

MINUTES
City of Alpena Planning Commission
Regular Meeting (Council Chambers and Virtual)
March 8, 2022
Alpena, Michigan

CALL TO ORDER:

The regular meeting of the Planning Commission was called to order at 6:00 p.m. by Randy Boboltz, Planning Commission Vice-Chairman.

ROLL CALL: PLANNING COMMISSION

PRESENT: Boboltz, Gilmore, Kostelic, Bauer, Peterson, Wojda, VanWagoner

ABSENT: Sabourin

STAFF: Rachel Smolinski (City Manager), Montiel Birmingham (Planning, Development, and Zoning Director), Donald Gilmet (Contractual Staff, appeared virtually at 7:01 pm), Kathleen Sauve (Recording Secretary)

PLEDGE OF ALLEGIANCE: Pledge of Allegiance was recited.

APPROVAL OF AGENDA: Agenda was approved as printed.

APPROVAL OF MINUTES: Meeting February 8, 2022, minutes were approved as printed.

Joint meeting for Capital Improvement Project February 16, 2022,
were approved as printed.

PUBLIC HEARING AND COMMISSION ACTION:

Boboltz gave everyone in attendance an overview of how the meeting will proceed. Given the number of people in attendance, Boboltz suggested that he may impose a time limit for public speakers if needed.

Case # 22-SU-01 – Kevin Carrier, on behalf of Neighborhood Provisions, has requested a Special Land Use permit to allow for the sale of Adult Use marihuana at Neighborhood Provisions, located at 909 W. Washington Avenue.

Montiel Birmingham presented the Finding of Fact report. (See Appendix A & B).

Boboltz reiterates that the first petitioner for the Special Use permit, Neighborhood Provisions, has already been approved for Medical Marihuana sales in November of 2021, and the reason

he did not acquire a Special Use permit for Adult Use marijuana was because the city had not passed an Ordinance for Adult Use yet. He explained that all property owners within 300 feet of the proposed facilities received a letter notifying them of the public hearings for said facilities. He stated that staff has received a letter of opposition from someone who grew up next to the proposed second facility and a petition of opposition signed by 16 people. Out of the 16 people who signed the petition, five signers who live on Bedford Street indicated that they did not want approval for either facility, and that no letters of opposition were received for 909 W. Washington Avenue.

FAVOR: Kevin Currier, part owner of and representing Neighborhood Provisions, 909 W. Washington Avenue, presented the board with his intentions of seeking a Special Land Use permit to allow for the sale of Adult Use marijuana in addition to Medical marijuana, at the current facility Neighborhood Provisions, which will open its doors soon. He said his family has been working hard on the facility and want to do things the right way so that the City can look back and see that all the time that they (City) have put into it has paid off. He stated that they want to do things not just for the business or the Cannabis industry, but for the City and its citizens.

Michael Cramer agreed that it would be high time for the city to catch up with the rest of the State and it would prevent him from having to drive long distances to obtain the Cannabis that he uses for his cancer treatment and his wellbeing. He said it looks like a nice facility in a good area, there shouldn't be any objection and he is looking forward to it.

OPPOSITION: Robert Bruning addressed the Board and stated he is the one who started the petition, and the 16 people he got to sign the petition were the ones he was able to collect in about an hour. He said he has a daughter that attends Ella White school, another that attends U of M, and another in Grand Rapids. Bruning stated he is concerned about pot smokers walking up and down the street, whether smoking it or intoxicated by it, in our DARE community, where our children have been taught about the dangers of drugs. Just because it is legal, does not make it safe. He said he is concerned about people driving under the influence of drugs. He inquires if our local law enforcement is capable of handling the infractions of anybody who might be under the influence and will they have test kits and training in their car for this; is there a legal limit like with alcohol; what about this being located along a parade route. Bruning said he is furious that this facility might come to his neighborhood, and why can't it go outside of town where there are more businesses and less homes. He said he knows the State ordinance is 1000 feet from a school, and his house is 1584 feet from the school, and he felt 584 feet is nothing for the people who are going to be travelling back and forth. He said we should be concerned about the safety of the crossing guards at the school as well. He hoped the Board would get those answers before this is approved. He said he does not have a problem with Medical Marijuana use and does not think anybody that signed the petition does, and he just does not want a bunch of people running around that are high. He felt his kids will not be safe and he is thinking of moving altogether because of this new pot store.

Darv Walmsley said he has lived in the neighborhood of Bedford Street for over 50 years, and it is a very nice neighborhood with a lot of senior people who live there, along with some newer families with younger children. He said his wife was a schoolteacher at Ella White for over 40 years, so he has a pretty good idea what goes on with the younger population. Having a facility like this on Campbell Street, which is relatively close to the school, the students will walk by and smell it. He said he is not in favor of it because it is right at his front door. He said he feels it is going to devalue his home.

Jamie Beaubien, student at University of Michigan, said she grew up in a home on Bedford Street that is within 300 feet of the potential marihuana facility on Campbell street. She said the news of another dangerous substance shop located near her childhood home is extremely frustrating and disappointing. She has always thought of Alpena as a city that values its children and overall wellbeing of its citizens, but feels these future plans do not reflect that. She said Ann Arbor has a total of 24 pot shops, some very close to campus, and she is frequently congested due to the exposure of smoke in the air. She felt that the laws in place to keep individuals from smoking in or near the neighborhood will not be upheld, as evidenced by what is going on in other cities. Beaubien felt that a marihuana shop should not go within 300 feet of a neighborhood, the safety of that neighborhood would come into question, and that allowing the two shops would create a domino effect, eventually allowing many others. She wanted the board to consider the connection between the increase drug use and crime rates because she is certain that the crime rate will increase. She expressed concern over her little sister possibly having to live in similarity of those children in the unsafe areas of Detroit. She believed Alpena should stand up and be a city that differentiates from all the rest, and we should do all that we can to fight for a safe and morally just community.

With no further public wishing to speak, the public hearing was closed for deliberation at 6:30 pm.

Wojda said that the Planning Commission and City Council identified long ago what locations would be acceptable for these sorts of facilities, and when they did that they tried to bear in mind the community's needs, interests, needs of children in the community, the needs of the overall wellbeing of the citizenry, and those were all things that were thought about when they put together the standards for locations that would be allowed to house recreational marihuana facilities; this location meets those standards. Wojda went on to say that the traffic of course will increase, although he felt it would not be unmanageable; the building is located in an area with a lot of commercial activity; it was historically used for retail sales and he viewed that as consistent; he felt it is better for the economic wellbeing of the community to have occupied spaces rather than vacant spaces. He went on to say that DARE is about teaching kids not to abuse drugs in an unhealthy way, that doesn't mean we don't allow bars in the community or prohibit people from possessing prescription drugs or medical or recreational marihuana in a lawful manner; we are discouraging abuse of those drugs and teaching healthy habits.

Bauer verifies that it will not be a grow facility.

Kostelic said she believes that the location on Washington will not be the single impact of increased traffic, and agrees an occupied building is better than a vacant one in the long run.

Boboltz felt that many of the issues brought up tonight have already been put to rest back at the November meetings when City Council was debating and had Planning Commission involved, whether to approve or allow an Adult Use Ordinance, and that included input from our city police. He stated he understood that not 100 percent of the population voted in 2018 for the legalization of marihuana. He went on to describe his research at a facility of the same nature in a different community, which appeared secure.

Peterson then echoed Boboltz sentiments. She stated the facilities she has been in were clean, odor free, secure, professional, some of the nicer buildings in the area, and she had never seen anyone using the product within the area of the building. She said that if there might be an uptick in crime or concerns with substance abuse, correlation does not equal causation, and it does not mean that it is due to these facilities in our community.

Boboltz stated that he understands that the second public hearing of this meeting might have different issues than the one currently being discussed. He entertained a motion.

Wojda motions to adopt the findings of fact in Appendix B, with the clarifications as follows:

Item A: That the location of the building complies with the maps of areas allowed and posted by the City of Alpena.

Item B.1: That the economic benefits, physical improvements to the property, and maintenance plan have been demonstrated by the applicant; add that the building was historically used for retail sales and services, and the surrounding uses include an existing smoke shop in a different location.

Item B.8: Amend to reflect there was a petition with 16 signatures generally opposing; a letter in opposition; and numerous comments from citizens who are opposed and some who are in favor.

Item D: Add that it is better for our community economically to have occupied spaces as opposed to vacant facilities.

Item F: Amend that it will increase traffic, but our system can manage that traffic increase.

Item G: Add that odors are required to be controlled under the Ordinance.

Apart from those items, Wojda ***motions*** to adopt the findings of fact and approve the petition of Neighborhood Provisions for Adult Use Marihuana.

Motion ***seconded*** by Kostelic.

Motion passed to **approve** the Special Land Use permit to allow Adult Use Marihuana sales at 909 W. Washington Avenue, by a vote of 7-0.

Case # 22-SU-02: Brock Johnson, on behalf of Venture 245, LLC, has requested a Special Land Use permit for the sale of Adult Use marihuana, at the proposed Meds Café, located at 427 W. Campbell St.

Johnson introduced himself as a local resident representing Meds Café and has been the contractor for four other facilities similar to this in four other communities: successful builds, successful projects, no issues, and a lot of fun with clients. He asked the clients if this came to be a viable option in Alpena, and if he could get a building, would they come and join him since they already have the network, the distribution, the safety policies, and all the controls in place. Once they granted him permission to proceed, he secured the former Northern Tool building, which was already retail use, same traffic, looked like a great facility, would be larger than they would need and would be able to remodel it to make it work for a dispensary type facility. He said they are very happy to have this in Alpena, have followed all the rules and guidelines, and look forward to being another business in the area.

Montiel Birmingham presented the Finding of Fact report. (See Appendix A & C).

Boboltz expressed his concern over the current lighting in the parking lot and suggests that lighting upgrades be added as an additional condition to move forward.

FAVOR: Michael Cramer told the Planning Commission that there are some websites that they could go to, put together by the National Organization for the Repeal of Marihuana Laws. On those sites, there is a spot that lists different specific allegations and if you click on it, it gives you the actual facts with reference to National and International studies.

OPPOSITION: Matt Leavesley said he cannot think of a less than ideal place to put a business like this. He said he knows the intersection of Ripley and Campbell very well, he uses it every day, and it is an extremely tricky intersection no matter what is in there. He felt that when Northern Tool was in there, the business was waning, hence minimal traffic; but, now they are talking about leasing to another business which we don't know what that is yet, and putting this business in there, which would make it the third smoke shop, second marihuana shop in a very small diameter in this very close knit and residential community, and this one is literally going to go within feet, spitting distance, of resident's backyards. He stated he understands the technicalities of where something like this can go, but we all know this is not the same kind of retail business that Northern Tool was. He felt it incredibly unwise to put a business like this right on the property lines of those residents, and personally could think of dozens of other locations that would be much better suited. He said in terms of vacant buildings, if this business does not go in there, it doesn't mean another one isn't going to want to go in there that would be much better suited for that particular area. He said the issue isn't so much

whether it is allowed there but is it wise, and is it the best place for the community for this particular business to go. He submitted that he does not think that is that case and when you look at the other variables such as this being the second business within walking distance, and selling something that not so long ago was considered a harmful drug. He stated he recognizes the reasoning of the other Medical Marijuana facility wanting to sell Recreational as well, because it will bring in a larger clientele, as will this one, and it will make that intersection chaos.

Robert Bruning returned to the podium to stand by his comment from earlier about the building codes; he does not think anybody has any problem with what goes on inside the building, but what happens when it comes outside the building after being sold to irresponsible people. He said this is a different type of commodity with a different type of people coming into our neighborhood. He questioned if there would be a higher law enforcement presence because of these shops, what the entrance and exit situation would be, will traffic be allowed to exit on our side streets, and we don't want that kind of traffic running up and down our streets possibly allowing people to be dropping stuff out of their pockets. He said we cannot split hairs about the DARE program, say we are a DARE community, and then turn around and set up pot shops; it doesn't make it right and it doesn't make it safe.

With no further public comment, Boboltz closed the public hearing to deliberate at 7:10 pm.

Kostelic said she does not live far from the area in question, and she agreed that the intersection is very busy and tricky to maneuver out of at times. She also agreed that the location is zoned correctly, but she goes back and forth about the location as it does encroach into the neighborhood a bit, it is close to Ella White school and she is not against the shop he wants to open, but she is open to the idea of discussing a different location.

Peterson agreed that the traffic, even with Ella White's restructuring of the parking lot, but with dismissal and arrival to the school, the railroad tracks near the other shop, a lot can happen during Alpena's version of "rush hour", and she wanted to be mindful of that as they were making the decision. She also agreed that with the number of locations in such a small parameter, they need to look at the full picture, and not just pigeonholing a certain neighborhood in Alpena to be where Provisioning centers are occurring.

Wojda agreed that the intersection is a tricky one with a weird angle, and he was very concerned about the impact of traffic on that neighborhood intersection. He said as opposed to the other applicant, although it meets our standards, he is also troubled that it butts up to residential backyards; but, when they look at other factors and compatibility with adjacent uses, he can't ignore the fact that there are houses in the backyard. He said those are the two big things he is struggling with. He said it does meet all of the standards, it is a good plan, but he doesn't know if it is a good plan in the right place.

VanWagoner asked if there is a provision in the Ordinance for a business of this nature and how close it could be to a residence. Birmingham replied that it does exist in other Ordinances, but not currently in ours.

Boboltz said that they are up against a situation that is not very comfortable because the City, and the Planning Commission to a certain extent, went as far as getting this Ordinance put together and it appeared to him that the language does not include anything saying that a facility like this has to be some distance from a residential neighborhood. He was unable to say whether it had ever been discussed to put that type of restriction in place, or if it had been but decided against. He stated that it troubled him. He said he hadn't previously given the intersection a lot of thought, but he agreed that the intersection, particularly turning left, can be a real bear. He also agreed that the petitioner has met all requirements, and this Special Use permit, if approved in essence, is the final word on it – it does not have to go to City Council for approval. He said that doesn't mean that if we did approve it with all the objections from the public that the City might not reconsider some additional language to that Ordinance, but it surely puts the petitioner between a rock and a hard place.

Wojda stated that we still must consider the factors here – it is not just a matter of it meeting the standards and therefore it is approved. He stated that there is nothing that says there must be a certain setback from residential uses, but that comes into play under the second factor – compatibility of adjacent uses. Wojda went on to say that there is certainly a commercial stretch of businesses along there, so from that perspective, it is compatible with those adjacent uses along the Ripley Street corridor, but the other side of the property is people's back yards and that is a concern. For Wojda, he says if you look at the factors, a lot of them weigh in on approval, but there are two that weigh against, and do those two outweigh the others.

Gilmore asked Johnson what the estimated volume of traffic would be in one day. Johnson says about 20 to 40 vehicles. He stated that at the other facilities, they only have one way in and one way out, and this location has two. He said the reason for selecting the building was because it is in a high traffic area.

Wojda asked what Johnson's plan is for the parking lot entries and exits. Johnson says it meets the curb cut requirements for entry and exit for both.

Boboltz said one of the lot approaches is only gravel and in poor condition. Johnson replied that they have every intention of putting their parking spaces in and of course, as soon as we get warmer temperatures, putting up the signage, striping, and everything for the exterior.

VanWagoner said he has no problem with the traffic on that street as he plows snow across the street and never has an issue, but if we made provisions to keep it away from schools and churches, yet there are kids living right next door to this, he has a problem with that.

Kostelic said she could not, in good faith, move forward with this approval because of the location.

Bauer stated that she does not recall any conversation about limiting these facilities around residential neighborhoods – that it was always schools, churches and The Boys and Girls club. She asked Wojda if there was enough to not pass it, given the ordinance. Wojda replied that it is not about a certain number of tally marks on either side, it is a matter of how you weigh them.

Johnson said he owns other businesses that are also adjacent to residences as well, and he doesn't know of many businesses in town that don't butt up to residential areas.

Wojda ***motions*** to adopt the following findings in Appendix C:

Section 6.12

Item A: That the applicant property is located in a zoning district that would allow this special land use.

Item B: The building has a history of commercial use, although compatible with some neighboring properties, it is completely incompatible with other neighboring properties and that weighs strongly against approval.

Item C: Public services are available and that weighs in favor.

Item D: Economic wellbeing is served by having a business in place, that there would be no direct public costs associated.

Item E: Compatibility with Natural Environment weighs in favor.

Item F: The impact of traffic on the street system weighs against approval in that this is a unique intersection.

Item G: Non-Detrimental Standards are compatible.

Item H: Consistency with Zoning Ordinance and Comprehensive Plan is compatible.

Section 7.41

Item A: Standards are compatible with the maps of allowed areas

Item B: Meets all submittal requirements of our supplemental development standards

Based upon the two most important factors, the compatibility with adjacent uses and the impact on the traffic street system, Wojda moves to find that those factors outweigh the other factors that weigh in favor of approval, that they in turn, DENY the request for the Special Land Use permit.

Motion ***seconded*** by Bauer.

Yeas: Wojda, Peterson, Boboltz, VanWagoner, Bauer, Kostelic

Nay: Gilmore

Motion to **deny** Special Land Use approval for the sales of Adult Use Marihuana at 427 W. Campbell Street, passed by vote of 6-1.

Gilmore recommended that City Council revisit that Ordinance to mitigate another situation like this from happening again. Boboltz agreed and said sooner rather than later. Birmingham acknowledged.

Outdoor Seating and Dining Service Zoning Text Amendment

Birmingham presented an overview of the ordinance (See Appendix D).

Bauer asked Anne Gentry, Downtown Development Authority, if they wanted to keep the fence language. Gentry stated that they had a board meeting, with a few board members in favor of having fences; they decided to keep it in the language as discouraged. Bauer said it was not a deal breaker for her but felt it should be clarified to say what kinds of materials can be used, if we are worried about safety. Boboltz also shared that he was concerned about the language. Bauer mentions that the City does not have a bike Ordinance, so the sidewalks are being shared with all kinds of pedestrian traffic; also, if we are worried about safety, saying that fences are discouraged and letting certain materials remain, it is not safe. Birmingham replied that the City currently does not have specific language regarding the material, but it does state that it must be kept clean, orderly, safe and maintained.

Boboltz reiterated that all other changes the Planning Commission had wanted from the previous meeting, had been made.

With no further discussion for or against from public or the Commission, the public hearing was closed for deliberation by Boboltz at 7:40 pm.

Bauer **motions** to approve the amendment to the Zoning Ordinance for Outdoor Seating and Dining Services in Articles 3, 4, 5, and 7.

Peterson **seconded** the motion.

Motion passed by vote of 7-0.

NEW BUSINESS: Birmingham explained to the Commission that she found in the Zoning Ordinance the requirement of a Special Land Use permit for outdoor dining in a public right of way. She says one of the objectives in the Master Plan is to encourage businesses to use outdoor spaces, with the example given of Sidewalk cafes. She suggested allowing them by right, and not requiring the Special Land Use permit. She stated that if the City were to do that, it would affect the Waterfront District, Central Business District, Commercial Corridor District,

B-1 Local Business District, B-2 General Business District, and B-3 Commercial District; this Ordinance would require the application to be submitted with a plot plan. If within the DDA, Birmingham would review it as well as Gentry and her team with the DDA. If not within the DDA, Birmingham would review it for any type of signage, seating, or benches.

Kostelic ***motions*** to move forward with Appendix E, which eliminates the requirement for a Special Land Use permit for outdoor dining on a public right of way.

Wojda ***seconded*** the motion.

Motion ***approved*** by vote of 7-0.

CONTINUING EDUCATION: Birmingham presented the board with some continuing education opportunities as follows:

Conflicts of Interest – obtained by MSU Extension

Great Lakes Coastal & Zoning E-mail Course (free of charge)

PUBLIC COMMENT: Michael Cramer said that the decision for the cannabis shop on Campbell Street is an issue as much for the building as it is for the business. He said that if the traffic is that bad at the area, and it keeps coming up as an issue, that will have to be rectified before any business takes on that building at all. He felt it not fair to put that on the cannabis shops shoulders, it is the City's problem if it is really a dangerous intersection. His second point was that if everyone is so emotional about the location of the business near residential areas, they should visit the website he mentioned earlier in the meeting. He said it has been emotionally overblown by the hyperventilation of the war on drugs. He said he thinks the City should reconsider their decision to allow the business on Campbell Street.

With no further business to discuss, the meeting stood adjourned by Randy Boboltz, Vice-Chair, at 7:51 pm.

Steve Gilmore, Secretary