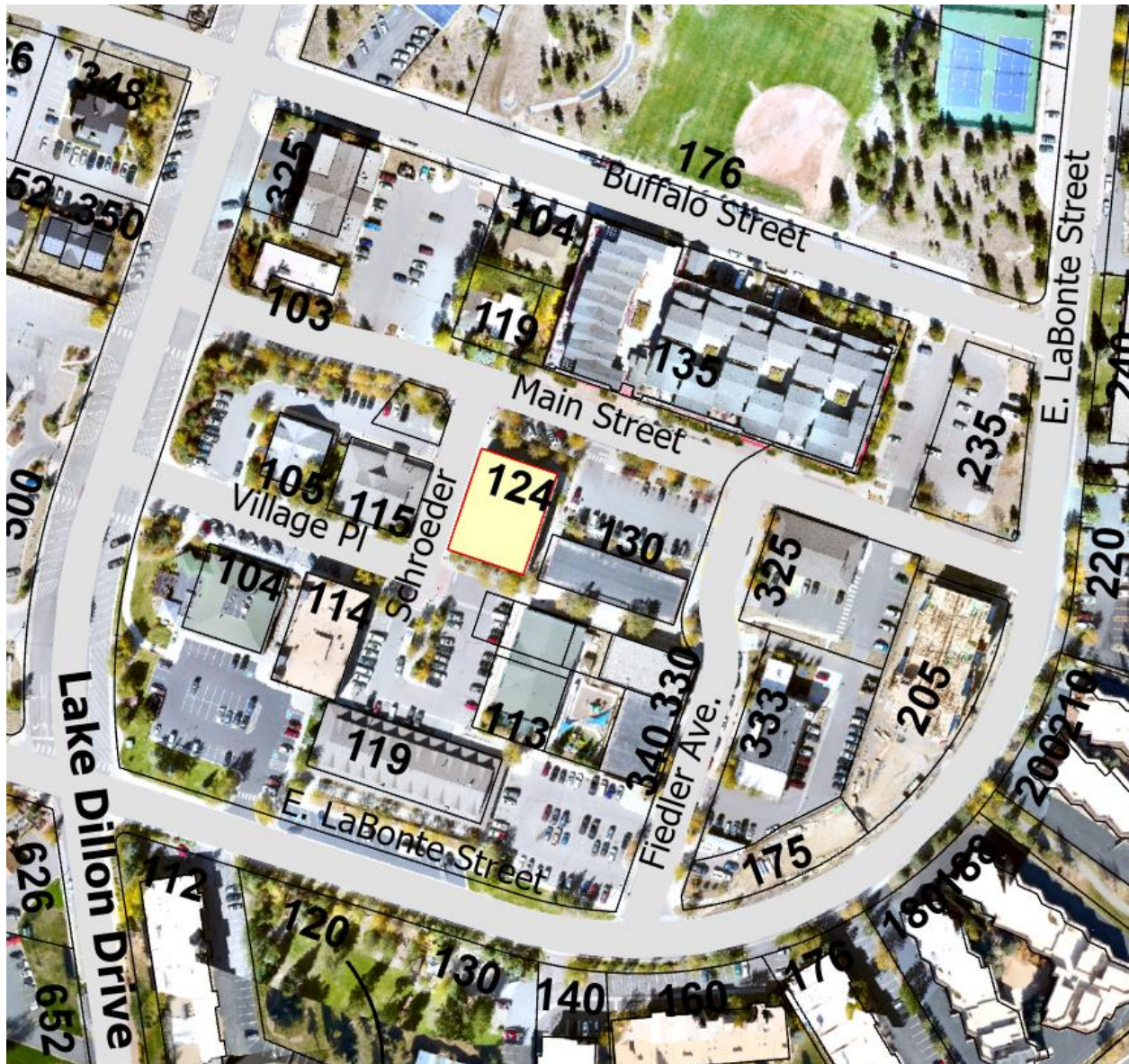
The Town has received a Level III Development Permit Application for a Conditional Use Permit for a Wholesale Trade Class 1 business license located at 124 Main Street, more specifically described as Lot A, Block M, New Town of Dillon Subdivision. The Applicant is Breck Booch LLC (Phil Gordon, Owner), a Kombucha (fermented tea) manufacturer. The Dillon Municipal Code requires a Conditional Use Permit for a Wholesale Trade Class 1 business in the Core Area zone district.

BACKGROUND / TIME FRAME:

- April – June 2020: Coordinate with Applicant for Wholesale Trade Class 1 Conditional Use Permit Application
- June 5, 2020: Application submittal for Conditional Use Permit

PUBLIC NOTICE:

Level III Applications require a public hearing before the Planning and Zoning Commission. The Town posted signs of the Public Hearing on site on Thursday, June 18th, 2020. A newspaper ad ran in the Summit Daily (Journal) on Friday, June 19th, 2020 and a mailing noticing the public hearing time and date was sent out on Friday, June 19th, 2020 to property owners within 300' of the Application. Notices were also placed in the Town of Dillon public posting locations. These dates and notification distribution are all within the required 7-day minimum and 14-day maximum notice period required by the Dillon Municipal Code (the “Code”).



124 Main Street Building Vicinity

CODE ANALYSIS & THE APPLICATION:

Zoning District: The Application is located in the Core Area (CA) zone district. Wholesale Trade Class 1 establishments are listed as a Conditional Use in the Core Area zone district (Sec. 16-3-150). A conditional use is an activity generally similar to other uses permitted within a zoning district, which, because of the manner in which the proposed use could be developed, may not be appropriate in all situations or may require the imposition of special conditions to ensure compatibility with existing and potential land uses within the vicinity (Sec. 16-5-200).

Code Definition of Wholesale Trade Class 1: shall be limited to brewpubs, artisan's workshops, artisan's studios and those wholesale trade establishments which manufacture, repair or assemble apparel, furniture, home furnishings, skis, snowboards, kayaks, canoes, sails, tents, backpacks,

sleeping bags and other nonmotorized recreational equipment for indoor or outdoor use. This class shall also include wholesale trade establishments which produce ingestible items, such as food, beverages and alcoholic beverages. Allowable uses as production of ingestible items would include bakeries, confectioners and catering.

Application Narrative:

Breck Booch Kombucha Manufacturer Business Narrative:

The space I have for this business consists of two adjoining spaces of a little over 400 square feet each. In Suite 204 is my desk and office space at the entrance. The room next to that is the fermentation room. In this room I have a bunch of large carboys filled with tea fermenting. The room is temperature and light controlled. Suite 203 is the production and storage room. Here I have a walk-in fridge with taps. I have a large 3 compartment sink. I have a cooking station for boiling tea. The process is I boil tea and fill carboys in the production room. Then they sit in the fermentation room for 8 days. Then flavor and cbd is added and then tea is transferred to a keg in the fridge. Then the keg is carbonated for a day and stored in the fridge until ready for delivery. I have a delivery truck that I will be using personally. I can load this truck from a parking space. I will allow customers to come fill their growlers directly from my taps in the brewery. That is the only retail use I have for this space and I think it will be minimum. Focus is on wholesaling kegs to bars. Kombucha produces trace amounts of alcohol. The product is under the limit of .5 percent alcohol by volume, making it a non-alcoholic drink.

Phil Gordon, Owner

REVIEW AND FINDINGS BY PLANNING AND ZONING COMMISSION:

Review Criteria:

Section 16-5-220 of the Dillon Municipal Code provides the following review criteria for a Conditional Use Permit application with the *Applicant responses in italics*. For the complete Code section on Conditional Uses, please see Appendix ‘A’ of this staff summary.

1. The use is listed as an allowed conditional use within the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the Comprehensive Plan and applicable zoning district.
Wholesale Trade Class 1 is listed as a Conditional Use in the Core Area zone district.
2. The parcel is suitable for the proposed conditional use, considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.
The site is developed with an existing three (3) story building constructed in 1973 and this criterion does not specifically apply to the Application.
3. The proposed conditional use will not have significant adverse impacts on the air or water quality of the community.

This criterion is not anticipated to apply to this application. Should the brewing and mild fermentation of tea cause any perceptible odors, the Applicant has a contingency plan for the installation of an exhaust system which has already been approved by the property owner according to the Applicant.

4. The proposed conditional use will not substantially limit, impair or preclude the use of surrounding properties for the uses permitted in the applicable zoning district.

This criterion is not anticipated to apply to this application. The use is similar to other such wholesale trade activity in the Core Area zone district and is not anticipated to impact uses permitted in the Core Area zone district. The Wholesale business will also offer limited retail sales on site which are consistent with the zone district and other neighboring uses.

5. Adequate public utilities and services are available or will be made available to the site prior to the establishment of the conditional use.

The existing site is already served by gas, electric, water, and sanitary sewer facilities. The use for the business is not anticipated to negatively impact utilities serving the building. A review of the water and sewer tap fees for the building indicate that the proposed use is consistent with previously assessed tap fees for the building and no additional tap fees are due for the Application.

6. If located on an adjoining lot, the following additional criteria shall be met: the conditional use is parking or storage uses accessory to a primary single-family use.

This criterion does not apply to the Application.

7. If the conditional use is for wholesale trade class 1 or wholesale trade class 2, the following additional criteria shall be met:

- a. The proposed conditional use will not produce any noise or vibration issues that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.

The business will have a small walk in cooler which will emit a mild hum a few hours a day. This is not anticipated to have significant impacts on the community or tenants in the multi-tenant building.

- b. The proposed conditional use will not produce any smells, odors or noxious fumes that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building. The proposed conditional use shall meet all applicable code requirements for ventilation and fire protection.

The brewing of tea should not generate smells that will have significant impacts on the community or neighboring tenant spaces in the multi-tenant building. A contingency plan is in place should an exhaust system become necessary.

- c. The proposed conditional use will not produce any storage, loading or delivery activities related to the storage, loading or delivery of finished products or raw materials that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.

The Applicant has one (1) delivery truck which is planned to take deliveries from the production facility at 124 Main Street once a day for distribution to local food and beverage service sites. The loading activities are planned for

available parking spaces offered to businesses in the Core Area zone district; there will be no established loading zone. The storage, loading and delivery activities are not anticipated to have significant impacts on the community or neighboring tenants.

d. The proposed conditional use will not cause its employees and vendors to occupy parking spaces intended for retail businesses within two hundred (200) feet of the business.

The Applicant plans to have only one (1) employee at the site at any given time. Parking will be as provided for in the Core Area zone district as open to first come first serve occupancy, until such time that said parking owned by the Town of Dillon takes a new form or is otherwise regulated.

Decision:

If the proposed development is in compliance with Town Code and Town goals and policies, the Planning and Zoning Commission may approve the application. In addition, the Planning and Zoning Commission may attach conditions which are reasonable and necessary and relate to impacts created by the proposal.

If the proposed development is not in compliance with Town Code and Town goals and policies, the Planning and Zoning Commission may deny the application.

The Planning and Zoning Commission may also continue the hearing for up to thirty-five (35) calendar days for good cause, or to allow additional information and materials to be submitted that will allow for a comprehensive review. In no event may the Planning and Zoning Commission continue a hearing for more than thirty-five (35) days unless agreed to in writing by the applicant. In the event a hearing is continued, the applicant shall submit any additional materials he or she wishes the Town to consider at least ten (10) days prior to the continued hearing, unless otherwise specified by the Town.

Deferral to Town Council. Depending on the nature of the application, the Planning and Zoning Commission may have the option to defer the application to Town Council for their review and action.

BUDGET IMPACT: None

MOTION FOR APPROVAL:

I move we approve Resolution PZ No. 09-20, Series of 2020 with conditions as presented.

ACTION REQUESTED: Motion, Second, Roll Call Vote.

Resolutions require the affirmative vote of a majority of the members present.

DEPARTMENT HEAD RESPONSIBLE: Scott O'Brien, Public Works Director

Appendix 'A' Dillon Municipal Code Excerpts

Division 3 - Conditional Uses

Sec. 16-5-200. - Purpose.

A conditional use is an activity generally similar to other uses permitted within a zoning district, which, because of the manner in which the proposed use could be developed, may not be appropriate in all situations or may require the imposition of special conditions to ensure compatibility with existing and potential land uses within the vicinity. In some instances, conditional uses may be referred to in this Chapter as a *special review*. In those instances, the *special review* shall mean a conditional use, and shall be treated as such hereunder.

(Ord. 04-08 §8)

Sec. 16-5-210. - Authorization.

Authorization. Uses listed as conditional uses within any zoning district may be approved by the Town if the procedures found within Article II, Division 2 of this Chapter are followed and if findings are made by the Town that the criteria contained in this Division have been satisfied. Conditional uses shall be established and maintained in accordance with the applicable development standards within the zoning district in which the use is located, and any conditions imposed as part of the approval.

(Ord. 10-00 §2)

Sec. 16-5-220. - Conditional use criteria.

The following criteria, in addition to other applicable criteria in this Chapter, shall be used to review and decide conditional use permit applications.

- (1) The use is listed as a conditional use within the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the Comprehensive Plan and applicable zoning district.
- (2) The parcel is suitable for the proposed conditional use, considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.
- (3) The proposed conditional use will not have significant adverse impacts on the air or water quality of the community.
- (4) The proposed conditional use will not substantially limit, impair or preclude the use of surrounding properties for the uses permitted in the applicable zoning district.
- (5) Adequate public utilities and services are available or will be made available to the site prior to the establishment of the conditional use.
- (6) If the conditional use is parking or storage uses accessory to a primary single-family use and located on an adjoining lot, the following additional criteria shall be met:
 - a. Parking shall not be allowed in any setback of the vacant lot.
 - b. There is no predetermined limit to the number of vehicles allowed on the vacant lot, but the Planning and Zoning Commission, using the perceived capacity as appropriate for the neighborhood, shall determine a maximum number of vehicles.

- c. If more than two (2) vehicles are parked on the vacant lot, they shall be fully screened in accordance with Section 16-7-30.
 - d. No commercial vehicles are allowed to be parked or stored on the vacant lot.
- (7) If the conditional use is for wholesale trade class 1 or wholesale trade class 2, the following additional criteria shall be met:
- a. The proposed conditional use will not produce any noise or vibration issues that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.
 - b. The proposed conditional use will not produce any smells, odors or noxious fumes that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building. The proposed conditional use shall meet all applicable code requirements for ventilation and fire protection.
 - c. The proposed conditional use will not produce any storage, loading or delivery activities related to the storage, loading or delivery of finished products or raw materials that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.
 - d. The proposed conditional use will not cause its employees and vendors to occupy parking spaces intended for retail businesses within two hundred (200) feet of the business.

(Ord. 10-00 §2; Ord. 05-04 §6; Ord. 05-13 §7)

Sec. 16-5-230. - Authorization of conditions.

When deemed necessary to ensure that the use meets the criteria for approval, conditions addressing the following, or related, matters may be imposed:

- (1) Size, height and location of buildings and accessory structures.
- (2) Landscaping when necessary to provide screening from incompatible adjacent uses or from public rights-of-way.
- (3) Retention of existing trees and vegetation for buffering purposes.
- (4) Size, location, screening, drainage and surfacing of driveways, parking and loading areas and street access.
- (5) Size, height, location and materials for the construction of fences to screen the subject property from incompatible adjacent uses or from public rights-of-way.
- (6) Location and intensity of outdoor lighting.
- (7) Hours of operation or conduct of particular activities.
- (8) Abatement, mitigation or prevention of nuisances.
- (9) Availability and improvement of urban services, including street improvements, dedication of street right-of-way, traffic signs and signals, sewer, storm drainage, water and turnouts and shelters for mass transportation, provided that the condition applies

only to the subject property or public right-of-way or easement abutting the subject property, or impacted by the subject property.

- (10) Conditions may be imposed that require that all or part of the proposed development or use be deferred until certain events occur, such as the availability to the subject property of certain levels of service required to meet Town standards and provide for the health, safety and/or welfare of the community.
- (11) Conditions may be imposed that require that any and all conditions imposed under this Section be recorded in the deed of records with the County Clerk and Recorder.

(Ord. 10-00 §2)

Sec. 16-5-240. - Limits on conditions.

The following limits and requirements apply to conditions imposed pursuant to this Division:

- (1) Conditions shall be clear and objective; shall be reasonably related to the public health, safety and welfare; and shall be designed to reasonably effectuate their intended purpose.
- (2) If the dedication of street right-of-way or street improvements are required as provided in this Division, the provision of the dedication, improvements or funding of such shall be deferred until a building permit is obtained.

(Ord. 10-00 §2)

Sec. 16-5-250. - Transfer of conditional use permit.

Unless otherwise provided in the final decision granting the conditional use permit, any conditional use permit granted pursuant to this Chapter shall run with the land, and shall automatically transfer to any new owner or occupant subject to all conditions of approval.

(Ord. 10-00 §2)

Sec. 16-5-260. - Duration of permit.

Development permits issued for conditional uses shall be valid for the duration as set forth in Section 16-1-110 of this Chapter.

(Ord. 10-00 §2)

RESOLUTION NO. PZ 09-20
Series of 2020

A RESOLUTION APPROVING A LEVEL III DEVELOPMENT APPLICATION FOR A CONDITIONAL USE PERMIT FOR A WHOLESALE TRADE CLASS 1 BUSINESS AT 124 MAIN STREET.

WHEREAS, the Planning and Zoning Commission of the Town of Dillon (“Planning Commission”) has received a Level III Development Application from Breck Booch LLC (the “Applicant”) for a Conditional Use Permit for a Wholesale Trade Class 1 business at 124 Main Street, Lot A, Block M, New Town of Dillon Subdivision, Dillon, Colorado (the “Application”); and

WHEREAS, the Dillon Municipal Code requires a Conditional Use Permit for a Wholesale Trade Class 1 business to operate in the Core Area zone district; and

WHEREAS, following the required notice, a public hearing was held on July 1, 2020, before the Planning Commission on the Application; and

WHEREAS, following the public hearing the Planning Commission has made certain findings of fact regarding the Application and has determined that certain conditions which are reasonable and necessary to and relate to impacts created by the proposed development should attach to the approval of the thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF DILLON, COLORADO, AS FOLLOWS:

Section 1. That the Planning and Zoning Commission of the Town of Dillon (“Planning Commission”), following the required notice, held a public hearing on July 1, 2020, on the application for a Level III Development Conditional Use Permit from Breck Booch LLC (the “Applicant”) for a Wholesale Trade Class 1 business in the multi-tenant building located at 124 Main Street in the Core Area zone district, Dillon, Colorado (the “Application”), and following said public hearing makes the following findings of fact:

- A. That the Application is complete.
- B. That the Application is for a Wholesale Trade Class 1 business to brew and ferment tea. The Applicant will brew, ferment, flavor and keg the Kambucha for limited on site retail sales for filling growlers for carry-out and for wholesale trade delivery to businesses serving the product.
- C. That the Application complies with the specific requirements of Section 16-5-220 “Conditional use criteria” of the Town of Dillon Municipal Code (the “Code”), as detailed as follows:

1. The use is listed as an allowed conditional use within the zone, or is otherwise identified as a conditional use and is consistent with the intent and purpose of the Comprehensive Plan and applicable zoning district.

Wholesale Trade Class 1 is listed as a Conditional Use in the Core Area zone district.

2. The parcel is suitable for the proposed conditional use, considering such factors as size, shape, location, topography, soils, slope stability, drainage and natural features.

The site is developed with an existing three (3) story building constructed in 1973 and this criterion does not specifically apply to the Application.

3. The proposed conditional use will not have significant adverse impacts on the air or water quality of the community.

This criterion is not anticipated to apply to this application. Should the brewing and mild fermentation of tea cause any perceptible odors, the Applicant has a contingency plan for the installation of an exhaust system which has already been approved by the property owner according to the Applicant.

4. The proposed conditional use will not substantially limit, impair or preclude the use of surrounding properties for the uses permitted in the applicable zoning district.

This criterion is not anticipated to apply to this application. The use is similar to other such wholesale trade activity in the Core Area zone district and is not anticipated to impact uses permitted in the Core Area zone district. The Wholesale business will also offer limited retail sales on site which are consistent with the zone district and other neighboring uses.

5. Adequate public utilities and services are available or will be made available to the site prior to the establishment of the conditional use.

The existing site is already served by gas, electric, water, and sanitary sewer facilities. The use for the business is not anticipated to negatively impact utilities serving the building. A review of the water and sewer tap fees for the building indicate that the proposed use is consistent with previously assessed tap fees for the building and no additional tap fees are due for the Application.

6. If located on an adjoining lot, the following additional criteria shall be met: the conditional use is parking or storage uses accessory to a primary single-family use.

This criterion does not apply to the Application.

7. If the conditional use is for wholesale trade class 1 or wholesale trade class 2, the following additional criteria shall be met:

a. The proposed conditional use will not produce any noise or vibration issues that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.

The business will have a small walk in cooler which will emit a mild hum a few hours a day. This is not anticipated to have significant impacts on the community or tenants in the multi-tenant building.

b. The proposed conditional use will not produce any smells, odors or noxious fumes that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building. The proposed conditional use shall meet all applicable code requirements for ventilation and fire protection.

The brewing of tea should not generate smells that will have significant impacts on the community or neighboring tenant spaces in the multi-tenant building. A contingency plan is in place should an exhaust system become necessary.

c. The proposed conditional use will not produce any storage, loading or delivery activities related to the storage, loading or delivery of finished products or raw materials that have significant adverse impacts on the community and the neighboring property owners and tenants in a multi-tenant building.

The Applicant has one (1) delivery truck which is planned to take deliveries from the production facility at 124 Main Street once a day for distribution to local food and beverage service sites. The loading activities are planned for available parking spaces offered to businesses in the Core Area zone district; there will be no established loading zone. The storage, loading and delivery activities are not anticipated to have significant impacts on the community or neighboring tenants.

d. The proposed conditional use will not cause its employees and vendors to occupy parking spaces intended for retail businesses within two hundred (200) feet of the business.

The Applicant plans to have only one (1) employee at the site at any given time. Parking will be as provided for in the Core Area zone district as open to first come first serve occupancy, until such time that said parking owned by the Town of Dillon takes a new form or is otherwise regulated.

Section 3. That the Planning and Zoning Commission of the Town of Dillon does hereby approve the Application with the following conditions:

1. The Applicant shall maintain a current Business License with the Town of Dillon on an annual basis.
2. The Applicant shall obtain property owner approval and then submit a sign permit application to the Town of Dillon for any signage proposed, whether temporary or permanent. The signage shall conform to the Master Sign Plan approved for the building and the sign regulations set forth in the Dillon Municipal Code.
3. Should the Town Manager determine that the business emanates odors perceived to be offensive to the community or neighboring tenants, then the Applicant shall install a suitable exhaust system capable of mitigating the odor.
4. Loading operations shall not cause negative impacts on the community or neighboring tenants nor impede motor vehicle or pedestrian movements and shall take place in a parking place in the Core Area zone district, and not on a sidewalk or plaza in the Core Area or other area not designated as parking. Should the Town of Dillon's Core Area parking pool available parking or regulations change, the Applicant shall be subject to those changes and regulations.
5. Should the retail sales expand such that onsite consumption takes place, chairs and tables are provided for retail customers, or if the weekly production of fermented tea exceeds seven-hundred and fifty (750) gallons per week, the Town shall re-evaluate the water and sewer tap fees associated with the Application, and the Applicant shall be responsible for paying any additional fees assessed in accordance with the Town Code.

APPROVED AND ADOPTED THIS 1ST DAY OF JULY, 2020 BY THE PLANNING AND ZONING COMMISSION OF THE TOWN OF DILLON, COLORADO.

**PLANNING AND ZONING COMMISSION,
TOWN OF DILLON**

By: _____
Teresa England, Chairperson

ATTEST:

By: _____
Michelle Haynes, Secretary to the Commission