

FLINT ZONING BOARD OF APPEALS
Meeting Minutes
May 19, 2020

Board Members Present

Matthew Telliga, Chair
Jerry Kea, Vice-Chair
John E. Hardy II
Ari McCaskill
Carol-Anne Blower
Lauren Coney
Florlisa Stebbins
Johnetta Ricks

Staff Present

Suzanne Wilcox, Director
Bill Vandercook, Planner I
Keizzy Anpalagan, GIS Technician
Kelly Thompson, Assistant City Attorney

Board Members Not Present

Jacqueline Jordan

ROLL CALL:

Chairperson Telliga called the meeting to order at 6:01 p.m. Roll was taken and a quorum was present. The meeting was held through Zoom meetings

ADOPTION OF THE AGENDA:

M/S –McCaskill/Blower

Motion to adopt the meeting agenda.

Unanimously carried.

APPROVAL OF MINUTES:

The Board reviewed the minutes of 4-21-2020.

M/S – Hardy/ Blower

Motion to approve the minutes of 4-21-2020.

Unanimously carried

PUBLIC FORUM:

No one spoke during the Public Forum.

REPORTS:

None

COMMUNICATIONS:

None

PUBLIC HEARING:

ZBA 20-2236: Green Skies – Healing Trees, LLC requests a Use Variance for Group E Special Regulated Use Permit for Adult-Use Retailer co-located with Medical Provision Center at 3401 Corunna Road (Parcel ID # 40-23-101-010).

Tommy Nafso, General Council presented the request for a Use Variance. Mr. Nafso said they were appealing the decision made by the City of Flint Planning Commission. Mr. Nafso said

they are compliant with numerous facilities in MI and are committed to compliance. Mr. Nafso noted their business reviews are 4.3 – 5.0 at two of their locations. Mr. Nafso said they are coming to the City. Mr. Nafso said this Recreational Adult-Use business was important to the City. Then he said being able to compete without Medical and Adult-Use being able to coexist its harder to compete in the market. Mr. Nafso said being able to operate both is consistent with state law and allows them to continue to be able to continue to operate. Mr. Nafso explained this will allow them to provide additional jobs and to grow.

Mr. Nafso introduced his team including Shamika Beck, Store Manager and Marcus Shula, Director of Operations.

Mr. Nafso said on the basis for denial at the March 10, 2020 Planning Commission Meeting, he asked the Zoning Board of Appeals to overturn and grant the special land-use request. Mr. Nafso explained the reason they were denied was: consistency with master plan, traffic, curb cut on Barney Street (because Barney Street is a residential street), and parking.

Commissioner Telliga noted there were five reasons provided by the Planning Commission. Commissioner Telliga noted the Planning Commission minutes reflect the residential properties being within 300 feet of the facility. Commissioner Blower stated the motion made during the Planning Commission meeting regarding residential proximity was the number one reason for denial. Mr. Nafso said he agreed with Commissioner Blower's statement and would address this matter.

Mr. Nafso noted the Master plan and said there was a reference of them being in the City corridor district and their use was inappropriate for being in the district. Mr. Nafso said their use couldn't be more compatible with the city corridor district. Mr. Nafso pointed out the City Corridor district in general include Flint busiest roads for a range of activities accessible by automobiles and transit. Mr. Nafso explained City corridors leverage the economic potential of traffic and help minimize land-use incompatibilities by containing a variety of uses and manageable areas throughout the city.

Mr. Nafso addressed parking. They have 15 parking spaces. Delivery with COVID is a phenomenon probably here to stay. Currently, we have delivery at this location and have a state license for this. Mr. Nafso said they are fortunate to be deemed an essential business and be able to provide medicine to people who need it. Mr. Nafso said based on the volume traffic they see now they don't anticipate seeing an increase or issue with traffic. Mr. Nafso said there may be a perceived issue with traffic, but the phenomenon of delivery we are seeing will work to alleviate traffic.

Ms. Beck noted they currently see about twenty-five patients a day about three every hour. Ms. Beck said employees park in the back of the building and leave all of the parking spaces up front for patients.

Commissioner Telliga asked what are the hours of operation. Ms. Beck responded 10 am-7 [pm]. Commissioner Kea asked how big is the facility. Ms. Beck said approximately 2400 square feet. Commissioner McCaskill noted for the record the site plan shows 1500 square feet.

Commissioner Kea asked Mr. Nafso what the delivery discussion was regarding. Mr. Nafso explained due to COVID the State put out an order saying you cannot have anyone in the facility. The distinction is we can currently provide curbside and home delivery. Mr. Kea said you are currently discussing medical marijuana facilitation, but your request before the Zoning Board of Appeals is for Adult use retail. Commissioner Kea said what you are talking about is for

a different customer base than what you are requesting. Mr. Kea asked Mr. Nafso if he wanted to add the adult-use activities. Mr. Nafso said correct.

Mr. Nafso said he was explaining the principals about how home delivery will just naturally decrease the amount of interaction at the store to the medical and the adult-use market. Mr. Nafso noted the change in consumer behavior to the preference toward delivery in both medical and adult-use, will alleviate the amount of traffic.

Commissioner McCaskill asked Mr. Nafso if the Adult Use recreational would be in conjunction with your other Flint store. Mr. Nafso said they don't have another location this is currently a medical marijuana facility. Commissioner McCaskill asked Mr. Nafso so you're applying for a variance to operate as. Mr. Nafso explained to be clear there is some confusion on the form which he would take responsibility for, but this is an appeal of the board of the decision of the Planning Commission. Mr. Nafso said he believed it says something to the effect of variance, but effectively this is just an appeal of the decision of the Planning Commission without the need for a variance. Mr. Nafso said we are not looking for a variance in this case.

Commissioner Kea asked the applicant if he is currently operating a medical marijuana facility at this location and wants to add adult-use recreation. Mr. Nafso said correct.

Mr. Nafso discussed fencing in the rear of the building. Mr. Nafso said there is a fence in the back of the building.

Commissioner Blower asked can Mr. Nafso – Green Skies Healing, LLC present information that was not presented to the Planning Commission at their meeting. Commissioners concurred they needed to review the exact materials as the Planning Commission reviewed at their meeting. Ms. Thompson said she didn't think the information needed to be limited to information provided to the Planning Commission, but to keep consistency with past Zoning Board of Appeals meetings it was ok.

Commissioner McCaskill asked Mr. Nafso if you had intentions on adding the visual or fence why isn't it included in your application? Mr. Nafso said the request was forwarded to Mr. Vandercook on April 20.

Mr. Nafso said another location was approved at 400 North Dort Hwy which abuts several residential properties. Mr. Telliga asked medical and recreational. Mr. Nafso said yes. Commissioner McCaskill noted 400 Dort doesn't enter from a residential street it enters from a commercial corridor. Commissioner McCaskill said these are not similar based on the ordinance or visual explanation. Commissioner McCaskill noted the egress from Barney is a residential street. Commissioners discussed ingress and egress with the applicant.

Mr. Nafso said the denial of the Planning Commission violates state law (MCL 333.279565). Commissioner Telliga said that's not what our purview is. Ours is the City ordinance and the same standards as Planning Commission was presented.

Commissioner Telliga asked Ms. Thompson to respond to this issue. Ms. Thompson said the purpose of the Zoning Board of Appeals hearing today was to decide the appeal or review of the Planning Commission under City ordinance standards. Ms. Thompson noted City standard is not a prohibition of recreational licenses. Mr. Nafso said the spirit and intent of the ordinance is grandfathered in for approval based on existing use. Mr. Nafso noted 1) the location does not conflict with the master plan 2) the location and use are compatible and harmonious with City corridor district 3) we have complied with the conditions and met the intent of the ordinance 4) another marijuana retailer was approved close to residential 5) the egress across from Barney

is a commercial establishment which does not affect the use and enjoyment of the area. Mr. Nafso asked the Zoning Board of Appeals to overturn the Planning Commissions' decision and grant the Special use approval.

Ms. Thompson discussed, the scope of review on appeal within the Municipal League Zoning Board of Appeals Handbook. Then stated "there's a paragraph here that says the ZBA should not treat the appeal as a new decision. Rather review of the decision should be limited to the information that was available to the body or person who made the decision initially, allowing testimony or evidence, in addition to that previously submitted is inappropriate unless the zoning ordinance directs otherwise".

Commissioner Telliga noted new information presented was the fence. Then asked if the state ordinance was presented to the Planning Commission at their meeting. Mr. Nafso said no it was not. Mr. Vandercook stated he did not believe the applicant brought up 400 Dort Hwy during the Planning Commission meeting. Mr. Nafso asked due to Dort Hwy being a part of public record and we are at an appellate hearing that it should not be struck from the record.

Jacqueline McDonald, 8 Ward spoke in opposition.

Kristin Owen, 8 Ward spoke in opposition.

Chandra 43:29 Ward spoke in favor

Dorian Jackson 2722 spoke in favor

Marlon Lindsey spoke in favor

Commissioner Telliga asked staff to read the letter received for ZBA 20-2236

Ms. Wilcox read letters sent in from Dion Boosie, Samuel Cox. Adam Watkins, Harrison Lee, Dwayne Harrington, Brandy Cook, Kevin Wilbon, Annetta Wilbon. Marlin Lindsay, Tiffany Harris, Janice Dixon, Esre Pleasant, Egypt Otis, Cynthia Pleasant, Shantelle Willbourne, Sandra Weston, and Dorian Jackson, Curtis Dixon, and Janice Dixon. These individuals all sent in the same letter of support for Green Skis Healing Tree, LLC.

Curtis Dixon wrote in support

Ms. Wilcox read a letter from Betty Smith who wrote in opposition of the marihuana business

Michael Danic wrote in opposition

Tammy Perillo wrote in opposition

Sandra Hodges wrote in opposition

Julie Broadbent Ph.D. wrote in opposition

Robert Bonaus wrote in opposition

David Barofsky wrote in opposition

Kristen Owen wrote in opposition

Krista Dannic wrote in opposition

Gil Hendrix wrote in opposition

George Hamo wrote in opposition

Sandra Jones wrote in opposition

Julie Taylor wrote in opposition

Clara Wiley wrote in opposition

Betty Sanae wrote in opposition

Linda Olsen wrote in opposition

Adam and Sandra Armstrong wrote in opposition

Carolyn Mo Paul wrote in opposition

Kathy Baker wrote in opposition

Lauren Ingram wrote in opposition

Paul Ingram wrote in opposition

Elizabeth Ingram wrote in opposition

Michelle Ingram wrote in opposition

Chet Hagen wrote in opposition

Councilman Allan Griggs spoke and said he supported his constituents in Ward 8 in opposing recreational marihuana

Mr. Nafso noted there were references in the letters we don't want this location, want them to be somewhere else and there are enough of these kinds of locations. Mr. Nafso explained this is not a new location and crime has not increased. He said they take pride in their commitment to compliance and security and follow strenuous standards. Mr. Nafso said the property was zoned for the use within the spirit and intent of Flint's ordinance and master plan. Mr. Nafso said the tax revenue to cities from retail stores is 15 % and tax revenue has been phased out for medical for cities.

Mr. Nafso said the spirit and intent of grandfathering should have been followed by the Planning Commission. He said they were asking the Zoning Board of Appeals to overturn the decision of the Planning Commission based on the spirit of the ordinance. Mr. Nafso discussed home values near Marihuana businesses and other research (security, crime, public health) relating to marihuana businesses.

Mr. Nafso said they expect a 25 % increase in business from Recreational sales which makes a difference. Mr. noted there were statements made in fear, but research support this is not an issue and will increase home value. Mr. Nafso wanted to note their letters of support came from

the immediate neighbors and he knew several of the letter read were not from the neighborhood.

Commissioner Keas asked if this can be remanded back to Planning Commission as information was presented to the Zoning Board of Appeals and not the Planning Commission. Commissioner Blower said the Planning Commission had decided, so that would be a rehearing and that is not allowed at the Planning Commission.

Mr. Nafso asked the Board to recess so he could see if there was a motion for reconsideration to go before the Planning Commission. Commissioner Blower said a reconsideration would have to be brought up by the Planning Commissioner who opposed and no one opposed; it was a unanimous decision.

Commissioner Telliga asked Assistant City Attorney Kelly Thompson if she concurred with Commissioner Blower. Mrs. Thompson read a part of the bylaws which say, "An application asking for the same relief in connection with the same property that has previously been heard and acted upon, shall not be received for one year following denial of an application, except where showing is made in the application that substantial change in conditions has occurred since the previous hearing, which justifies the commission in treating the matter as a regular new application. A substantial change in conditions must include but may not be limited to one or more of the following a zoning change, a land-use change, a change in traffic patterns, and or a change in the master plan or urban renewal plan".

Commissioner Telliga Closed the Public Hearing

Commissioner Telliga opened the hearing up to discussions and deliberations from the Zoning Board of Appeals.

Commissioner Kea asked what does the city ordinance say? Mr. Kea asked Commissioner Telliga if he could read the staff report into the record. Commissioner Telliga said yes you can.

Commissioner Kea read the following from the staff report: "the standards for which the variance is being granted would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome. Does the site meet requirements in the staff assessment said no. Staff finding The property was originally licensed as a medical marijuana provisioning center dating back to 2015, and is a "grandfathered" location into the City of Flint's medical marijuana location restrictions and zoning standards, because the business is a grandfathered medical marijuana provisioning center, they are also allowed to apply for an adult-use (recreational) marijuana SRU permit without a location variance and the staff finding the opposition says It is a "D-3" zone, which does not allow for Group E Adult-Use (Recreational) Marijuana Facilities"... according to the current zoning ordinance, and being that they are located in a D3 zone. They are not allowed to, for Group E adult recreational marijuana facilities to be closer than 300 feet to a residential area". Mr. Kea said it does not meet the ordinance and this recreational marijuana business is not allowed.

Mr. Nafso said he was not clear about the document Commissioner Kea was reading from and what ordinance was being referred to and asked for clarification from Commissioner Telliga. Mr. Nafso asked if this was the ordinance that was separate and distinct from what he was calling the grandfathered ordinance. Commissioner Telliga said it was the Medical Marijuana ordinance. Commissioner Telliga noted the medical marijuana business was grandfathered in, but it is his understanding this does not include adult-use recreational.

Commissioner Telliga asked Commissioner Blower to recuse herself from voting on ZBA 20-2236 Green Skies Healing, LLC since she had voted at the Planning Commission meeting regarding the case. Then said Commissioner Bloers can give her input from the Planning Commission meeting regarding Green Skies Healing case.

Commissioner Blower said “almost all of the Planning Commission's decisions have been spoken about tonight, but I just wanted to kind of give you a briefing. The medical facility is grandfathered. And by our ordinance, we allow them to apply. Those are kind of different standards of medical standards in 2015, which I believe is the original. Were very different than what they are today. So we looked at our standards, our five standards being compatible with adjacent land use, consistent with the master plan and renewal plans, compatible with the natural environment, being public services and facilities and then to protect the health, safety and welfare as stated, we had numerous issues with this application. Our findings in again, it was a unanimous decision by our board being number one that compatible with adjacent uses. We've heard over and over again the residential homes within the 300 feet, as well as we discussed the buffering the lighting, the parking lot as it as it's not only just the locational standard, but how they were being a neighbor we had a lengthy discussion and decided that they did not meet that standard. Next is the compatibility with a master plan or renewal property, this property would not be approved under the ordinance for being a d3 property currently, and in the future land use a city corridor it would not be allowed In the city corridor, although they interpret the master plan is one thing is not allowed. An adult use would not be allowed in the city corridor outright. And then the fifth being the protection of the public health, safety, welfare. And those are the standards of the parking lot, the parking, the flow of traffic, the residential streets, all of those things were taken into consideration when we made the decision. And those were the three standards, especially that we looked at those tied in with the residential comments and opposition and we had a lengthy meeting. And many residents came out in opposition to this application. So it's not just residential. It wasn't just the standards we took. We took all of it into consideration. And again, it was a unanimous decision against this applicant”.

Commissioner Kea made a motion to deny ZBA 20-2236 based on the following identified within the staff report being: “The standard for which the variance is being granted would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome and the response to that analysis was no staff finding. The property was originally licensed as a medical marihuana provisioning center dating back to 2015, and is a “grandfathered” location into the City of Flint’s medical marihuana location restrictions and zoning standards, because the business is a grandfathered medical marihuana provisioning center, they are also allowed to apply for an adult-use (recreational) marihuana SRU permit without a location variance but the staff found in opposition says It is a “D-3” zone, which does not allow for Group E Adult-Use (Recreational) Marihuana Facilities. There are currently 24 residential properties within 300ft of 3401 Corunna Rd property. Standard 2: The variance is the minimum necessary to provide adequate relief to the applicant and is not so large that it is unfair to similarly situated property owners who managed to comply with the requirements or make do with a smaller variance. Again, the analysis came back as a no. Staff finding their support was the property was originally licensed as a medical marihuana provisioning center dating back to 2015, and is a “grandfathered” location into the City of Flint’s medical marihuana location restrictions and zoning standards. Allowing the variance would allow for the applicant to apply for an SRU Group E permit. Staff finding again says 3401 Corunna Road (PID #: 40-23-101-010) is a “D-3” zoned property that does not allow for Group E Marihuana Facility Use. Within 300ft of 3401 Corunna Rd, there are approximately 24 residential zoned properties, which also does not allow for Group E Marihuana Facility Use.

Article XXXII (Medical Marihuana Opt-In Ordinance) Section 50183(L) LOCATION OF GROUP “E” SPECIAL REGULATED USES (1) GROUP “E” SPECIAL REGULATED USES SHALL BE LIMITED TO THE “D-5”, “D-6”, “E”, “F”, & “G” ZONING DISTRICTS. FOR THESE SPECIAL

REGULATED USES THERE SHALL BE NO OTHER ACCESSORY USES PERMITTED WITHIN THE SAME FACILITY OTHER THAN THOSE ASSOCIATED WITH THE PROVISIONING OF MEDICAL MARIHUANA TO REGISTERED PATIENTS. GROUP "E" SPECIAL REGULATED USE. AN APPLICATION TO ESTABLISH A GROUP "E" SPECIAL REGULATED USE SHALL NOT BE APPROVED IF THE PROPOSED LOCATION IS WITHIN 1,000 FEET OF A PRE-K THROUGH 12 SCHOOL, OR WITHIN 500 FEET FROM A DEDICATED PUBLIC PARK (EXCEPT FOR THE TRAIL, KNOWN AS THE FLINT RIVER TRAIL/IRON BELLE TRAIL, ITSELF, WHERE THE PRINCIPAL USE OF THE PARK SPACE IS FOR THE FLINT RIVER TRAIL) OR PLACE OF WORSHIP; OR IF THE PROPOSED LOCATION IS WITHIN 300 FEET OF A RESIDENTIAL PROPERTY OR RESIDENTIALLY ZONED DISTRICT.

Standard three: The problem is due to circumstances unique to the property and not to general conditions in the area. The finding was a no. Staff finding the support was The location is a grandfathered facility currently licensed as a Group E Medical Marihuana Facility. Staff finding in opposition was the spirit of the MMFLA ordinance and zoning ordinance about Special Regulated Uses is to create buffers between uses such as schools, parks, residential, churches, and prevent a "cluster" of Group A and Group E uses within 2,000 feet of each other. Approving this variance will allow Adult-Use Retail facility within 300 feet of a residential zoning district ("A", "B", "C" zoning districts).

The Master Plan of future land use being city corridors does not allow recreational adult use. Adequacy of site to handle to be able to handle the increase in traffic and staffing related to additional recreational licensee.

Property is currently zoned D-3 which does not allow for Group E Marihuana facilities.

Next standard. The problem was not a self-created hardship. Staff analysis said no. The hardship was created by being a grandfathered facility currently licensed as a Group E Medical Marihuana Facility. Staff finding the opposition was the property in question is adjacent to residentially zoned parcels (24 within 300 feet). The property is currently zoned D-3 which does not allow for Group E Marihuana facilities.

Next standard Issuance of the variance would still ensure that the spirit of the ordinance is observed, public safety secured and substantial justice done. The staff analysis came back no. Staff findings in support were none. Staff found it in opposition where the spirit of the MMFLA ordinance and zoning ordinance pertaining to Special Regulated Uses is to create buffers between uses such as schools, parks, residential, churches, and prevent a "cluster" of Group A and Group E uses within 2,000 feet of each other. Approving this variance will allow Adult-Use Retail facility within 300 feet of a residential zoning district ("A", "B", "C" zoning districts).

Master Plan of future land use being city corridor does not allow recreational adult use. Adequacy of site to handle to be able to handle the increase in traffic and staffing related to additional recreational licensee.

Property is currently zoned D-3 which does not allow for Group E Marihuana facilities".

M/S – Kea/ Hardy

Motion to deny ZBA 20-2236 as presented.

Unanimously carried.

Commissioner Blower abstained from voting.

CITY ATTORNEY REPORT:

Mrs. Thompson said she is working with planning staff to finalize the permanent ordinance for marijuana. And the existing emergency ordinance is set to expire on June 12.

OLD BUSINESS:

ZBA Training

Commissioner McCaskill explained the MSU extension has training about zoning ordinances he provided to staff. Then asked if staff shared with the board. Mr. Vandercook responded he had not had the opportunity to send out the information. Commissioner Telliga asked if the information could be forwarded. Mr. Vandercook said he would forward the information on to all board members. Commissioners discussed training booklets about zoning board of appeal rules. Ms. Wilcox said she would look into acquiring the books for the Board.

NEW BUSINESS:

None

ADJOURNMENT:

M/S – Blower/McCaskill

The meeting was adjourned at 7:55 pm.

Unanimously carried.