

**MINUTES OF SPECIAL MEETING  
 BOARD OF ZONING APPEALS  
 February 27, 2018, 6:30 P.M.  
 Neighborhood Empowerment Center - 600 W. Maple Street**

**I. ROLL CALL**

The meeting was called to order by Chairperson Marcie Alling at 7:18 p.m. Roll call was taken.

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

**Absent:** K. Litwiller M. Rice

**Staff:** S. Stachowiak

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

**II APPROVAL OF AGENDA**

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

**III. HEARINGS/ACTION**

**A. BZA-4034.18, 4929 S. Cedar Street**

Ms. Stachowiak stated that this is a request by RODA Investments, LLC/Tru Releaf Collective to establish a medical marijuana dispensary at 4929 S. Cedar Street. Section 1300.13(A)(2) of City Ordinance 1217 prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment or rehabilitation facility. The medical marijuana dispensary at 4929 S. Cedar is located approximately 340 feet from a substance abuse treatment/rehabilitation facility at 4902 S. Cedar Street. A variance to the required separation distance between the 2 facilities is therefore, being requested.

Ms. Stachowiak stated that Section 1300.13 of Ordinance No. 1217, which regulates medical marijuana facilities, requires a 500 foot separation between medical marijuana provisioning centers and churches, child care centers, playground equipment in a park and substance abuse treatment facilities. She said that the distances are measured from nearest edge of building to nearest edge of building, along the centerline of the street as depicted on the diagram that was included in the meeting packet. Ms. Stachowiak said that Section 1300.18 of the Ordinance authorizes the Board of Zoning Appeals to grant variances from the separation distance requirements, based on the criteria listed in this Section to be used in evaluating such requests.

Ms. Stachowiak stated that she is recommending approval of the variance based a finding that the request is consistent with the applicable evaluation criteria, as detailed in the staff report that was provided in the meeting packet.

Ms. Stachowiak said that the following letters were received with regard to this request:

- \* Nancy Mahlow, 430 N. Fairview, in opposition to the variance
- \* Tim & Cyndi Terwilliger, 101 W. Syringa, in opposition to the variance
- \* Jim & Elaine Jackinchuk, 106 E. Syringa, in opposition to the variance
- \* Anonymous letter in support of the variance
- \* Jeremy Garza, 2<sup>nd</sup> Ward Council Member, in opposition to the variance
- \* Rachelle White on behalf of the Southwest Action Group in opposition to the variance

- \* Jan Patrick 328 E. Syringa, in opposition to the variance
- \* Elaine Womboldt, 4815 Tressa Drive, on behalf of Rejuvenating South Lansing, in opposition to the variance
- \* Darrell Slaughter, no address given, on behalf of the Old Everett Neighborhood Association, requesting a postponement of the BZA's decision on the variance
- \* Rhonda Fuller, 6527 Hilliard Road, in opposition to the variance
- \* Kathleen Miles, 1128 Woodbine, in opposition to the variance
- \* Alice Florida, 4011 Alpha, in opposition to the variance
- \* Elizabeth Lane, 503 S. Dexter, in opposition to the variance
- \* Gwen & Larry Counseller, 307 Cloverland, in opposition to the variance
- \* Rachelle White, 2227 W. Holmes Road, in opposition to the variance
- \* Noel Harshmann, no address given, in opposition to the variance
- \* Laurie Ruiz, no address given, in opposition to the variance
- \* Vicki Bellon, 3218 Stabler, in opposition to the variance
- \* Robert Tetzlaff, no address given, in opposition to the variance
- \* Marilyn Ebaugh, 2201 Pamela Place, in opposition to the variance
- \* Damita J. Walker, 3216 Jerree Street, in opposition to the variance
- \* Debra Smith, no address given, in opposition to the variance

Ms. Alling opened the public hearing.

**Jonathon Brown, Grewal Law, PLLC, on behalf of the RODA Investments, LLC & Tru ReLeaf Collective**, spoke in support of the request. He stated that the request complies with all of the criteria set forth in Ordinance No. 1217 for evaluating variances and asked that the variance be approved. Mr. Brown said that the applicant has been operating a dispensary at 4929 S. Cedar Street since 2015 with zero complaints and zero violations. He said that the applicant desires to provide safe and efficient access to those members of the community that utilize medical marijuana.

**Ronnie Somo, RODA Investments, 4929 S. Cedar Street**, spoke in support of his request. He stated that there is only 1 dispensary within 2 blocks of 4929 S. Cedar and it opened up after the moratorium was in effect. Mr. Somo said that most of the dispensaries on S. Cedar will be shut down for noncompliance with the City's licensing application requirements.

Mr. Leaming questioned whether the applicant would be able to pursue this matter in court as it would not meet the standard of ripeness. He said that even if the variance is approved, there is no guarantee that the applicant will be one of the 20 applicants that will ultimately be issued a license from the City. Mr. Leaming said that you cannot argue that you lost out on something that has not even been decided upon yet.

Ms. Stachowiak stated that the City Clerk's Office cannot even consider the applicant's license application unless the variance is approved.

Mr. Leaming asked the applicant if he is proposing any improvements to the building or site.

Mr. Brown stated that the building and site are already in good shape and in compliance with all codes and ordinances so no changes are proposed.

Mr. Leaming said that several letters of objection have been received. He asked if the applicant has done any community outreach.

Mr. Somo said that they have not done any formal outreach as they were not aware that there were any issues relative to the dispensary that needed to be addressed with the community.

**Mary Fuhrman, 119 E. Syringa Drive**, spoke in opposition to the request. She said that she is the neighborhood watch coordinator for the area in which the subject property is located. Ms. Fuhrman said that with so many applications that comply with the criteria for separation

between dispensaries and other uses such as substance abuse treatment facilities, why authorize a variance for one that does not meet that requirement. She said that Victory Clinical Services has been at its location for about 10 years and the applicant knew that it was there when he moved in. She also said that there are already numerous other dispensaries on S. Cedar Street.

**Jeff Fuhrman, 119 E. Syringa Drive**, spoke in opposition to the variance. He stated that with so many dispensaries on S. Cedar Street, the City needs to start eliminating them rather than authorizing variances to allow them in conflict with the ordinance provisions. Mr. Fuhrman said that the dispensaries are devaluing property values and asked if the Board members if they would want to live in an area that has a proliferation of dispensaries.

**Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing**, spoke in opposition to the variance. She said that she heard that a lot of people, including Victory Clinical Services, were not notified of the rescheduled public hearing for this evening. Ms. Womboldt said that the notice that went out was misleading in that it said that the request was to establish a medical marijuana dispensary at 4929 S. Cedar Street, when in fact it is already in operation. She said that there is a dispute as to whether marijuana has any medicinal value but to place a medical marijuana dispensary within 500 feet of a substance abuse treatment facility is a disgrace and is a detriment to the recovery of those individuals who are in treatment. Ms. Womboldt said that there are 3 members of the current City Council that voted against the ordinance that is currently in effect. She said that there are more than enough dispensaries in Lansing to serve the patients in Lansing that utilize it.

**Jan Patrick, 328 E. Syringa Drive**, spoke in opposition to the request. She said that she received a postcard for the first public hearing but not for the second one. Ms. Patrick said that the members of the Old Everett Neighborhood Organization have not had enough time to meet and discuss the variance. She said that there are already too many dispensaries in the area including one within very close proximity to the subject property. Ms. Patrick asked that the variance be denied.

**Mike Redding, 3522 Karen**, spoke in opposition to the variance. He said that the rules were put in place for a reason and should not be varied just because someone makes a request to do so.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. Leaming stated that there have been a lot of comments about the dispensaries going in long after the substance abuse facilities were in operation. He said that until the ordinance was adopted in 2017, the applicants could not know what would ultimately be the requirements for separation, if any, between dispensaries and other facilities such as substance abuse treatment clinics. Mr. Leaming said that the criteria set forth in the ordinance for evaluating these types of variances is very subjective and thus, puts the BZA in a difficult position of determining whether to a request should be approved.

Mr. Hovey stated that criterion number 4 (the need for a provisioning center at the location in order to provide the safe and efficient access to medical marijuana with the City) cannot possibly be determined because the locations that will be issued licenses to operate a dispensary have not been determined. Until that is determined, there is no way of knowing if the location being considered for a variance is necessary to provide safe and efficient access to medical marijuana. Mr. Hovey said that the City should determine the top 20 applications and if the ones that are requesting a variance are in the top 20, then the BZA can more accurately determine if they meet the ordinance criteria for issuance of a variance. He said that since the Board needs to decide on the variance before that occurs, he is leaning towards approving the variance as it complies with the criteria to the extent that the Board can make that determination at this time.

Ms. Alling said that she is also leaning towards approval as both facilities seem to have a very good track record of running their establishments, at least in terms of not violating city codes and ordinances since they have been in operation. She said that the staff has not been made aware of any complaints relative to either of the applicant's facilities. She said that with regard to 4929 S. Cedar Street, it is separated from Victory Clinical Services by a 5 lane road that is probably the busiest road in the City. Ms. Alling said that the ordinance criteria is very subjective but the requests, nevertheless, seem to comply with the criteria and denying the variance would make the applicants ineligible for consideration in obtaining a license when they otherwise, may be one of the 20 applications that would get approved by the City.

Mr. Quick stated that a lot of the concerns that have been expressed are not things that the BZA can consider in making its decision such as whether marijuana has medicinal value. He said that the Board has received a number of letters in opposition, but there are a lot of people and businesses in the areas surrounding these request that have remained silent on the issue.

Mr. Leaming said that he is leaning towards denial of the variances as there has been a lot of opposition, particularly in regard to the variance request for 4929 S. Cedar Street. He said that this would indicate that criterion number 6 (the impact of the variance on the character of the structure's surroundings and owners of other properties in the vicinity) has not been satisfied. . Mr. Leaming said that there are several other dispensaries in close proximity to 4929 S. Cedar. Mr. Leaming said that until the City decides which of those locations will be issued a license, it cannot be determined if the applicant's location is necessary to provide "safe and efficient" access to medical marijuana which is one of the criteria that the BZA must consider in making its decision on the variance.

Mr. Hovey stated that he is reluctantly going to vote in favor of the variance. He said that his reluctance involves placing the BZA in a position of having to determine whether or not to approve the variance based on criteria that is not very subjective and in some cases, cannot even be applied until it has been determined which of the 80+ applications for dispensary licenses are among the top 20 applications being considered for approval.

**Mr. Leaming made a motion to deny BZA 4034.18 for a variance of 140 feet to the required 500 foot separation between a medical marijuana dispensary at 4929 S. Cedar Street and the substance abuse treatment facility at 4902 S. Cedar Street, on a finding that the variance is not consistent with the 4<sup>th</sup> and 6<sup>th</sup> variance evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217. Motion fails for lack of support.**

**Mr. Hovey made a motion, seconded by Mr. Quick to approve BZA 4034.18 for a variance of 140 feet to the required 500 foot separation between a medical marijuana dispensary at 4929 S. Cedar Street and the substance abuse treatment facility at 4902 S. Cedar Street, on a finding that the variance is consistent with the variance evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217. Mr. Hovey, Mr. Quick and Ms. Alling voted yes. Mr. Leaming voted no.**

Ms. Alling stated that the variance has been approved.

Ms. Stachowiak stated that since there are only 4 members present at this meeting, which is the minimum number needed for a quorum, the City Attorney's Office will need to determine whether the variance is approved since it is a majority of those present rather than a majority of the total Board membership that voted in favor of the variance. She said that she will inform the applicant, in writing, as to whether the variance was approved based on the 3-1 vote.

**B. BZA-4035.18, 1106 N. Larch Street**

Ms. Stachowiak stated that this is a request by Caleb Wilson to permit a medical marijuana dispensary at 1106 N. Larch Street. Section 1300.13(A)(2) of City Ordinance 1217 prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment or rehabilitation

facility. The medical marijuana dispensary at 1106 N. Larch Street is located approximately 444 feet from a substance abuse treatment/rehabilitation facility at 610 E. Grand River Avenue. A variance to the required separation distance between the 2 facilities is therefore, being requested.

Ms. Stachowiak stated that Section 1300.13 of Ordinance No. 1217, which regulates medical marijuana facilities, requires a 500 foot separation between medical marijuana provisioning centers and churches, child care centers, playground equipment in a park and substance abuse treatment facilities. She said that the distances are measured from nearest edge of building to nearest edge of building, along the centerline of the street as depicted on the diagram that was included in the meeting packet. Ms. Stachowiak said that Section 1300.18 of the Ordinance authorizes the Board of Zoning Appeals to grant variances from the separation distance requirements, based on the criteria listed in this Section to be used in evaluating such requests.

Ms. Stachowiak stated that she is recommending approval of the variance based a finding that the request is consistent with the applicable evaluation criteria, as detailed in the staff report that was provided in the meeting packet.

Ms. Stachowiak said that the following letters were received with regard to this request:

- \* Nancy Mahlow, 430 N. Fairview, in opposition to the variance
- \* Brenda L. Rayle, on behalf of Reality Counseling Services, 610 E. Grand River Avenue, in opposition to the variance

Ms. Alling opened the public hearing.

**Caleb Wilson, Kola, 1106 N. Larch Street**, spoke in support of his request. He said that Ms. Stachowiak received a phone call from the director of the Old Town Main Street Commercial Association in support of his request. He said that he has been an active member of the Old Town community including helping to sponsor several festivals. Mr. Wilson said that he has reached out to the community and attempted to reach out to Reality Counselling Services but was unable to get a response from them. He said that he has been in operation at 1106 N. Larch Street since prior to the moratorium and has applied for a license through the City Clerk's Office but cannot be considered for the license unless the variance is approved. Mr. Wilson said that Reality Counselling Services is not an active member of the Old Town area. He also said that he has had some of Reality Counselling Services patients become his patients as there is a molecule in medical marijuana that can assist with overcoming opioid addiction.

**Dave Nakfoor, Reality Counselling Services, 610 E. Grand River (Cesar Chavez)**, spoke in opposition to the variance. He said that he has been at 610 E. Grand River for more than 20 years and he has been doing substance abuse counselling for 30 years. Mr. Nakfoor stated that if his customers are leaving his establishment and going to the dispensary, that is a good reason in and of itself for denying the variance. He said that if his patients "drop dirty" when they go for testing, they could end up in jail. Mr. Nakfoor said that Mr. Wilson did not reach out to him until he needed the variance. He also said that he has experienced problems with the smell emanating from Kola and from customers of that establishment smoking marijuana in his parking lot.

**Jonathon Brown, Grewal Law, PLLC, on behalf of the RODA Investments, LLC & Tru ReLeaf Collective**, stated that people cannot get medical marijuana without having a card authorizing them to do so.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

**Mr. Hovey made a motion, seconded by Mr. Quick to approve BZA 4035.18 for a variance of 56 feet to the required 500 foot separation between the medical marijuana dispensary at 1106 N. Larch Street and the substance abuse treatment facility at 610 E.**

**Grand River Avenue, on a finding that the variance is consistent with the variance evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217. Mr. Hovey, Mr. Quick and Ms. Alling voted yes. Mr. Leaming voted no.**

Ms. Stachowiak stated that, as with the previous variance request, she will notify the applicant in writing as to whether the variance was approved, based on the 3-1 vote.

IV. **NEW BUSINESS** - None

V. **OLD BUSINESS** - None

VI. **PUBLIC COMMENT**

**Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing**, expressed concerns about how the outcome of this meeting will affect future applications for dispensaries that do not comply with the ordinance in terms of the separation requirements.

**Mark Fuhrman, 119 E. Syringa Drive**, stated that he objects to Ms. Stachowiak speaking in favor of the variance requests. He also expressed concerns about authorizing variances when there are enough license applications to choose from that comply with the ordinance requirements.

**Mary Fuhrman, 119 E. Syringa**, stated that Ms. Stachowiak should not be encouraging the Board to vote in favor of the variances.

VII. **APPROVAL OF MINUTES**

**Minutes of special meeting held on January 17, 2018**

**Mr. Hovey made a motion, seconded by Mr. Leaming to approve the minutes from the special meeting held on January 17, 2018 meeting, as printed. On a voice vote (4-0), the motion carried unanimously.**

VIII. **NEW BUSINESS** – None

IX. **ADJOURNMENT AT 8:39 P.M.**

Respectfully Submitted,

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Susan Stachowiak, Zoning Administrator