
**MINUTES OF SPECIAL MEETING
BOARD OF ZONING APPEALS
December 3, 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, J. Hovey, C. Iannuzzi, K. Berryman, J. Leaming, M. Solak & W. Sanford

Absent: M. Rice

Staff: S. Stachowiak, J. Smiertka & 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. Hovey, seconded by Mr. Leaming to approve the agenda with the addition of "excused absence" under New Business. On a voice vote, the motion carried 7-0.

III. PUBLIC COMMENT

Kathy Miles, 1128 Woodbine, spoke in opposition to the variances. She said that allowing a concentration of provisioning centers on S. MLK is contrary to the intent of the ordinance and would be unfair to south Lansing.

Mike Morofsky, 1300 Woodbine, spoke in opposition to the variances. He said that the neighborhood organizations have worked hard to improve the area and allowing a clustering of dispensaries on S. MLK would be detrimental to the revitalization of the area in general and Logan Square in particular. He also said that there are two members of the Board that have a conflict of interest with regard to these variance requests.

Marilyn Ebaugh, 2201 Pamela Place, spoke in opposition to the variances. She said that if approved, there would be five dispensaries in one small stretch of S. MLK which would not only be contrary to the intent of the ordinance but would negatively impact properties values in the area.

John Miles, 1128 Woodbine, spoke in opposition to the variances. He said that the applicants are looking for loopholes to get around the ordinance.

Jason Wilkes, 3218 Continental Drive, spoke in opposition to the variances. He said that he is President of the Averill Neighborhood Association and is involved with other neighborhood organizations in the area. Mr. Wilkes stated that the intent of the ordinance is to allow access to medical marijuana but to prevent clustering. He said that two dispensaries would be adequate but 5 is way too many.

Jeremy Garza, 2nd Ward Council Member, spoke in opposition to the variances. He said that these requests should not even be considered since allowing dispensaries within 500 feet of each other would be contrary to the intent of the ordinance. Council Member Garza said that a clustering of dispensaries in the area could impact potential improvements to Logan Square. He said that the BZA and Planning Board are guardians of the Zoning Ordinance and are charged with ensuring that land use patterns make sense and do not have negative impacts on the City.

Enrique Mendoza, 3809 Kendalwood Drive, spoke in opposition to the variances. He said that he is a homeowner in south Lansing and is a supporter of Rejuvenating South Lansing. He also said that allowing a clustering of dispensaries is not fair to south Lansing. Mr. Mendoza asked the Board to deny the variance.

Marilyn Irvine, 5211 Tulip Avenue, spoke in opposition to the variances. She said that the rules were put in place for a reason and they should be upheld. Ms. Irvine said that the area has been neglected and allowing a clustering of dispensaries would not help the situation.

Elaine Womboldt, 4815 Tressa Drive, Facilitator of Rejuvenating South Lansing, spoke in opposition to the variances. She requested that Josh Hovey recuse himself from voting as he has a conflict of interest based on his association with "Regulating Marijuana like Alcohol". Ms. Womboldt said that she obtained a petition containing 59 signatures in opposition to the variances. She said that at the last meeting, a letter was submitted containing 8 signatures from individuals that were incorrectly represented as being area business owners. Ms. Womboldt said that one of them was from an employee of Shaheen Chevrolet but according to Ralph Shaheen, she does not represent his business and in fact, he does not support the variances.

Claude Beavers, 3010 Boston Blvd., spoke in opposition to the variances. He said that he has lived in the Colonial Village neighborhood for 50 years and has two adult children in the area that are also opposed to the variances. He said that there is not good cause to approve the variances and inundating the area with dispensaries would undo efforts to improve the area.

Anita Beavers, 3010 Boston Blvd., spoke in opposition to the variances. She said that she is a past president of the Colonial Village neighborhood association. Ms. Beavers said that the government is still not sure how to handle the laws surrounding marijuana and allowing variances just does not make sense.

Joshua Weinberg, 22405 Chatsford Circuit Street, Southfield, MI stated that he is the attorney representing the applicant for the 3218 S. MLK variance and they are withdrawing their request at this time. Mr. Weinberg said that by doing so, a variance is not required for 3208 S. MLK as it is no longer within 500 feet of another site that is an applicant for a provisioning center license. He provided a written statement withdrawing the variance application for 3218 S. MLK>

Aaron Geyer, 32411 Mound Rd, Warren, MI, Attorney representing the applicant for 3208 S. MLK, stated that a variance for 3208 S. MLK is no longer needed.

Carol Wood, At-Large Council Member, spoke in opposition to the variances. She said that approval of the variances would be detrimental to the businesses in the area and to the surrounding neighborhoods. Council Member Wood said that other businesses can occupy the sites that are the subject of these variances. They do not have to be dispensaries. She asked that the Board deny the variances.

Mike Redding, 3522 Karen Street, spoke in opposition to the variances. He said that other request for similar variances have been denied and so should the requests being considered at this meeting. Mr. Redding said that the area does not need 5 dispensaries right next to each other.

Robert Myers, Historical Society of Michigan, 5815 Executive Drive, spoke in opposition to the variances.

Loretta Stanaway, 546 Armstrong Road, spoke in opposition to the variances. She said that these variances are just a way to circumvent the will of the public. Ms. Stanaway questioned the ethicalness of some of the Board members with regard to voting on issues where they have a conflict of interest. She also said that Ms. Stachowiak should not even be making recommendations to the Board. Ms. Stanaway said that allowing the variances would be contrary to the efforts to improve south Lansing. She also said that about 80% of medical marijuana card holders do not need marijuana for medicinal purposes.

Deborah Clawson, 2404 Wellington Road, spoke in opposition to the variances. She said that there are already dispensaries on S. MLK and allowing more would be detrimental to the area. Ms. Clawson asked that the Board deny the variances.

Jan Fleck, 2300 Hampden Drive, spoke in opposition to the variances. Ms. Fleck said that she is a former school principal and expressed concerns about the impact of the dispensaries on the charter academy behind Logan Square.

Charles Fleck, 2300 Hampden Drive, spoke in opposition to the variances. He said that he is opposed to clustering of dispensaries and it would destroy the area and diminish any hope for revitalizing the Logan Square shopping center.

Adam Hussain, 3rd Ward Council Member, spoke in opposition to the variances. Council member Hussain said that the City Council worked very hard on the ordinance and solicited a great deal of input from the public. He said that one of the primary concerns that was expressed was one area of the City being disproportionately affected by the clustering of dispensaries, particularly in south Lansing, which is why the 500 foot separation requirement was put into the ordinance. Council member Hussain stated that approval of the variances would be an egregious circumvention of the spirit of the ordinance itself and the process that was involved in its development. He also reiterated the comments made by Council member Garza with regard to the BZA and Planning Board being the guardians of the zoning ordinance and the responsibility of its members to fulfill the responsibility to the community with which they have been entrusted. He asked that the Board deny the requested variances.

Ann Morrow-Maynard, 2400 Wellington Road, spoke in opposition to the variances. She said that the variances would result in too many dispensaries within such a small geographic area. Ms. Morrow-Maynard asked the Board to deny the variances.

Bilky Joda-Miller, 6031 Rockingham Drive, spoke in opposition to the variances. She said that there are a lot of efforts to improve the area and allowing a clustering of dispensaries would be contrary to those efforts. Ms. Joda-Miller said that if the Board members think that it is a good idea, they should put them in their neighborhoods.

Jody Washington, 1st Ward Council Member, spoke in opposition to the variances. She said that a group of Council members work very hard on an ordinance to regulate medical marijuana facilities and what was ultimately approved involved last minutes changes that were put forth by some Council members who are not present this evening. Council member Washington said that the applicants for these variances have no right to come into the City of Lansing and make millions off of the backs of its residents. She asked that the variances be denied.

Donald Horton, 5747 Richwood Street, Apt. 42, representing Rejuvenating South Lansing, spoke in opposition the variances. He said that the City has been dealing with medical marijuana and now it will have to deal with recreational marijuana as well. Mr. Horton said that there are neighborhoods in the area and they do not want a clustering of dispensaries. He also said that approval of the variances will set a negative precedent for approving future requests of a similar nature. Mr. Horton asked that the variances be denied.

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 said that the applicants had no way of knowing when they selected their locations that there would be other applicants within 500 feet. He requested that the variance be conditionally approved for a period of 90 days to allow time for the applicant to find another location. Mr. Stein said that his client has provided a good plan and based on the scoring, deserves to be issued a license.

Seeing no one else wishing to speak, Ms. Alling stated that the Board will move into a committee of the whole to deliberate on the variance requests.

IV. ACTION

- A. **BZA-4043.18, 3208 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**
- B. **BZA-4044.18, 3218 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**
- C. **BZA-4045.18, 3316 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**
- D. **BZA-4046.18, 3330 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**

Ms. Stachowiak asked the applicant's attorney for 3208 S. MLK if they are withdrawing their variance request.

Aaron Geyer, 32411 Mound Rd, Warren, MI, Attorney representing the applicant for 3208 S. MLK, stated that a variance is no longer needed.

City Attorney Jim Smiertka stated that unless the request is withdrawn, it is an active request and the Board would need to vote on it.

Mr. Geyer withdrew the variance request for 3208 S. MLK stating that because the request for 3218 S. MLK has been withdrawn, a variance for 3208 S. MLK is no longer necessary.

Mr. Leaming asked Mr. Weinberg if he is withdrawing the license application for 3218 S. MLK as well.

Mr. Weinberg said that they want to seek a new location for the license.

Mr. Leaming questioned how 4 applications made the top 20 when they violate the spacing provision of the ordinance. He said that the BZA did not choose to have these cases come before them. They were selected by the City Clerk's Office as 4 of the top 20 applications.

Mr. Smiertka said that 10 applications have been conditionally approved, pending approval by the State of Michigan and 3316 S. MLK is one of them.

Heather Sumner, Deputy City Attorney said that the 4 locations that are the subject of these variance requests did make the top 20 but even if the variances were to be approved, there is no guarantee that a license would be issued as there are still appeals that need to be settled before the final determinations can be made. Ms. Sumner said that during the application process, the applicants had no way of knowing if someone else would file an application within 500 feet so that cannot be held against them.

Ms. Stachowiak stated that the Board can vote the remaining variances up or down in one motion or can vote on them individually. She pointed out that the circumstances surrounding the 2 remaining variances are exactly the same. She also said that the decision needs to be made based solely on the 6 criteria set forth in the ordinance to be used for evaluating variance requests.

Ms. Sumner provided the Board will sample language that would be appropriate for making a motion both to approve and to deny the variances.

Mr. Leaming said that he is opposed to the variances as they are not consistent with the intent of the ordinance that was adopted. He also said that he does not believe that the BZA even has standing to act on the variances since no licenses have been issued at that time.

Mr. Solak stated that he heard the full presentations by the applicants at the last meeting and for the

record, they have been put into a difficult position. He said that, in fact, the ordinance is not well-written and well thought-out and has put everyone, including City staff and the BZA in a difficult position. Mr. Solak said that there have been some misrepresentations of the facts made at this meeting but the bottom line is that it is a poorly written ordinance and it needs to be changed.

- A. **BZA-4043.18, 3208 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers - WITHDRAWN**
- B. **BZA-4044.18, 3218 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers – WITHDRAWN**
- C. **BZA-4045.18, 3316 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**
- D. **BZA-4046.18, 3330 S. ML King, Variance to the separation requirement between medical marijuana provisioning centers**

The following motion was made by Mr. Solak and seconded by Mr. Leaming:

“Having heard and considered the two pending requests for variance (BZA 4045.18 & BZA 4046.18) pursuant to Chapter 1300, including the amount of time, if any, that the applicant has been operating in compliance with this chapter at the present location; the extent to which the applicant has demonstrated a commitment to the land use and public nuisance concerns in the surrounding neighborhood; the distance between the applicant's location and any medical marijuana provisioning center that is within 500 feet of the applicant's location; the need for a provisioning center at the location in order to provide the safe and efficient access to medical marijuana within the City; 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; I would move that the Board of Zoning Appeals deny the recommendation of the Zoning Administrator to grant the requested variances with respect to BZA 4045.18, 3316 S. ML King & BZA 4046.18, 3330 S. ML King.

On a roll call vote, the motion carried unanimously (7-0). BZA 4045.18 & BZA 4046.18 are denied.

Mr. Berryman said that, in the interest of full disclosure, Ralph Shaheen is a member of a Board that he staffs.

Mr. Leaming agreed with Mr. Solak that the ordinance is very poorly written and has put the Board, staff and the applicants in a very bad position. He said that the ordinance needs to be changed.

Mr. Iannuzzi stated that he takes offense to some of the comments that were made during the meeting with regard to him and Mr. Hovey, City staff and the applicants.

Ms. Alling said that everyone is doing the best that they can with an ordinance that is less than perfect. She said that there are no conflicts of interest and while this whole situation has been unfortunate, attacking one another and making accusations is not helpful.

V. NEW BUSINESS

A. Excused Absence

Mr. Leaming made a motion, seconded by Mr. Solak to grant an excused absence for Mr. Rice. On a voice vote, the motion carried unanimously (7-0).

VI. PUBLIC COMMENT

Council Member Wood stated that the ordinance that was adopted is not the ordinance that the Public Safety Committee spend 18 months working on. She said that another Council member got involved and presented a different ordinance to the Committee of the Whole which was adopted by split vote. Council Member Wood said that she, Jody Washington and Adam Hussain all voted against it. She also said that the licensing process was handled solely by the City Clerk.

Mike Morofsky stated that the Board did the right thing by denying the variances.

Loretta Stanaway stated that her faith in the Board has been restored.

Elaine Womboldt stated that her comments about Mr. Hovey having a conflict of interest was her opinion. She said that the ordinance that was adopted was different from the one that that was worked on by the Committee and the public for more than 18 months.

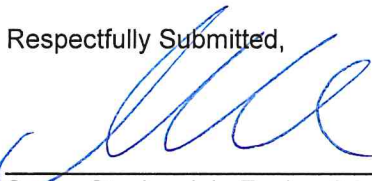
Karl Biasi, 2100 Pattengill Avenue, stated that he has worked well with Ms. Stachowiak in the past and this was an unfortunate situation as a result of the ordinance language.

Council Member Hussain said that he has served the City in many capacities over the years and the ordinance that has been adopted is not what the Public Safety Committee developed but rather what was put forth to the City Council separately and approved by a vote of 5-3 with, Carol Wood and Jody Washington voting no. He said that Council Member Garza was not on the City Council at the time.

Don Horton stated that by denying the variances this evening, the Board avoided setting a negative precedent for future requests to vary the terms of the ordinance.

VII. ADJOURNMENT AT 7:52 P.M.

Respectfully Submitted,



Susan Stachowiak, Zoning Administrator