



City of Ann Arbor

301 E. Huron St.
Ann Arbor, MI 48104
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Meeting Minutes Zoning Board of Appeals

Wednesday, January 25, 2012

6:00 PM

City Hall, 301 E. Huron Street, 2nd Flr.

1 CALL TO ORDER

Vice Chair E. Briggs called the meeting to order at 6:03 PM.

2 ROLL CALL

E. Briggs called the roll.

Present: 6 - Candice Briere, Sabra Briere, Erica Briggs, Alex Milshteyn, Perry Zielak, and Ben Carlisle

Absent: 2 - Wendy Carman, and Chair Carol A. Kuhnke

3 APPROVAL OF AGENDA

A motion was made by Briere, seconded by Milshteyn, that the Agenda be Approved as presented. On a voice vote, the Vice Chair declared the motion carried.

4 APPROVAL OF MINUTES

4-a 11-1448 Zoning Board of Appeals Meeting Minutes of July 27, 2011

Enter Candice Briere at 6:06 PM.

Postponed to the Zoning Board of Appeals due back on 2/22/2012

4-b 12-0116 December 7, 2011 Draft ZBA Meeting Minutes

Postponed to the Zoning Board of Appeals due back on 2/22/2012

5 APPEALS AND ACTIONS

5-a 12-0117 ZBA11-021 - 1712 South State Street
An application for review of decisions related to the property at 1712 South State has been submitted by Dori Edwards. Review of the following actions is requested:
Planning Staff denial of Zoning Compliance permit for medicinal marijuana dispensary.

SUMMARY:

Dori Edwards, Tree City Health Collective, is requesting review of the Planning and Development Services denial of zoning compliance permit for operation of a medical marijuana dispensary at 1712 S. State Street.

BACKGROUND:

On August 5, 2010 City Council enacted a moratorium on the establishment of medical marijuana dispensaries in the City of Ann Arbor (see attached). The petitioner states that they had signed a lease for a medical marijuana dispensary at 1712 S. State Street in August 2010 just before the moratorium was enacted.

In June of 2011, City Council approved revisions to Chapter 55 (Zoning), Section 5:50.1 (Regulations concerning medical use of marijuana), and this ordinance went into effect August 22, 2011 (see attached). The ordinance defines a medical marijuana dispensary as a building or part of a building where 1 or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients. Within the new ordinance, Section 5:50.1(3)(a) states that a medical marijuana dispensary shall only be located in the D, C, or M districts or in certain PUD districts where retail is permitted in the supplemental regulations.

This parcel is zoned O (office), which allows general/medical/dental offices, but no retail sales or medical marijuana dispensaries. On November 3, 2011 TreeCity Health Collective applied for a Zoning Compliance permit in order to operate a medical marijuana dispensary in the former residential structure at this location. The permit was denied by Planning staff because according to Chapter 55, Section 5:50.1(3) medical marijuana dispensaries are not a permitted use in the Office Zoning District.

ALLOWABLE USES:

In June 2011, City Council approved revisions to Chapter 55 (Zoning), Section 5:50.1 (Regulations concerning medical use of marijuana). This ordinance went into effect August 22, 2011. Within the new ordinance, Section 5:50.1(3)(a) states that medical marijuana dispensaries shall only be located in the D, C, M districts, or in certain PUD districts. As such, medical marijuana dispensaries are prohibited from the Office zoning district.

QUESTIONS TO STAFF BY THE BOARD:

None

PRESENTATION BY THE PETITIONER:

Dennis Hayes, Attorney and representative for the applicant, Treecity Health Collectives, Inc, explained the request presented to the Board. He stated that they are in an odd situation in that the definition of a medical marijuana dispensary was something that was not contemplated in the State or even the City at the time they set up the zoning districts. He said when Treecity located at the site on S. State Street they signed their lease as a non-profit, and moved in prior to the moratorium being established. He said they believed it was appropriately zoned as an alternate healthcare practitioner, adding that they are not just a dispensary, but a service organization. Hayes said the dispensary is an incidental part of a larger use, he believed is permitted. He said the exclusionary efforts, in regards to the dispensaries, ignores the beneficial services provided by the dispensaries from their medical marijuana caregivers to their medical marijuana patients.

He stated that in 2004 the City Council passed a resolution that medical marijuana could be distributed to anyone with a medical condition. He noted that under the State law, the distribution of medical marijuana is not treated as a sale [retail

distribution] but rather a service where the provider/caregiver is entitled to be compensated for those services.

Hayes referenced his letter on file and as presented to the Board. He requested the Board to reverse the staff denial of the Zoning Compliance permit stating that it was a legal use up until the City passed an ordinance making it a nonconforming use, almost one (1) year after the applicant's business started.

Hayes stated that the applicant had applied to the City for a medical marijuana license and had been received as a qualifying pre-moratorium dispensary facility, by the City's medical marijuana licensing board.

He referenced State law regarding non-conforming uses and reiterated that Treecity was a nonconforming use when the City passed the ordinance in 2011. He said it isn't easy for medical marijuana dispensaries to find willing landlords who will rent to them.

Dori Edwards, Treecity Healthcare Collective, petitioner, spoke in support of her application noting that when they were looking for a facility they were trying to be respectful to the conservative people in Ann Arbor by choosing a location in an area where there were several other healthcare facilities along S. State Street.

Edwards said the space they chose accommodates member meetings, massage therapy, and shiatsu. She stated that their motto has kind of been to educate, inspire and evolve, and they really care about educating people about the uses and medicinal value of medical marijuana. She said that she believes they fit under the zoning definition for other healthcare practitioners, and was disappointed when the City didn't include Office zoning in the zoning ordinance for dispensaries. She said it was fitting for them because they are in a stand alone office building and there are no smells wafting down the hallway to other offices.

Edwards said it would take a lot of time and energy to move to a new facility at the current time given that State legislation is so unsure. She added that their patient base is mainly made up of professionals who like their anonymity and who would not like to be seen exiting a collective in the downtown area. She said throughout the State the law isn't protecting the patients and she is thankful that Ann Arbor is trying to protect patients and caregivers. She noted that the handicapped accessibility at their current location is important, given the volume of patients with disabilities. Edwards stated that when the State makes this clear she will fully comply with Ann Arbor's ordinance but currently it is so unsure.

AUDIENCE PARTICIPATION:

None

BOARD DISCUSSION:

Kristen Larcom, City Attorney was present to answer any questions from the Board.

P. Zielak asked why the Board would hear a discrepancy between information that the City had or did not have records indicating when the business in question was established.

Kowalski responded that according to the Building and Zoning records there was no discrepancy; that there were no building permits applied for the work done in the facility, and there were no zoning compliance permits applied for at the time the

petitioner has indicated.

Kowalski noted that the Medical Marijuana Licensing Board is a separate entity and if records were submitted to that Board, those would be totally separate from the Building and Zoning permits/records or file.

S. Briere stated that if the Board was to look in the City's records for documentation for any dispensary, they might have found one dispensary that attempted to pull a zoning compliance permit or building permit prior to this past August [2011]. She said that because the ordinance on licensing requires that those applying for a license, based on them being in operation prior to the moratorium, doesn't include what that criteria might be. She said the licensing board has made a decision to be creative about that criteria, recognizing that most of the documentation that you and I might expect, wasn't filed anywhere. She said it's not as if someone was operating a retail establishment or restaurant or seeking a liquor license, but a very different situation.

A. Milshteyn asked if someone could shed some light on why the "office" zoning classification was excluded from the allowed zoning, when commercial zoning was included.

S. Briere said she could make an attempt, but wouldn't promise that she had all the details accurate. She said she had asked the same question, as a member of City Council, of Planning Staff. She said the logic had to do with the number of visits, that the Planning staff anticipated, that a dispensary might experience, the number of parking spaces, the amount of floor space given over to both providing an opportunity for a transaction with medical marijuana and for paraphernalia. She said for reasons she never quite mastered, it was convenient to connect medical marijuana dispensaries with a retail store in their calculation of what it needed, and retail doesn't fit well in office. Briere said the City Planning staff with whom she worked, felt that it wasn't the same as going to the doctor or the dentist.

A. Milshteyn asked the petitioner how many visits on average they receive per day.

Edwards answered that on average there would be 30-35 visits per day and their hours of operation were from 11 am. to 8 pm. She said there were never more than 4 cars in the parking lot at any given time.

Edwards said for the record their business didn't sell paraphernalia.

A. Milshteyn said he wasn't sure why office zoning wasn't allowed when there are dentist and doctor offices that see hundreds of patients a day. He said he is leaning towards allowing this kind of business in an Office zoning district but he wasn't sure what kind of precedent that might be setting. He said this is a special case in that it is a stand alone house, while he didn't know if he would be comfortable with allowing this sort of operation in a large building where there are multiple offices and there would be other tenants sharing the same offices. He asked what kind of precedent the Board would be setting for future petitions that come before them.

Kristen Larcom, City Attorney responded that she believed the focus needs to be on what City Council decided the zoning for medical marijuana dispensaries should be. The Council decided not to include medical marijuana dispensaries in Office Zoning districts. She said that is what the City law essentially says and she recalls that one of the rationale that the Planning Division gave was that they considered that office is traditionally sort of a buffer between residential and commercial districts and rather than having it in office they used the office essentially as a buffer district. She said the short of it is that the Zoning Board of Appeals needs to determine what they feel

complies with the zoning as it is currently written.

B. Carlisle stated that he isn't questioning the medical benefits of medical marijuana or the help the dispensaries are providing, in terms of services, however the Planning Commission and the City Council did go through the proper measures to adopt the Zoning ordinance to regulate medical marijuana dispensaries. He said they went through the public hearing process and public vetting and they decided in their wisdom that medical marijuana dispensaries should not be permitted in the "O" [Office] District. For right or wrong, that's not up to us to decide at this point. He said in his opinion, the question in front of the Board is the legal or non-legal non-conforming aspect of this case, and if this a legal non-conforming use or not and if it is a non-legal non-conforming use should such use be allowed to continue.

B. Carlisle said he was struggling with the fact that there is no documentation that this use was a legal non-conforming use and as such he didn't think the Board has the right to deny an action by the staff to continue a non-legal non-conforming use.

E. Briggs asked Attorney Larcom if the petitioner was a conforming or illegal use prior to the moratorium. She said that dispensaries were in place and when City Council acted there was a moratorium in place but there was no attempt to end that use, to have businesses close their doors, while Council was discussing this.

Larcom stated that at the time, the whole zoning code, didn't explicitly allow medical marijuana dispensaries in any zoning district. She said it generally goes back to the general principle that if a use is not explicitly permitted, it is prohibited. So, the moratorium isn't an ordinance amendment, and essentially functions as delaying enforcement of the ordinance just for those that had already opened. She said that City Council made the decision in their discretion because they didn't want to close down the businesses at that time, but they were going to make a decision as to where they would be allowed to operate and after that the zoning code takes over and is enforced.

E. Briggs asked Kowalski if before August 2010, if someone had contacted the City to ask where they should have set up dispensaries what advice they were given by staff at that time.

Kowalski said he couldn't say exactly what advice different staff members gave, but said staff would not have had them locate in a specific area. He said the first thing staff does is look in the zoning code as to what permissible uses are permitted. He said that since it isn't permitted in any zoning district he would have advised against locating where our zoning code doesn't allow it.

Kowalski said the reason that section of code is in there is so that if it is expressly not permitted it is prohibited. He stated the code doesn't give anybody the permission to just move into a zoning district with a use that is not anywhere in the zoning code; as if to say, if it is not anywhere in the zoning code then the zoning code doesn't matter.

E. Briggs asked if there are any instances, other than medical marijuana, where this would have been an issue for the City.

Kowalski said, No, he couldn't think of any other uses.

E. Briggs asked Larcom, if when the State passed this law, at that point, if folks potentially were being told across the State that dispensaries are legal but cities were then saying that their zoning code doesn't allow that type of use, which would effectively not allow a dispensary to set up in any place.

Larcom said, the State law does not provide for dispensaries and does not address it at all. She said the dispensary is a different use and it is not governed by State law. She said the City's ordinance defines what a dispensary is, and that there is no State law that defines it. She said the ordinance defines a dispensary as the transfer of marijuana and doesn't speak about sales.

S. Briere stated that had a dispensary come to a community asking where they could build or where can they rent, in most cases in 2009 and 2010, the answer would have been nowhere – legally. She said people didn't begin addressing this issue until the same time the City of Ann Arbor did, which was the spring of 2010. She said then the recommendation was that local municipalities do something with their zoning law. She said one of the things that City Council did not address was grandfathering in businesses, which she said, in a sense, is what the petitioner is seeking. She said they opened here and played by the rules, but once established, all the rules changed and they said we can no longer can play by them and we think we should be grandfathered in. She said that is what the non-conforming use would be.

S. Briere said that she also wants to point out that the petitioner came to City Council and asked to be rezoned and the Council heard that the entire State Street corridor was being re-evaluated for use and the Council was told that spot zoning for any use now, would be detrimental to that corridor work. She said, for some members of Council this was a consideration in how they voted, when they did not vote in favor of rezoning the petitioner's parcel.

C. Briere asked Kowalski if the City is still looking at the State Street corridor with regards to rezoning and what the status currently is on the study and if there was an anticipated deadline date for the study.

Kowalski responded that there is a study currently underway by the Planning Division which was examining the whole State Street corridor which is from Ellsworth to the Stadium bridge. He said he didn't have a completion date. He said zoning was one aspect of the study in looking at what the Master Plan calls for in that area. Right now, it is not commercial zoning, but he noted that conditions have changed along that State Street corridor which is the reason why this study is being initiated at this time.

E. Briggs said she wanted to take a moment to express her personal extreme frustration with the petition and the issues that the petitioner has been forced to go through in the City. She said the petitioner had not expressly asked for an area where they could be placed in the City and they made some logical assumptions based on where this use might be permitted based on what our zoning ordinance said, and they went to a location in the City where it seemed they would have the least amounts of conflicts possible, she believed. She said when Planning and City Council went through all of this it was decided that Office was not an appropriate location for dispensaries to be located and so they were not allowed and when they came back to the City and said we are operating here and we think, given that there is Office located right across the street from us, it would be appropriate for us to be zoned Office, they were told, maybe that's true, but we have to go through the entire process before we can make those decisions.

S. Briere said their request was to be rezoned to C1.

E. Briggs said that for the petitioner that entire process could potentially be a very long wait and for a small business owner she believed this has been very onerous for someone who has attempted to set up in our community. She said it has been a

particularly disturbing process to watch, specifically for this petitioner. She said she struggles with the fact that what our zoning code doesn't expressly permitted, it prohibits. She said she believed the question comes down to whether or not this was expressly permitted. She said she has a lot of sympathy for the petitioner, in this case.

Dori Edwards asked the Board what "other health care practitioners" means, since it is in the City's zoning code for office. She said if it is so wide, how can they say it is not expressly permitted, then it must be prohibited, when it says other health care practitioners. She said she was very confused.

S. Briere said, that for the purposes of the zoning, the draft that the staff provided to the Planning Commission and that the Planning Commission provided to the City Council, it wasn't necessarily tightly examined, as other things were pressing like what is a license and how do you do it. She said that she believes the end result was that medical marijuana dispensaries were not considered health practitioners by definition.

A. Milshteyn asked Kowalski, if he wanted to open a pharmacy, would he be allowed to do that in an Office zoning.

Kowalski responded, No.

C. Briere said that she believes that 95% of what they are doing here is other health practitioners; the counseling, the classes, the meetings all fit in there. It's the little portion in there, the dispensing and the transferring itself that is more of a pharmaceutical kind of function and makes it more appropriate for commercial zoning in that regard, than for office. She said that is where she believed the hang up was. While she is really sympathetic to the situation, and feels the applicant has clearly tried to conform as much as possible, she thinks this is that one sticking point that makes it a non-legal non-conforming use.

S. Briere said that when we think of pharmacies, we think of CVS, which sells toilet paper and shampoos and razor blades, and hair dye and pampers and wine as well as that small little corner that is given over to dispensing prescription drugs. She asked Kowalski if she was to open a yoga studio at which she sold yoga mats and body oils and bubblebath and things like that as part of her yoga studio, and teas, would that be acceptable in an Office zoning district.

Kowalski said that the zoning code limits the amount of sales that are allowed within an Office district. He said, the accessory uses that are allowed under the Office district are, "incidental services may be provided within an office building for the convenience of occupants." He said there are standards for that which state, "not more than 5% of the floor area is to be used for incidental services," which, he stated refers to newsstands and candy sales and cafes.

S. Briere said, like the café that the City Hall is allowing to open on the 1st floor.

Kowalski said, yes, and as long as it is not more than 5% and subject to the standards. He said they don't allow offices to go ahead and sell any kind of unrelated products.

S. Briere said her chiropractor sold her a pillow.

C. Briere said she believed the difference is that something that you are getting from a pharmacy, not necessarily the shampoos, but the actual prescription medications.

The medicinal marijuana you are getting you need a prescription for it, since it's a more controlled substance that you can't buy anywhere else. She said it's the drug component itself that makes the difference.

E. Briggs asked Larcom what other healthcare professionals was intended to signify in the code.

Larcom responded that the subject of advising people, helping people, learning about medicinal uses of marijuana may fit one part but the use definition, 'if a building or any part of a building is used for the transfer of marijuana, it is a medical marijuana dispensary'. She said it doesn't mean that the building can't be used for other uses, but that particular use renders it a medical marijuana dispensary.

Kowalski added that other healthcare practitioners that are considered under 'other uses' could be massage therapists, physical therapists or chiropractors; those who aren't specifically a dentist or a physicians.

B. Carlisle said while he respects the motion he is leaning to not voting for the motion based on the fact that it gets down to the legal nonconforming issue and since they didn't have any evidence that the dispensary was in existence prior to the Aug 2010 moratorium, coupled with that there is long standing case law that has been established that a use that is not listed or permitted in the zoning ordinance is not an allowed use. He said he struggles with the question if the use was ever a legal conforming use and hence now can be a legal nonconforming use. He said he believed this is the sole issue before the Board. He said how they feel about medical marijuana dispensaries in the Office Zoning district is a whole different request, which would require them to go through a use variation, which he mentioned, they didn't get approved [by the City Planning Commission and the City Council denying their rezoning request]

B. Carlisle said he feels the plight of the petitioner but from what he is hearing there is no evidence that the use was a legal conforming use.

A. Milshteyn gave a scenario asking what would happen if he had a business on S. State Street making widgets, which was a legal use and next year the City decides to rezone that area, and per the new zoning he was no longer able to make widgets on that property; would he be grandfathered in.

Kowalski responded that if he was a legal use at the time that the zoning changed he would be grandfathered in and considered a legal nonconforming use.

P. Zielak said that he shares the sentiment for the petitioner as shared by other Board members, and felt that the definition of 'other healthcare practitioner' could be debated, whereas the definition for dispensaries is very specific and the petitioner's use falls clearly into it; therefore, he couldn't be in favor of the petition.

A motion was made by S. Briere, seconded by P. Zielak, in petition ZBA11-021; 1721 South State, based on the following finds of fact, the Zoning Board of Appeals overturns the Planning Staff denial of the zoning compliance permit for establishment of a medical marijuana dispensary at 1712 South State,

Findings of fact:

a) Based on it being a pre-existing business that was in operation prior to August 5, 2010, [the date the moratorium took affect].

On a voice vote, the vote was as follows with the Chair declaring the motion

failed.

Petition was not granted.

Yeas: 1 - Councilmember Briere

Nays: 5 - Briere, Briggs, Milshteyn, Zielak, and Carlisle

Absent: 2 - Carman, and Chair Kuhnke

5-b 12-0118

ZBA11-022 - 700 Tappan Street

An application for review of decisions related to the property at 700 Tappan has been submitted by Michael McLeod. Review of the following actions is requested: Planning Staff denial of Zoning Compliance permit for medicinal marijuana dispensary.

SUMMARY:

Michael McLeod, Green Planet Patient Collective, is requesting review of the Planning and Development Services denial of a zoning compliance permit for operation of a medical marijuana dispensary at 700 Tappan.

BACKGROUND:

On August 5, 2010 City Council enacted a moratorium on the establishment of medical marijuana dispensaries in the City of Ann Arbor (see attached). The petitioner states that they had signed a lease for a medical marijuana dispensary at 700 Tappan in August 2010 just before the moratorium was enacted.

In June of 2011, City Council approved revisions to Chapter 55 (Zoning), Section 5:50.1 (Regulations concerning medical use of marijuana), and this ordinance went into effect August 22, 2011. The ordinance defines a medical marijuana dispensary as a building or part of a building where 1 or more primary caregivers operate with the intent to transfer marijuana between primary caregivers and/or qualifying patients. Within the new ordinance, Section 5:50.1(3)(a) states:

"Medical marijuana dispensaries shall only be located in a district classified pursuant to this chapter as D,C, or M, or in PUD districts where retail is permitted in the supplemental regulations."

This parcel upon which 700 Tappan is located is part of the multiple-parcel Casa Dominick's Planned Unit Development (PUD). The Casa Dominick's PUD supplemental regulations, approved by City Council on October 19, 2009, permit the following permitted principal uses within Building B (700 Tappan):

- i. Restaurants and catering businesses. Drive-thru window service shall be prohibited. Outdoor restaurant uses shall be prohibited after midnight.*
- ii. Grocery, prepared food and beverage sales, including retail sales of non-food items typically associated with groceries and food preparation. Examples include cookware, glassware, linens, books, kitchen utensils and implements, and small kitchen appliances.*
- iii. Classrooms and educational instruction.*
- iv. Tanning, massage and beauty salon.*

v. *Business offices, medical or dental offices, professional and non-profit organization offices. Examples include real estate and insurance agencies, attorneys and law firms, accountants, architects, engineers, travel agencies, consultants, and property management firms. Banks shall be prohibited.*

vi. *Residential dwellings, subject to the residential occupancy limitations per Ann Arbor City Code Chapter 55, Section 5:7 (a), (b), or (d). Six persons living as a single housekeeping unit shall not be permitted.*

On November 16, 2011 Green Planet Health Collective applied for a zoning compliance permit to operate a medical marijuana dispensary at 700 Tappan. The permit was denied by Planning staff because it does not comply with Chapter 55, Section 5:50.1(3)(a), as retail is not listed as a general use allowed in the PUD supplemental regulations for this parcel, but is limited to the retail sales of non-food items related to the sales of groceries and prepared foods.

QUESTIONS TO STAFF BY THE BOARD:

None

PRESENTATION BY THE PETITIONER:

Michael McLeod, Applicant, distributed a memo [on file] to the Board containing his verbal statement which he read to the Board.

AUDIENCE PARTICIPATION:

Dennis Hayes, Attorney for Treecity Healthcare collective, spoke in support of the petition. He said that the situation for 700 Tappan was that there was a new use within an existing PUD zoning classification definition. He requested that the Board understand these new circumstances and adapt to them and allow flexibility within the PUD classification.

BOARD DISCUSSION:

S. Briere said that in looking at the Planning Commission minutes, it looks like in their discussion on the subject they decided to go with more general language rather than request specific language for each existing PUD. She asked if they were to look at all the PUDs, where some form of retail is allowed, would they find the kind of detail that would state what kind of retail is allowed in each PUD.

Kowalski said that in some PUDs there are specifics listed and in some there aren't.

S. Briere asked if it would specifically say that retail was allowed.

Kowalski responded, yes, that they would probably find that in some PUDs it will specifically say that retail in this location is allowed.

S. Briere said she understand the restrictions that were written prior to the property owner leasing the land to a dispensary and since the property owner was once upon a time the petitioner asking for these restrictions, one imagines he did not see them as restrictive. She said it was an imagination she has and has not confirmed it with the property owner.

C. Briere stated that since the PUD was constructed before a dispensary was a permitted use in the City if there a process where they could go back and add that to

their supplemental regulations as a permitted use. She asked if they could amend the supplemental regulations to include retail.

Kowalski answered that the property owner could go through the process of amending their PUD supplemental regulations, which would go before the City Planning Commission as well as the City Council, to add retail use in general, or medical marijuana dispensary use specifically.

C. Briere asked if that was the case, would this issue go away since they would be a permitted use within the PUD.

Kowalski responded, yes, he believed there would be a mechanism available to address the issue.

S. Briere asked if the property owner were to make such a petition to the City Planning Commission could staff give an estimate of the minimal time it would take to travel through the process.

Kowalski said he couldn't estimate at this time, since it would have to go through the public comment process, but said, two (2) to three (3) months at the very minimal.

S. Briere said it is important for people to keep in mind the timing, because the licensing board won't consider the application if the person seeking a license is not allowed to be in that location. She said the licensing board is, by the ordinance, allowed to forward a recommendation to Council one (1) time a year; in January. She said the fact that it would take a minimum of two and half (2 1/2) to three (3) months, if magic happened, is something for them to keep in mind, if they are thinking that the property owner should get their supplemental regulations amended.

E. Briggs said that it was helpful to have the Planning Commission discussion, regarding having medical marijuana dispensaries included in PUDs, in their packets, and while she was not in favor of including them in the PUDs, she noted that most of the other members on the Planning Commission were in favor of inclusion.

S. Briere stated, from someone sitting on Council during all of the deliberations, she said it never came up that they would be approving medical marijuana licensed dispensaries in a Planned Unit Development [PUD] where retail is allowed, and questioning what that meant. She said no one on Council said to define retail and how it fits in with the supplemental regulations. She said they did have the opportunity to look at the Planning Commission meeting minutes and look at their discussion. She said she can't speak to who did that.

B. Carlisle said he was struggling with the issue that he felt like they are trying to reenter the intent of what retail means and its relationship to a PUD.

C. Briere agreed, adding that if the City Planning Commission and the City Council were thinking that any mention of retail would allow dispensaries to exist in a PUD vs the PUD had to specifically mention retail or dispensaries. She said given that the PUD was so specific and that it is all related to grocery, food and beverage items, she was inclined to think that a dispensary was not suited to retail use in this situation. She said she felt it was kind of a grey area.

B. Carlisle asked staff if the applicant was to go through with amending their PUD and the process took, three (3), six (6), or nine (9) months, would the denial of the Zoning Compliance permit be put on hold until they go through the PUD process or would they be required to be removed from the premises at 700 Tappan Street until

the PUD was resolved.

Kowalski responded that the original Zoning Compliance permit had been denied, so they would have to re-apply. He said in regards to allowing them to operate, it would become an enforcement issue and he couldn't speak to that issue at this time, if they did move forward with the PUD amendment process.

S. Briere asked Attorney Larcom to speak to the enquiry.

Larcom said that if the decision was that they weren't in compliance with the current zoning, it would mean that the zoning ordinance is enforceable against them and they shouldn't count of being able to continue. She added that it was maybe, probable that they should expect enforcement.

Melanie McLeod asked to speak.

S. Briere said that if she wished to speak then she should come to the microphone.

McLeod said that she felt it was very important that the Board realize that the Planning Commission specifically did not want dispensaries added to the PUD definitions because of the overburden, cost, and time involved in changing a PUD and instead they wanted it to remain general and say where retail was allowed.

E. Briggs said while the Supplemental Regulations are quite specific as to what is allowed at this PUD parcel, medical marijuana could not have been anticipated at the time. She said that since it states grocery and knowing that pharmacies are located in grocery stores and beverages sold in grocery stores include alcohol which is a controlled substance. She said her understanding is that medical marijuana can be dispensed through several different mechanisms which might include edible forms. She said while it's not specifically a grocery it's not hard to see how it is aligned with those uses.

A motion was made by Zielak, seconded by Milshteyn, that in Petition ZBA11-022; 700 Tappan, the Zoning Board of Appeals overturns the Planning staff denial of the zoning compliance permit for establishment of a medical marijuana dispensary at 700 Tappan,

Based on the following findings of fact.

- a) Based on it being previously approved for PUD for grocery, prepared food, beverage sales, and retail.**
- b) That the expectation when the zoning was passed was that PUD's would not have to open up their Supplemental Regulations and amend them specifically to include this use.**

On a voice vote, the vote was as follows with the Chair declaring the motion carried unanimously.

Yeas: 6 - Briere, Councilmember Briere, Briggs, Milshteyn, Zielak, and Carlisle

Nays: 0

Absent: 2 - Carman, and Chair Kuhnke

6 OLD BUSINESS

None

7 NEW BUSINESS

None

8 REPORTS AND COMMUNICATIONS

9 AUDIENCE PARTICIPATION - (3 Minutes per Speaker)

None

10 ADJOURNMENT

Meeting was unanimously adjourned at 7:36 pm.

Community Television Network Channel 16 live televised public meetings are also available to watch live online from CTN's website, www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>).

Live Web streaming is one more way, in addition to these listed below, to stay in touch with Ann Arbor City Council and board and commission actions and deliberations.

- Video on Demand: Replay public meetings at your convenience online at www.a2gov.org/government/city_administration/communicationsoffice/ctn/Pages/VideoOnDemand.aspx
- Cable: Watch CTN Channel 16 public meeting programming via Comcast Cable channel 16.

The complete record of this meeting is available in video format at www.a2gov.org/ctn, on "The Meeting Place" page (<http://www.a2gov.org/livemeetings>), or is available for a nominal fee by contacting CTN at (734) 794-6150.