

**MINUTES OF REGULAR MEETING
BOARD OF ZONING APPEALS
November 8, 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 6:30 p.m. Roll call was taken.

Present: M. Alling, M. Rice, C. Iannuzzi, K. Berryman & M. Solak

Absent: J. Hovey, J. Leaming & W. Sanford

Staff: S. Stachowiak, H. Sumner

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

II APPROVAL OF AGENDA

It was moved by Mr. Rice, seconded by Mr. Berryman to approve the agenda with the addition of "excused absences" under New Business. On a voice vote, the motion carried 5-0.

III. PUBLIC COMMENT

IV. ACTION

A. BZA-4045.18, South side of the 600 Block of E. Michigan Avenue, Variance to the wall sign and projecting sign limitations

Ms. Stachowiak stated that this is a request for variances to permit the following signs on the proposed mixed-use building that will be located on the south side of the 600 Block of E. Michigan Avenue:

5 projecting signs (perpendicular to the building wall):

- * One 48 square foot projecting sign at the northeast corner of the building advertising the hotel
- * Three 32 square foot projecting signs and one 13 square foot projecting sign advertising the grocery store

Section 1442.24(d) of the Sign Ordinance permits one projecting sign for each business establishment and limits the size to 16 square feet. The applicant is requesting variances of 3 to the allowable number of projecting signs for the grocery store, 32 square feet to the allowable size for the hotel projecting sign and 16 square feet to the allowable size for 3 of the grocery store projecting signs.

21 wall signs totaling 3,360 square feet in area.

- * 16 wall signs for the grocery store totaling 2,660 square feet in area
- * 2 wall signs for the hotel totaling 357 square feet in area
- * 3 wall signs for the apartments totaling 343 square feet in area

Section 1442.24(b) permits one wall sign on each wall for each ground floor business establishments. The total allowable wall sign area for each ground floor establishment is 200 square feet. Wall signs must be placed at a maximum height of 15 feet on the wall.

Ms. Stachowiak stated that the applicant is requesting the following variances:

- * 13 to the allowable number of wall signs and 2,460 square feet to the allowable sign area for the grocery store
- * 157 square feet to the allowable sign area for the hotel
- * 1 to the allowable number of wall signs and 143 square feet to the allowable sign area for the apartments
- * 16 wall signs above a height of 15 feet in various locations on the building walls, as depicted on the plan sheet labeled SGN 02, dated October 15, 2018.

Ms. Stachowiak stated that staff is recommending approval of the request, based on a finding that the variances are consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application.

Ms. Stachowiak stated that the proposed signs will not be contrary to the appropriate and orderly development of the area in which the subject property is located. She said that although the number of variances seems excessive, the signage will be properly scaled for the building, as evidenced by the renderings that are included in the packet. 11 of the wall signs totaling 1,167 square feet in area will be located on the rear/south façade of the building and far enough to the east that most of them will not even be visible to traffic on S. Larch Street. There will only be 4 wall signs on the north elevation of the building along E. Michigan Avenue. While 3 of these signs are among the largest that are being proposed, the signs will cover less than 5% of the total north façade area. Ms. Stachowiak said that the same is true for the proposed signs on the east and west elevations of the building.

Ms. Stachowiak stated that the applicant is severely limited in the amount of signage that is permitted because of the large size of the building, because it is just one building and only contains 3 uses. The majority of the blocks along E. Michigan Avenue are characterized by several buildings/businesses that share common walls but are on separate parcels of land. Each individual building/business is then permitted to have one wall sign (2 wall signs for corner lots) up to 15% of the area of the wall to which it is attached, to a maximum of 200 square feet in area. This standard allows for signage that is more than adequate for the overwhelming majority of the buildings/businesses along E. Michigan Avenue. The same signage regulations that apply to the smaller buildings along E. Michigan Avenue, however, also apply to the applicant's property. Each of the 3 occupants of the building is limited to one wall sign, not exceeding 200 square feet in area. Ms. Stachowiak said that given the size of the proposed building, 200 square feet for each occupant is completely inadequate and would not allow for signage that is proportionate to the size of the building, particularly in comparison to the amount of signage permitted for other, much smaller buildings along E. Michigan Avenue.

Ms. Alling opened the public hearing.

Pat Gillespie, 600 E. Michigan-Lansing, LLC, 330 Marshall Street, spoke in support of his request. He stated that the City has waited for years to get a grocery store and another hotel in the downtown. Mr. Gillespie said that Meijer is locating in downtown Grand Rapids, Detroit and Columbus, Ohio and needed variances from their sign code as well. He said that sign codes just do not allow for adequate signage for a major retailer in a downtown setting.

Marc Criss, Lansing Rescue Mission, 607 E. Michigan Avenue, expressed his support for the project. Mr. Criss said that while the amount of signage seems excessive, it will be tasteful as evidenced by the renderings. He said that he came to the meeting to learn about the project and to make it clear that Pat Gillespie has not threatened him in any way.

Mr. Gillespie said that Meijer is very philanthropic and given its location, the Rescue Mission would be a likely recipient of its excess food and possibly other items as well.

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

Ms. Alling asked about the new billboard that will be located on the building.

Ms. Stachowiak said that the new billboard does not need a variance as it merely replaces the billboard that has been located on the site for many years. She said that the billboard company has a lease that is still in effect. Ms. Stachowiak said that the billboard complies with all requirements of the sign ordinance and has been approved by the City.

Jason Kildea, 600 E. Michigan-Lansing, LLC, 330 Marshall Street, stated that the new billboard has been approved by MDOT as well.

Mr. Rice said that the reason that the applicant is so limited in the amount of permitted signage is because it is one large building consuming an entire block. He said that if it were several smaller buildings in the same blockface, each one would be permitted a projecting sign and a wall sign up to 15% of the area of the wall to which it would be attached. Mr. Rice said that this would result in far more signage than what the applicant is requesting. He said that the circumstances surrounding this request are sufficiently unique to the project in question to warrant relief from the ordinance.

Mr. Iannuzzi made a motion, seconded by Mr. Solak to approve BZA 4047.18, a request by 600 E. Michigan-Lansing, LLC for variances to Section 1442.24 of the Sign Ordinance for the property located on the south side of the 600 block of E. Michigan Avenue, as follows:

- * **3 to the allowable number of projecting signs for the grocery store/market**
- * **16 square feet to the allowable size for 3 of the grocery store projecting signs.**
- * **32 square feet to the allowable size for the hotel projecting sign**
- * **13 to the allowable number of wall signs and 2,460 square feet to the allowable sign area for the grocery store/market**
- * **157 square feet to the allowable sign area for the hotel**
- * **1 to the allowable number of wall signs and 143 square feet to the allowable sign area for the apartments**
- * **16 wall signs above a height of 15 feet in various locations on the building walls, as depicted on the plan sheet labeled SGN 02, dated October 15, 2018,**

on a finding that the variances are consistent with the practical difficulty criteria of Section 1244.06 (c) and the impact criteria of Section 1244.06 (e), as detailed in the staff report for this application. On a roll call vote, the motion carried (5-0).

Ms. Stachowiak said that the following communications have been received with regard to the medical marijuana variance requests:

- * Elaine Womboldt, 4815 Tressa Drive, on behalf of Rejuvenating South Lansing, in opposition to the variances
- * Donald Horton, 5747 Richwood Street, Apt. 42, on behalf of Rejuvenating South Lansing, in opposition to the variances
- * Jeremy Garza, 2nd Ward Council Member, in opposition to the variances
- * Carol Wood, At-Large Council Member, in opposition to the variances
- * Adad Hussain, 3rd Ward Council Member, in opposition to the variances
- * Jason Wilkes, President, Averill Woods Neighborhood Association, 3218 Continental Drive, in opposition to the variances
- * Robert McCormack, 10734 Sky Prairie Street, Fishers, Inc., part owner of group redeveloping the former EDS building at 930 W. Holmes Road, in opposition to the variances

- * Marilyn Ebaugh, 2201 Pamela Place, in opposition to the variances
- * Nathan Hartley, 4254 Glenburne Blvd, in opposition to the variances
- * Suzanne Elms-Barclay, 1628 Lindbergh Drive, in opposition to the variances
- * Jordon Leaming, BZA member, in opposition to the variances
- * Letter signed by 8 business owners in the area surrounding the subject properties in support of the variances
- * 142 letters in support of the variances
- * Lawrence Jaramillo, applicant for the 3316 S. MLK variance request asking that the BZA delay taking action on his request to permit time to examine all options (received during the meeting)

B. BZA-4043.18, 3208 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers

Ms. Stachowiak said that this is a request by 3208 MLK, Inc. for a variance to permit a medical marijuana provisioning center at 3208 S. ML King that would be located approximately 360 feet from another proposed provisioning center at 3218 S. ML King. Section 1300.13(A)(2) of City Ordinance 1217 prohibits a medical marijuana dispensary within 500 feet of another medical marijuana dispensary. A variance to the required separation distance between the 2 provisioning centers 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. 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 is 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 requests on a finding that they are consistent with the evaluation criteria set forth in Section 1300.18(3) of Ordinance 1217, as detailed in the staff reports.

Ms. Stachowiak said that the applicant for 3208 S. MLK and the other 3 applicants that have applied for variances scored in the top 20 of the 87 applications that were received for the first 20 provisioning center licenses. If the variances are approved, the applications will remain in consideration for issuance of one of the initial 20 licenses to be approved by the City. If denied, they could all be excluded from any further consideration. In the alternative, 2 of them that are separated by more than 500 feet could still be considered. Ms. Stachowiak said that approval of the variances does not guarantee that any of the applicants will be issued a license.

Ms. Stachowiak said that if all of the requested variances are approved, 4 of the total 25 provisioning centers that will eventually be issued licenses in the City would be located within about 700 feet of each other. She said that the alternative is to spread the facilities out along the corridors. While this would eliminate a concentration of provisioning centers in one particular area, it would result in them being located in more geographic areas of the City, some of which may not be as appropriate and compatible with the surrounding areas as those that are the subject of the current variance requests. Ms. Stachowiak said that some of the benefits to allowing several provisioning centers in the 3200-3300 blocks of S. ML King is that none of them would adjoin any residential uses, the area is already characterized by high impact commercial uses and the transportation system is designed to accommodate the traffic generated by the centers. She said that S. ML King is one of the City's primary commercial corridors where businesses have a high level of exposure to some of the highest traffic volumes in the City. Ms. Stachowiak stated that from a planning standpoint, provisioning centers should be concentrated along major commercial corridors where there is easy access to public transportation and the roadway is designed to accommodate high volumes of traffic.

Mr. Alling asked about the next step in the process to actually issuing the licenses.

Ms. Sumner stated that there are still some appeals pending and until they have been settled, no licenses can be issued. She said that approval of the variances would allow the four applicant's to remain in the running for issuance of a license. Ms. Sumner said that the City is hoping to complete the first round of issuing licenses in December. Once that is finalized, the licensees will be able to obtain approval from the State. She said that City approval does not guarantee State approval but an applicant cannot get State approval without first obtaining approval from the City.

Ms. Alling stated that the Board received an email from one of its members, Jordan Leaming, who was not able to attend the meeting but wanted to express his concerns:

"First, the adopted code does not allow for provisioning centers to be this close to each other. In fact, the way I read the code is that the city envisioned placement of these businesses to be spread out around the city to have access to a wider range of residents in different areas of the city, not create a concentrated mile of dispensaries.

Second, while these businesses may have been selected as being in the "top 20," none of them have a license and as such no standing to pursue a variance.

Granting variances here undermines the entire adopted code as well as any future decision of the Zoning Board.

I regrettably am not able to attend, but feel strongly this is a mistake to grant any variances in the information I reviewed.

I also feel it necessary for the Board to have a meeting with the city attorney's office and city clerk's office to understand how these variances are appearing based on the concerns noted above. Jordan Leaming."

Mr. Iannuzzi said that he agrees with Mr. Leaming. Since no licenses have been issued, the applicants do not have standing to pursue variances and the BZA does not have standing to authorize variances. He said that the BZA has been put in a very difficult position of having to decide on variances when it hasn't even been decided if any of them will be issued licenses for the proposed locations. He also questioned why these locations were selected to be in the top 20 of the applications that were received when they violate the required 500 foot separation provision in the ordinance. Mr. Iannuzzi said that they should all have been denied or two of them that are more than 500 feet apart, based on how they scored, should have been selected and then no variances would have been necessary.

Ms. Sumner said that she disagrees with Mr. Leaming's assessment. She said that when the applicant's applied, they had no way of knowing if there would be another applicant within 500 feet of their site. In this case, 4 of the applicant's that scored in the top 20 happened to be within 500 feet of another applicant and the only way to determine which, if any of them, stay in the running for further consideration is if variances to the 500 foot separation requirement are approved.

Mr. Berryman said that the process is seriously flawed when 4 applicants, all of whom violate the ordinance, scored in the top 20 of the 87 applications that were submitted.

Mr. Iannuzzi said that having 4 provisioning centers right next to each other violates the spirit of the ordinance. He said that the BZA should not be asked to decide whether there should be a concentration of provisioning centers in one area as opposed to spreading them out along the corridors, which was clearly the intent of the ordinance.

Ms. Alling opened the public hearing. She stated that the Board will hear public comment on all 4 of the variance requests at this time rather have a separate public comment period for each case.

Mike Stein, attorney representing the applicant for BZA-4046.18, 3330 S. MLK, stated that all 4 applicants scored in the top 20 of the pool of applicants and are now in a situation where if they are all denied, others who did not score as high will be issued licenses which is also contrary to the intent of the ordinance. Mr. Stein asked that the BZA table the requests to allow the board members more time to consider the issues surrounding the variances.

Mike Morofsky, 1300 Woodbine, spoke in opposition to the variances. He said that the neighborhood has worked hard to improve the S. MLK corridor and allowing 4 dispensaries next to each other will be a hardship on the neighborhood. He also said that the applicants should have been aware that they would be located in such close proximity to each other and selected other locations that would be in compliance with the ordinance.

Kathy Miles, 1128 Woodbine, spoke in opposition to the variances. She said that the ordinance is clear that provisioning centers are to be separated by at least 500 feet in order to prevent clustering. Ms. Miles stated that she is glad that Josh Hovey is not present as he has a conflict of interest and thus, should not be voting on the variances. She questioned Ms. Stachowiak's motivation with regard to her recommendation to approve the variances. Ms. Miles stated that it would not be fair to the neighborhood to approve the variances allowing 4 provisioning centers clustered together and asked that the Board vote no on the requests.

Jon Miles, 1128 Woodbine, spoke in opposition to the variances. He asked if any of the applicants have also applied for grow or processing facility licenses. Mr. Miles said that he is opposed to clustering the provisioning centers.

Ms. Stachowiak stated that she did not know the answer to Mr. Miles' question.

Joshua Weinberg, 22405 Chatsford Circuit Street, Southfield, MI stated that he is the attorney representing the applicant for the 3218 S. MLK variance. He stated that the facility will give back to the City of Lansing. They will be engaging professional athletes and it will be a 1st class facility. Mr. Weinberg said that approval of the variances will result in a clustering of provisioning centers but these types of facilities are unique to the extent that, unlike most retail businesses, they do not compete on the internet for business. He said that the product is stored in such a way that it is odorless. He said that the facility will have no negative impacts on the surrounding area. Mr. Weinberg said that the facilities will bring some economic vitality to the area which is characterized by many vacant buildings and asked that the Board approve the variances.

Mr. Berryman asked Mr. Weinberg if his client owns the building at 3218 S. MLK.

Mr. Weinberg said that they have the property under contract but do not own it at this time. He said that ownership is not a requirement for issuance of a license under the City ordinance.

Donald Horton, 5747 Richwood Street, Apt. 42, representing Rejuvenating South Lansing, spoke in opposition the request. He said that he is opposed to varying the ordinance that was adopted by the City Council. Mr. Horton stated that these applicants should not even be considered for licenses as they violate the separation requirement. He stated that the variances would create a clustering of provisioning centers that would negatively impact the surrounding area, both residents and businesses alike. Mr. Horton asked that the variances be denied.

Anita Beavers, 3010 Boston Blvd., spoke in opposition to the variances. She said that she is a retired nurse and is concerned about the effects that marijuana has on people and how it will be distributed/sold for recreational use. Ms. Beavers said that there has been an uptick in reckless driving since medical marijuana has been permitted.

Claude Beavers, 3010 Boston Blvd., spoke in opposition to the variances. He said that he came here to learn more about what is being requested. Mr. Beavers asked that the Board delay action on the requests until it is determined how recreational use of marijuana will be handled and until something has been done with Logan Square.

Paula Givens, PPI Consulting, 25535 Briar Drive, Oak Park, MI, attorney for 3330 S. MLK applicant, spoke in support of the variances. She said that the medical marijuana provisioning centers will not affect property values. Ms. Givens said that the Board should let the ordinance function the way the City Council intended by putting all of the applicants through the same process and selecting those that scored the highest. She said that denying all of the variances would not be acting in the spirit of the ordinance as it was intended as it will result in licenses being issued to applicants that did not score as high as those that are requesting variances at this time. Ms. Givens said that the provisioning centers will bring much needed economic development to an area that seems to be economically depressed at this time.

Aaron Geyer, 32411 Mound Rd, Warren, MI, Attorney representing the applicant for 3208 S. MLK, spoke in support of the request. Mr. Geyer showed renderings of the proposed \$700,000 worth of improvements to the building and the site that will occur if the variance is approved. He said that his client also owns 1520 E. Cavanaugh Road and has brought a significant amount of investment into the City of Lansing and intends to invest more, should a provisioning center license be issued. Mr. Geyer said that his client has purchased the building at 3208 S. MLK and is dedicated to ensuring that the property is attractive, well-maintained and the business is properly managed. He said that during the time that the center was in operation, there were no complaints or issues of any kind.

Christopher Aiello, 32411 Mound Rd, Warren, MI, Attorney representing the applicant for 3208 S. MLK, spoke in support of the request. He said that his client has another store on S. Cedar, which also scored in the top 20 of the applications that were received. Mr. Aiello said that 3208 S. MLK is a good location for a provisioning center as the transportation system is in place to handle the traffic. He said that they selected the location because it more than complies with the separation requirements from churches, schools, day care centers, etc. and they had no way of knowing there would be other provisioning center applicants within 500 feet when they purchased the property.

Todd Thomann, CHSM Services, LLC, spoke in support of his request for 3316 S. MLK. He said that this is the only one of the facilities of the 4 that are seeking variances that is currently in operation. Mr. Thomann said that the BZA has been put into a tough position of having to pick winners and losers in such a short amount of time. He asked that the Board delay action on the requests to provide more time for the Board members and the applicants to consider the issues. He also stated that, as a business that is currently operating, there are employees that will lose their jobs if they are not issued a license.

Lawrence Jaramillo, CHSM Services, 80 Wind N. Wood Drive, Okemos, MI 48864, submitted a letter to the Board asking that any decisions on the variance requests be postponed until a future meeting.

Mr. Geyer stated that on behalf of all 4 applicants, he is requesting that the variance requests be tabled in order to give them time to consider all of their options.

Mr. Solak expressed concerns about clustering these facilities in one small stretch of S. MLK. He said that requiring a 500 foot separation between facilities seems reasonable and fair. Mr. Solak said that he would not be supportive of any variances to this provision. He also said that he is prepared to vote on the variances at this time.

Mr. Iannuzzi said that the BZA does not have standing to make decisions on these requests when none of them have been issued a license through the City or been approved by the State.

Ms. Alling stated that she is also prepared to vote on the requests. She said that while there are concerns about the ordinance, it is in effect and the BZA has an obligation to make a decision on variance requests to the 500 foot separation requirement. Ms. Alling stated that if the requests are to be tabled, it needs to be for a specific reason and that needs to be communicated to the City staff that are present at this meeting so that they can address it prior to the next meeting.

Mr. Iannuzzi said that he is in favor of tabling the variance requests until the Mayor, City Council and the City Attorney's Office provide more guidance as to how they should be handled and explain how the BZA has standing to even authorize variances from the ordinance standard.

Mr. Iannuzzi made a motion, seconded by Mr. Berryman to table BZA-4043.18, BZA-4044.18, BZA-4045.18 and BZA-4046.18 until the next appropriate meeting. Roll call vote: Yes -Iannuzzi, Berryman & Rice. No - Alling & Solak. Motion carried.

V. OLD BUSINESS - None

VI. APPROVAL OF MINUTES – Regular Meeting, October 11, 2018

Mr. Rice made a motion, seconded by Mr. Berryman to approve the minutes from the regular meeting held on October 11, 2018, as presented. On a roll call vote, the motion carried unanimously (5-0).

VII. NEW BUSINESS

A. Excused Absences

Mr. Solak made a motion, seconded by Mr. Rice to grant excused absences for Mr. Hovey, Mr. Leaming and Mr. Sanford. On a voice vote, the motion carried unanimously (5-0).

B. 2019 Meeting Schedule – was approved by unanimous consent

VIII. PUBLIC COMMENT

VIII. ADJOURNMENT AT 8:46 P.M.

Respectfully Submitted,

Susan Stachowiak, Zoning Administrator