

**Zoning Board of Appeals
September 28, 2022 Regular Meeting**

STAFF REPORT

Subject: ZBA 22-2018; 2394 Winewood Avenue

Summary:

Eric Parkhurst, Parkhurst Services, LLC,, is requesting a variance from Section 5.16.3.G.7 Use Specific Standards. A requested variance of 6% from the requirement that 10% of a grow facilities energy use must come from Solar Panels on the site. Petitioner can only provide 4% of total energy use via solar panels on site. The property is zoned M1, Industrial District.

Background:

The subject property is located at the southeast corner of the intersection of South Maple Road and Winewood Avenue. The structure is an approved location for a Marijuana Microbusiness. As defined in Chapter 55, Unified Development Code(UDC), a microbusiness is, "A Licensee that cultivates, processes, and sells or transfers Marijuana directly to consumers, as further defined in the Michigan Regulation and Taxation of Marihuana Act.

From the petitioner's application:

A Microbusiness is required to obtain 10% its total energy usage from solar produced on site. We are required by our state license (Marijuana Microbusiness) to grow, process, and sell all our own product in house, while being limited to a 150-plant count. We have three indoor grow rooms, a processing lab and edible kitchen in addition to a retail space in a building less than 5000 square feet. The roof space is limited by large HVAC systems that were installed on the building in 2016. The building has a south facing angled roof section that is ideal for solar installation and would offset 4% of the total use off our cultivation, processing, and retail electrical usage. Homeland Solar had their P.E review the roof and found that the structure of the remainder of the roof (flat areas) are not suitable for a solar installation.

Description:

The Ann Arbor UDC Use Specific Regulations, Section 5.16.3.G, requires that, "a minimum of 10% of the Marijuana Facility's energy usage will be provide via solar panels on the site".

The site was originally approved as Special Exception Use(SEU) to allow a Marijuana provisioning center in 2018. In 2020, the SEU was modified to permit a Marijuana Microbusiness. The microbusiness designation triggered the requirement for solar power generation. The petitioner had provided a structural review and analysis of the solar capacity for the building. This report is attached and indicates the maximum possible area on the roof is dedicated to solar panels. This area provides 4% of power needs, requiring a variance of 6% to meet the required 10% solar power generation.

Standards for Approval- Variance

The Zoning Board of Appeals has all the power granted by State law and by Section 5.29.12, Application of the Variance Power from the UDC. The following criteria shall apply:

Applicant Response (regular type), *staff response, if any (italics)*

- (a). ***That the practical difficulties are exceptional and peculiar to the property of the person requesting the variance and result from conditions which do not exist generally throughout the City.***

Requiring a business to produce more of its own energy via solar panels than the space will practically allow is an exceptional and peculiar request, not asked of other local businesses. A Microbusiness is required to produce 10% of its energy usage from solar produce on-site. This requirement is placed on other cultivation facilities, but not processing or retail facilities. As a Microbusiness we are required to cultivate, process, and sell our product direct to the customer. This means we are required to offset our cultivation energy as well as that of our processing and retail. This is a situation unique only to our property. The requirement is not only exceptional and peculiar, but also not practically possible due to the energy demands on the business vs the available space for solar panels.

- (b). ***That the practical difficulties will result from a failure to grant the variance, include substantially more than mere inconvenience, inability to attain a higher financial return, or both.***

We will be out of zoning compliance and unable to operate the facility as a Microbusiness because the property does not have the space required to offset 10% of its energy via solar panels. This is due to the small physical size of the building, the energy requirements of the business, and the novel requirement to offset the energy of all three aspects of the business (cultivation, processing, and retail). Homeland Solar created a plan, which would offset up to 7% of the energy of the facility by utilizing the flat portion of the roof. After a review of the structure of the roof, however, an Engineer who reviewed the roof determined the roof could not carry the weight of the added solar and would need extensive reinforcement. This reinforcement would require us to temporarily stop cultivation. Because our license prohibits us from buying from the wholesale market, this would require us to stop operations completely for months. This scenario is beyond the financial means of my young, independent, Cannabis Microbusiness.

- (c). ***That allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Chapter, the Practical difficulties that will be suffered by a failure of the Board to grant a variance, and the rights of others whose property would be affected by the allowance of the variance.***

We are being held to a standard that is higher than other local business, including similar businesses. Not only is this standard unjust but it is not practically possible due to the energy demands of the business vs the space available on the property for solar panels. Because we are discussing solar collection, this variance will not negatively affect the rights of anyone else's property. Allowing the variance will fulfill the intended purpose of our facility utilizing solar energy while balancing the practical limitations of the usage, space, and technology.

It is correct that a Marijuana micro-business is the only use within code that requires solar energy generation to offset electrical needs. This requirement has been in place since the code was adopted.

- (d). That the conditions and circumstances on which the variance request is based shall not be a self-imposed practical difficulty.**

Prior to being used as a Microbusiness, the building was built out as a medical marijuana caregiver facility. The grow rooms and roof top air conditioners were furnished and installed before 2018. There was no requirement for solar power usage for cannabis facilities at the time, so the design didn't include space for solar panels. The site plan was updated when we applied for a Microbusiness SEU, which required the facility to be retrofitted with solar panels. We worked with Homeland Solar to maximize the space available to devote to solar panels. They recommended covering the south facing angled roof with solar panels as the most efficient use of the roof space for solar panels, which would account for a 4% offset. The 10% figure required by code is not possible at our property due to the power requirements of the business and the space available for solar panels. We have done everything possible to maximize the amount of solar power that can be generated efficiently from the property.

- (e). A variance approved shall be the minimum variance that will make possible a reasonable use of the land or structure.**

We have had the property reviewed by Homeland Solar, who has determined the property has the potential to efficiently offset 4%. Homeland Solar created a plan, which would offset up to 7% of the energy of the facility by utilizing the flat portion of the roof. After a review of the structure of the roof, however, the Engineer determined the roof could not carry the weight of the added solar and would need extensive reinforcement. This reinforcement would require us to temporarily stop cultivation. Because our license prohibits us from buying from the wholesale market, this would require us to stop operations completely for months. This scenario is beyond the financial means of my small, independent, Cannabis Microbusiness.

While the roof top area is limited, the only possible other location would be on the ground which would require removing parking or installing carports with solar panels on top. Given that the parcel is on a corner, there is a limited area for installation of carports outside of the required setbacks.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MK', is written in a cursive style.

Matt Kowalski AICP
City Planner, City of Ann Arbor