
**MINUTES OF SPECIAL MEETING
BOARD OF ZONING APPEALS
January 17, 2018, 6:00 P.M.
Neighborhood Empowerment Center - 600 W. Maple Street**

I. ROLL CALL

The meeting was called to order by Chairperson Marcie Alling at 6:37 p.m. Roll call was taken.

Present: M. Alling J. Quick J. Hovey J. Leaming

Absent: K. Litwiller M. Rice

Staff: S. Stachowiak H. Sumner B. Jackson D. Biehler

A quorum of at least four members was present, allowing voting action to be taken at the meeting.

Mr. Hovey made a motion, seconded by Mr. Quick to grant an excused absence for Ms. Litwiller. On a voice vote, the motion carried unanimously (4-0).

II APPROVAL OF AGENDA

It was moved by Mr. Hovey, seconded by Mr. Leaming to approve the agenda as printed. On a voice vote, the motion carried 4-0.

III. HEARINGS/ACTION - None

IV. NEW BUSINESS

Ms. Stachowiak stated that the City recently adopted an ordinance regulating medical marijuana facilities. She said that with regard to dispensaries, the ordinance requires that they be separated by 500 feet from churches, child care centers, substance abuse treatment facilities, playground equipment in a park and from another dispensary. Ms. Stachowiak said that the dispensaries must be separated by 1000 feet from a school. She said that the distances are measured from the nearest edge of the dispensary building to the center line of the street, along the street centerline, then to the nearest edge of the building containing the church, school, etc. Ms. Stachowiak said that the ordinance authorizes the BZA to grant variances from these requirements based on certain criteria which is different from the criteria that the BZA would normally use to consider variances. She said that the standard that the BZA applies to dimensional variances is whether there is something unique about the subject property, such as irregular shape or uneven topography that makes strict application of the ordinance standard impractical or unreasonably difficult. Ms. Stachowiak said that Assistant City Attorney, Heather Sumner is present to review the criteria that the BZA will use to evaluate variances from the medical marijuana ordinance. She said that Deputy Clerk, Brian Jackson and Deb Biehler from the City Clerk's Office are also present.

Assistant City Attorney, Heather Sumner, provided the Board with the information pertaining to variances, including a list of the criteria used to evaluate variance requests from the medical marijuana ordinance. She said that there are 6 criteria in the ordinance and the Board must consider all of them in determining whether or not to grant a variance. She also said that the Board can decide how much weight to apply to each of the 6 criteria.

Ms. Sumner said that the first criterion is "The amount of time, if any, that the applicant has been operating in compliance with this chapter at the present location." Ms. Sumner said that if it is an existing facility, the Board would have to consider whether there have been any problems associated with the facility and if it was established legally to the extent that it could be prior to the adoption of the ordinance. The second criterion is "The extent to which the applicant has demonstrated a commitment

to the land use and public nuisance concerns in the surrounding neighborhood.” Ms. Sumner said that the Board would consider, if there have been any concerns with the existing facility, how the applicant responded to those concerns.

Mr. Hovey asked if “public nuisance” is defined in the ordinance.

Ms. Sumner said that it is not defined in the medical marijuana ordinance but is defined elsewhere in the City’s codified ordinances. She said that she will provide that information to Ms. Stachowiak so that she can pass it along to the Board. Ms. Sumner said that just because someone is annoyed or does not like the facility that does not make it a public nuisance. Ms. Sumner said that if someone operates without the required license, that would constitute a public nuisance. She said that at this time, none of the facilities in the City have a license and the City is not taking any enforcement action against those who have applied for licenses.

Ms. Sumner said that the third criterion is “The distance between the applicant’s location and any medical marijuana provisioning center that is within 500 feet of the applicant’s location.” Ms. Sumner said that 87 applications for dispensary licenses have been received and of them, 20 will be approved. She said that when the 20 are initially selected, there may be instances where some of them are within 500 feet of each other and the Board may receive variance requests to the 500 foot separation requirement.

Mr. Hovey asked who is responsible for doing the measurements.

Ms. Stachowiak said that she is responsible for evaluating the license applications to ensure that the locations comply with all of the separation requirements in the ordinance. She said that she can do most of them on her GIS system. There are only a few that are too close to call and will need to be field measured.

Ms. Sumner said that the 4th criterion is “The need for a provisioning center at the location in order to provide the safe and efficient access to medical marijuana within the City.”

Mr. Leaming asked about the number of licenses that will be approved.

Brian Jackson, Deputy City Clerk, stated that 87 applications for dispensaries have been received. He said that the City is in the process of reviewing the applications to determine if they comply with the minimum standards such as being zoned properly, compliance with the separation requirements, no felony convictions by anyone associated with the business and no taxes or other fees owing to the City. He said that this step will take another week or 2 to complete. The second step will be to rank the applications to get it down to the top 20. Those will undergo a more extensive review including being vetted by an expert in the industry. If some of the top 20 are within 500 feet of each other, the BZA may be asked to approve variances to the separation requirement.

Ms. Stachowiak asked if the BZA should be considering the 2 variance applications that have already been received.

Mr. Jackson said that they can be reviewed. Ms. Sumner agreed.

Mr. Leaming stated that it would seem to be premature to grant a variance for an application that hasn’t been approved and may not even make the top 20.

Ms. Stachowiak said that the way she was looking at it is that the variance clears the way for the application to be considered.

Ms. Sumner said that the last 2 criteria are “The character of the structure and its surroundings” and “The impact of the variance on the character of the structure’s surroundings and owners of other properties in the vicinity.” Ms. Sumner said that these last 2 criteria are subjective and the Board can determine how much weight to give them in making its decision. She said that these criteria were put

in the ordinance at the behest of the neighborhood groups. Ms. Sumner said that the Board could consider how well the applicant has maintained the building and the site as well as its compliance with the sign ordinance and other city ordinances as well.

Mr. Hovey said that the applicants may have been reluctant to invest much money into a building or site, not knowing if they are going to be able to permanently operate at the location.

Deb Biehler, City Clerk's Office, stated that as part of the license application, the applicant has to submit a plan for the building and the site that shows the improvements to be made. The Board would be provided with a copy of the plan to consider as part of its deliberations.

Mr. Leaming said that the subjective nature of some of the criteria could make it difficult to defend any lawsuits that may result from denial of a variance or license application.

Ms. Sumner said that if a license is denied, the applicant can appeal the denial to the City's Medical Marijuana Commission and an appeal of the Commission's decision would have to be through Circuit Court. She said that some of the applications will be disqualified in the first round of reviews that is taking place right now for felony convictions, zoning issues or unpaid taxes/fees.

Ms. Stachowiak said that she has only disqualified 3 or 4 of them for not meeting the zoning requirements.

Ms. Biehler asked Ms. Stachowiak to provide the Clerk's Office with a list of the ones that she has denied.

Mr. Hovey asked if the sign ordinance addresses business signs.

Ms. Sumner said that the ordinance does not address signs but that state law prohibits advertising for grow facilities.

Ms. Stachowiak thanked Ms. Sumner, Mr. Jackson and Ms. Biehler for attending the meeting and provided very valuable information.

V. **OLD BUSINESS** - None

VI. **PUBLIC COMMENT** - None

VII. **APPROVAL OF MINUTES**

Minutes of special meeting held on October 19, 2017

Mr. Quick made a motion, seconded by Mr. Leaming to approve the minutes from the October 17, 2017 meeting, as printed. On a voice vote (4-0), the motion carried unanimously.

VIII. **NEW BUSINESS** – None

IX. **ADJOURNMENT AT 7:26 P.M.**

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator