
**MINUTES OF REGULAR MEETING
BOARD OF ZONING APPEALS
May 10, 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. Quick J. Leaming M. Rice K. Berryman

Absent: J. Hovey K. Litwiller

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. Quick, seconded by Mr. Leaming to approve the agenda as printed. On a voice vote, the motion carried 5-0.

III. PUBLIC COMMENT

John Frazer, Grewal Law, PLLC, on behalf of the RODA Investments, LLC & Tru ReLeaf Collective, spoke in support of the request. He stated that he supplied the Board members with some supplemental information that should be included in the meeting packet. Mr. Frazer said that this is not a referendum on whether medical marijuana should be permitted. The issue is strictly the distance between the applicant's property at 4929 S. Cedar Street and Victory Clinical Services at 4902 S. Cedar Street. Mr. Frazer stated that Victory Clinical Services has not objected to the variance and in fact, there have been a significant number of letters/emails submitted in support of the variance. He said that the request complies with all 6 of the criteria set forth in Ordinance No. 1217 for evaluating variances. Mr. Frazer said that there are 66 applications pending with the City for medical marijuana dispensary licenses. 19 have already been denied. 14 of the 66 are on S. Cedar Street. Mr. Frazer stated that there were originally 20 license applications for locations on S. Cedar Street. 6 of them have been denied and of the 66 total licenses pending, 46 are going to be denied which means that there will be a conservable reduction in the number of dispensaries throughout the City.

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 the variance request does not comply with the 1st and 3rd criterions listed in the ordinance. She said that the McQueen ruling prohibits dispensary medical marijuana from a storefront. Ms. Fuhrman said that Tru ReLeaf knew that they were within 500 feet of a substance abuse treatment facility and decided to located at 4929 S. Cedar anyway, thus creating their own conflict with the ordinance. She said that there is no practical difficulty or unnecessary hardship in this case that would warrant a variance.

Deb Parish, 526 Avon Street, stated that Tru ReLeaf opened illegally and now wants the BZA to grant a variance to make them legal. She said that the ordinance that was technically in effect at the time that Tru ReLeaf went into business at its current location required a 1,000 foot distance between dispensaries and substance abuse treatment facilities. Ms. Parish said that the decided to locate there anyway, knowing that there did not comply with the ordinance. She also said that there is no guarantee that Tru ReLeaf will even be one of the 20 licenses that will rank in the top 20, even if the variance is granted. She asked that the variance be denied.

Jeff Fuhrman, 119 E. Syringa Drive, spoke in opposition to the variance. He said that even with the licenses that have been denied so far, there are still too many of them on S. Cedar Street. Mr. Fuhrman stated that the request does not comply with the criteria that Ms. Stachowiak described in her staff report and therefore, the variance should be denied.

Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing, spoke in opposition to the variance. She said she was present at the February 27th meeting and expressed concerns about the variance at that time. Ms. Womboldt stated that the City Ordinance prohibits medical marijuana dispensaries within 500 feet of a substance abuse treatment facility because allowing them would negatively impact the treatment that the clients are receiving at those facilities. She said that there is another medical marijuana dispensary 300 feet away that does not violate any of the separation requirements set forth in the ordinance. She also said that there are letters of opposition from 3 Councilmembers, Darrel Slaughter of the Old Everett Neighborhood Association, Twin Oaks Condominiums, a petition containing multiple signatures in opposition to the variance and 26 additional emails/letters in opposition to the variance.

Rachel White, 2027 Pleasant View, also representing the Southwest Action Group, spoke in opposition to the variance. She said that she owns a business just 2 blocks away. Ms. White said that there are taxes owing to the City for the property at 4929 S. Cedar Street and the dispensary has been a public nuisance. She said that approving there variance, particularly when it does not comply with the criteria listed in the ordinance for evaluating variances, will set a precedent for future requests to vary the ordinance at other locations.

IV. OLD BUSINESS

A. BZA-4036.18, 6041 S. Pennsylvania Avenue

The public hearing was held at the April 12, 2018 meeting at which there was not a quorum to take action on the request. No comments were received at the public hearing.

Ms. Stachowiak stated that this is a request by Speedway, LLC to construct a new 165 square foot, 29.6 foot high, freestanding sign at 6041 S. Pennsylvania Avenue (Speedway Gas Station) that would have setbacks of 7.3 feet from the front property line along S. Pennsylvania Avenue and 6 feet from the front property line along E. Miller Road. Section 1442.12(h)(5)(b) of the Sign Code requires setbacks of 30 feet for a freestanding sign with this dimensions. Variances of 22.7 feet and 24 feet to the required setbacks are therefore, being requested. Ms. Stachowiak stated that staff is recommending approval of the variance based upon its consistency with the practical difficulty criteria listed in Section 1244.06 (c) of the Zoning Ordinance and the impact criteria of Section 1244.06 (e), as described in the staff report for this request.

Ms. Stachowiak stated that the applicant is in the process of obtaining the necessary approvals to reconstruct the Speedway gas station at the northeast corner of S. Pennsylvania Avenue and E. Miller Road. As part of this project, the applicant would like to replace the existing ground sign with a new ground sign in the same location on the site. Ms. Stachowiak said that the existing sign has been in its current location for many years and has not been disruptive to the appropriate and orderly development of the area; nor has it created any issues with regard to visibility at the street intersection. She said that the practical difficulty involves the inability to construct a ground sign in a location on the site that would be visible to traffic from both directions without interfering with vehicular circulation on the site.

Ms. Stachowiak said that she received supplemental information from Attorney John Frazer representing the applicant for 4929 S. Cedar Street that is included in the packet. She also received a letter and a petition from Elaine Womboldt containing 206 signatures in opposition to variance, 29 letters/emails in opposition to the variance and 41 letter/emails in support of the variance.

Mr. Leaming asked if the new sign will be in the same location as the existing sign and if so, when was the variance for the existing sign granted.

Ms. Stachowiak said that the new sign will be in the same location as the existing sign but the City's records do not go back far enough to determine when the variance was granted for the existing sign. She said that it has been there for decades. She also said that the applicant is permitted 2 ground signs under the ordinance because it is located at the corner of 2 major thoroughfares. She said that the applicant is only proposing the one sign.

Mr. Leaming made a motion, seconded by Mr. Quick to approve BZA 4036.18 for variances of 22.7 feet and 24 feet to the requires setbacks to permit a 29.6 foot high, 165 square foot ground pole sign at 6041 S. Pennsylvania Avenue that would have setbacks of 7.3 feet from the front property line along S. Pennsylvania Avenue and 6 feet from the front property line along E. Miller Road, 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 unanimously (5-0).

B. BZA-4034.18, 4929 S. Cedar Street

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 the BZA held a public hearing and subsequently voted 3-1 to approve BZA-4034.18 at its February 27, 2018 meeting. Following the vote on this matter, it was announced by the Chair that based on the vote, the variance was approved. It was later determined that a majority of the members serving on the board, rather than a majority of those present at the meeting is required to approve a variance. She said that since 4 votes are required to approve a variance, the variance was not approved at the February meeting. Following the meeting, a court order was issued remanding this matter back to the BZA for reconsideration and a revote on the matter,

Heather Sumner, Assistant City Attorney, stated that the court order is to ensure that the decision of the BZA does not violate any provisions of the Open Meetings Act since there was a conflict between what was announced at the February 27, 2018 meeting as to the Board's decision on the variance and what was later determined to be the true outcome. She said that the public hearing requirements have been fulfilled but the Board does need to revote on the matter.

Mr. Leaming stated that there are 2 members present at this meeting that were not at the February meeting. He said that there are 6 factors listed in the ordinance that the Board is to use in determining whether to grant a variance to the separation requirements between medical marijuana dispensaries and various other uses such as churches, child care centers, substance abuse treatment facilities, etc. Mr. Leaming said that in this case, the dispensary is located less than 500 feet from a substance abuse treatment facility. He said that this is a very emotional issue and a lot of the concerns that have been expressed are not things that the BZA can take into consideration when making its decision such as unpaid taxes, enforcement proceedings by the City with regard to medical marijuana facilities and how one feels about medical marijuana facilities in general.

Mr. Leaming said that some of 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. He said that criterion number 4 in particular is impossible to determine since the locations that will be approved by the City for dispensary licenses are not known at this time. Mr. Leaming stated that there is a great deal of opposition to this request and he is not satisfied that the variance complies with the criteria and thus, will be voting no just as he did at the February meeting.

Ms. Alling said that there a lot of issues have been brought up that cannot be considered by the Board in making its decision. She said that the Board must only consider the 6 criteria listed in the Ordinance for evaluating these types of variances. She also said that a decision needs to be made on the variance so that the City knows whether to consider the applicant's request for a dispensary license. If the variance is not approved, the licenses application will be out of consideration for one of the 20 licenses that will ultimately be approved by the City.

Mr. Quick stated that the Board cannot determine if criterion number 4 which is the "need for a provisioning center at the location in order to provide the safe and efficient access to medical marijuana with the City" can be met until such time as the City determines the 20 licenses that will be approved and this one may or may be one of them, regardless of whether the variance is approved or not.

Mr. Berryman said that this is his first meeting and asked if there are any legal concerns with him voting on this matter, not having been at the February meeting when the hearing was held and the first vote was taken.

Mr. Sumner stated that there is nothing legally preventing Mr. Berryman from voting on this matter. She said that he has been provided with all of the information and is may vote on the matter. Ms. Sumner said that the issue the first time was the result of not having enough members serving on the Board.

Ms. Alling said that the criteria traditionally used to evaluate variances do not apply in these cases. She said that the City did a good just of establishing the criteria and she is satisfied that it is met to the degree that it can be at this point and will be voted in favor of the variance just as she did at the February meeting.

Mr. Leaming asked is the only issue that has been called into question from the February meeting was the vote and if the reason that it was sent back to the BZA was to make sure that the variance was considered and voted upon in full compliance with the provisions of the Open Meetings Act.

Ms. Sumner stated that the ordinance regulating medical marijuana went into effect on October 17, 2017. She said that issues occurring prior to that date are not relevant at this time. Ms. Sumner stated that the applicant for this request applied for his dispensary license in accordance with the ordinance requirements for doing so and prior to the deadline for such applications. She said that when the top 20 licenses are selected, if 2 of them are within 500 feet of each other, the applicants for those licenses can seek variances to the 500 foot separation requirement between 2 dispensaries. She said that past practices/issues for medical marijuana dispensaries will be taken into consideration in the overall process of selecting the top 20 applications but are not relevant in determining whether to grant variances. Ms. Sumner said that if the variance for this request is denied, the license application will be denied and thus, not given any further consideration for one of the 20 licenses that will be granted.

Mr. Berryman asked if there have been any complaints against the applicant's dispensary.

Ms. Stachowiak stated that she has not received any complaints.

Ms. Sumner said that there is no record of any complaints since 10/17/17. She also said that the existing facilities that applied for licenses prior to the deadline can continue operating temporarily while their applications are pending. Those that have been denied are required to

cease and desists all operations.

Mr. Leaming said that most of the criteria are difficult if not impossible to determine compliance because everyone is in limbo right now while the determination is being made as to who will be approved for a license. He said that the second, fifth and sixth criterions have some relevance. Mr. Leaming stated that there has been a great deal of input from the public on this matter and most of it is in opposition to the request.

Mr. Rice made a motion, seconded by Mr. Leaming to reconsider 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 roll call vote, the motion was approved (4-1). Mr. Leaming cast the dissenting vote.

Mr. Quick made a motion, seconded by Mr. Rice 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. On a roll call vote, the motion failed (3-2). Mr. Leaming and Mr. Rice cast the dissenting votes.

C. BZA-4035.18, 1106 N. Larch Street

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 the circumstances surrounding this request and the one at 4929 S. Cedar Street are exactly the same with regard to it coming back to the BZA for reconsideration.

Mr. Quick made a motion, seconded by Mr. Leaming to reconsider 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 roll call vote, the motion was approved (4-1). Mr. Leaming cast the dissenting vote.

Mr. Rice 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. On a roll call vote, the motion failed (3-2). Mr. Leaming and Mr. Rice cast the dissenting votes.

V. PUBLIC COMMENT

Elaine Womboldt, 4815 Tressa Drive, Facilitator for Rejuvenating South Lansing, stated that the decisions on the medical marijuana requests were difficult but the Board made the right decision.

Mary Fuhrman, 119 E. Syringa, thanked the Board for its decision on the 4929 S. Cedar variance request.

Marilyn Irvine, 5211 Tulip Avenue, stated that she appreciates the Board's decision to deny the variance at 4929 S. Cedar.

Kat Tyler, 1106 Clark Street, Northtown Neighborhood Association, stated that Northtown is not opposed to the medical marijuana facilities but they need to be regulated and they need to comply with the ordinance requirements.

Deb Parrish, 526 Avon, stated that the Board made the right decision on the medical marijuana cases as it is not a good idea to have such facilities in such close proximity to methadone clinics. She said that the applicant's knew that the clinics were there when the moved in.

VI. APPROVAL OF MINUTES

Minutes of special meeting held on February 27, 2018

Mr. Quick stated that the word "not" needs to be deleted from the third line of the fifth paragraph on page four.

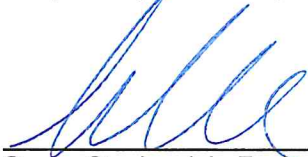
Mr. Leaming made a motion, seconded by Mr. Quick to approve the minutes from the special meeting held on February 27, 2018 meeting, with the change noted by Mr. Quick. On a voice vote (5-0), the motion carried unanimously.

VII. NEW BUSINESS

Mr. Rice made a motion, seconded by Mr. Berryman to approve excused absences for Mr. Hovey & Ms. Litwiller. On a voice vote, the motion carried unanimously (5-0).

VIII. ADJOURNMENT AT 7:33 P.M.

Respectfully Submitted,



Susan Stachowiak, Zoning Administrator