

CITY OF MUSKEGON
PLANNING COMMISSION
REGULAR MEETING
MINUTES

December 10, 2020

Chairperson T. Michalski called the meeting to order at 4:00 p.m. and roll was taken.

MEMBERS PRESENT: J. Montgomery-Keast (Muskegon MI), L. Spataro (Muskegon MI), B. Larson (Muskegon MI), B. Mazade (Muskegon MI), T. Michalski (Muskegon MI), J. Doyle (Muskegon MI), F. Peterson (Muskegon MI), S. Gawron (Muskegon MI), E. Hood (Muskegon MI)

MEMBERS ABSENT: None

STAFF PRESENT: M. Franzak, D. Renkenberger

OTHERS PRESENT: Via Zoom: C. Roberts, 7189 W 104th, Fremont MI; M. Gross, Brooklyn NY; K. Hallman, 296 W Webster Ave; M. Dobry, attorney for St. Pauls' Episcopal Church; D. Kamps, Step Up; D. Henrickson, 2325 Belmont Center Dr, Belmont MI; D. Johnson, Harbor 31; S. Achram, Paradigm Design for Harbor 31; A. Murphy, 142 Viridian Dr; T. Vitale, attorney with Smith Haughey Rice & Roegge, PC; M. Marcil, 670 Terrace Pt Dr

APPROVAL OF MINUTES

A motion to approve the Minutes of the regular Planning Commission meeting of November 12, 2020 was made by B. Larson, supported by J. Montgomery-Keast and unanimously approved.

OLD BUSINESS

Hearing, Case 2020-18: Request to amend Section 2331 of the zoning ordinance to expand the marihuana facilities overlay district to allow for microbusiness and designated consumption establishment at 420 S Harvey St by Michigan Canna House, LLC. This case was originally heard at the October meeting, where the public hearing occurred and was closed. The case was then tabled by the board. The applicant has stated that he wishes to bring the case back before the board for a decision. He also has a separate case to be heard under New Business at this meeting, which requests different types of licenses.

M. Franzak stated that he was still working on crafting a microbusiness ordinance, but it would not cover Mr. Roberts's request. J. Montgomery-Keast asked if the microbusiness licenses were only meant for caregivers. M. Franzak stated that microbusinesses were allowed in the same districts as caregivers but they were not reserved for only caregivers.

There was no public hearing held at this meeting, as it was held at the October meeting. L. Spataro stated that a motion should be made so the board could discuss it.

A motion that that request to amend Section 2331 of the zoning ordinance to expand the marihuana facilities overlay district to allow for microbusinesses and designated consumption establishments at 420 S Harvey St, by Michigan Canna House, LLC be approved, was made by S. Gawron and

supported by B. Larson, with discussion continuing on the motion.

C. Roberts had prepared a presentation on the request, which he presented to the board. He stated that this request was similar to his last request but it had been edited to include a license for Processor. B. Mazade stated that his concern with this request was that it wasn't something that the city intended to allow with the revised marihuana ordinance staff was working on. M. Franzak stated that Mr. Roberts was requesting retail sales, which was not covered by the ordinance being worked on. C. Roberts further detailed his request. He stated that this case involved his request for a microbusiness; his other application for the different license types would be heard under New Business. L. Spataro stated that these types of requests would be much easier for staff, the board, and applicants to navigate once the ordinance was in place. M. Franzak pointed out that Mr. Roberts was asking to amend the ordinance. J. Montgomery-Keast stated that she was not opposed to a microbusiness at this location, but it was confusing since there were no parameters listed. B. Mazade stated that it was a fluid situation and suggested that the city may want to issue a moratorium on these requests until the ordinance was in place.

A vote was taken on the motion to approve the request. The motion failed, with T. Michalski and B. Larson voting aye, and J. Montgomery-Keast, L. Spataro, B. Mazade, J. Doyle, F. Peterson, S. Gawron, and E. Hood voting nay.

Hearing, Case 2020-20: Request to amend Section 2331 of the zoning ordinance to expand the marihuana facilities overlay district to allow for MMFLA and MRMTA Growing, Processing and Provisioning/Retail license types at 965 W Western Ave, 920 Washington Ave and 1330 Division St by P & G Holdings, LLC. This case was originally heard at the November meeting; The public hearing was closed and the case was tabled by the Planning Commission. It is now being brought back to the board for a vote.

A motion to remove the case from the table so it could be voted on by the board, was made by B. Mazade, supported by B. Larson and unanimously approved.

The property at 920 Washington was recently approved as part of the marihuana facilities overlay district for retail-provisioning license types. The property owner would now like to expand the types of marihuana licenses allowed on site, which also includes buildings 965 W Western Ave and 1330 Division St. This request would allow all growing license types, processing licenses and provisioning/retail licenses at 965 W Western Ave, 920 Washington Ave and 1330 Division St. Staff recommends approval of the request at 965 W Western Ave and 920 Washington Ave in an effort to redevelop the properties. Notices were sent to property owners and occupants within 300 feet of the subject properties; staff received communication from some of the neighbors who were opposed to the request.

A motion that that request to amend Section 2331 of the zoning ordinance to expand the marihuana facilities overlay district to allow for MMFLA and MRMTA Growing, Processing and Provisioning/Retail license types at 965 W Western Ave, 920 Washington Ave and 1330 Division St by P & G Holdings, LLC be recommended to the City Commission for approval was made by F. Peterson and supported by E. Hood, with discussion continuing on the motion.

L. Spataro asked if staff had a recommendation and if the request was consistent with the new marihuana ordinance being crafted by staff. M. Franzak stated that it was not consistent with what staff was proposing for the microbusiness ordinance; however, this property was approved earlier in the year for provisioning and retail uses. This latest request was an opportunity to spur redevelopment of the building. J. Doyle asked why it had been previously mentioned that time was running out on this project. M. Franzak stated that the building was deteriorating. T. Michalski asked if this request

was for a special use permit. M. Franzak stated that it was not; it was similar to the previous request. F. Peterson stated that he saw this case differently from the previous one. He discussed the property's history and stated that this building was one that the city had been trying to get the owners to develop for some time. In addition, the City Commission had previously approved the property for selected marihuana-related uses. He stated that resources were now available to help further develop the property and it was important to leverage those. M. Gross stated that the marihuana business would create cash flow needed for redevelopment of the condos. J. Doyle asked if the Planning Commission could put a deadline on the condo development to ensure that it was completed. F. Peterson stated that he would have to check with the city's attorney on that. T. Michalski asked if it could be included as a recommendation in the motion. M. Franzak stated that he didn't think a development agreement could be tied in with the zoning ordinance but if the condo development didn't happen, staff could propose that the Planning Commission remove the property from the marijuana district. J. Doyle stated he would be comfortable with that and he would like it added to the motion. M. Franzak stated that it could be added as a suggestion, but it wouldn't be binding. B. Mazade stated that he was not in favor of the request, but asked if J. Doyle's suggestion could be incorporated through contract zoning. M. Franzak stated that he would have to look into that. T. Michalski stated that a marihuana facility was not the highest and best use of lakefront property. He also stated that he wanted to see some type of contract or development agreement to ensure that the condo development was done. F. Peterson stated that he would amend the motion to include a 2-year limit for the condo development. He also pointed out that the marihuana overlay district had several requirements regarding exterior improvements, which would benefit this property. M. Franzak confirmed that a blight elimination plan was part of marihuana overlay district requirements.

F. Peterson amended his motion recommending approval of the request, to include a recommendation that the approval be reviewed in 24 months to allow staff or the Planning Commission to consider revocation of the zoning approval if the condo development had not proceeded as stated. E. Hood supported the amended motion. The amended motion was approved, with T. Michalski, B. Larson, L. Spataro, J. Doyle, F. Peterson, and E. Hood voting aye, and J. Montgomery-Keast, B. Mazade, and S. Gawron voting nay.

PUBLIC HEARINGS

Hearing, Case 2020-26: Request to vacate a portion of the alley between Clay St and Webster Ave between 2nd St and 3rd St, by the Muskegon Museum of Art. M. Franzak presented the staff report. The Muskegon Museum of Art is planning an expansion of their building that will extend over the alley and onto their lot on Clay Ave. They are requesting to vacate a portion of the alley in order to build over it. The other buildings on the block will not have access to the rear of their properties restricted, as the alley will remain open directly behind all of them. Staff recommends approval of the vacation request.

L. Spataro asked if there had been any input from the neighboring businesses. M. Franzak stated that the applicant had submitted documentation indicating that they were agreeable to the request. K. Hallman, Executive Director of the Muskegon Museum of Art, stated that they did not want to close the entire portion of the alley as shown in red in the staff report; they would only close it up to where St. Paul's parking lot began, which was the darker gray parking lot shown in the report. The museum would control only the center section behind their building, not the area behind St. Paul's or the Women's Club. M. Dobry phoned in on behalf of St. Paul's Church, to confirm that the section of the alley abutting the church's parking lot would not be closed. K. Hallberg confirmed that was correct.

A motion to close the public hearing was made by B. Larson, supported by T. Michalski and unanimously approved.

A motion that the request to vacate the portion of the alley between Clay St and Webster Ave, and between 2nd St and 3rd St, that is adjacent to the Muskegon Museum of Art property as discussed above, be recommended to the City Commission for approval, was made by B. Larson, supported by J. Montgomery-Keast and unanimously approved, with T. Michalski, B. Larson, L. Spataro, J. Doyle, F. Peterson, E. Hood, J. Montgomery-Keast, B. Mazade, and S. Gawron voting aye.

Hearing, Case 2020-27: Request for a special use permit to operate group living/mentoring home for young adults at 1129 Peck St, by Step Up. M. Franzak presented the staff report. Step Up is a non-profit organization that assists young people (ages 18-24) that have graduated out of the foster care system. They currently have an operation at 1670 Peck St. The homes will have a mentor on site as well as a few young adults. The zoning ordinance defines a family as anyone related by blood or marriage and up to two other people. Under this definition, a use like this would not be in conformance of a single family in the one-unit home. Although the property is zoned RM-1, and multifamily homes are allowed, there would still be more than one family living in the single unit. Adult Foster Care Large Group Homes are allowed in this zoning district with a special use permit. While this use would be much smaller in terms of occupants, staff feels that this is similar in nature and should also require a special use permit. Staff recommends approval.

D. Kamps stated that Step Up currently operated 2 such homes in the area and this one would be similarly run. Their intent was to assist foster kids who aged out of the foster system when they turned 18.

No public comments were received. A motion to close the public hearing was made by L. Spataro, supported by J. Montgomery-Keast and unanimously approved.

A motion that the request for a special use permit to operate a group living/mentoring home for young adults at 1129 Peck St be approved, was made by B. Larson, supported by J. Montgomery-Keast and unanimously approved, with T. Michalski, B. Larson, L. Spataro, J. Doyle, F. Peterson, E. Hood, J. Montgomery-Keast, B. Mazade, and S. Gawron voting aye.

Hearing, Case 2020-28: Request to amend the final Planned Unit Development (PUD) at 600 Shoreline Dr (Harbor 31), by Harbor 31, LLC. M. Franzak presented the staff report. In the year 2000, Lakefront Development LLC was approved for a mixed-use PUD at this site. Only a couple of the developments from the plan were built and the remaining developable lots were sold to a new developer. While the original site plan cannot be located, a City Commission resolution approving the plan spells out the PUD's conditions of approval. The original PUD also described the publicly accessible boardwalk; however, staff cannot locate any actual recording of said publicly accessible land. This proposed development project meets most of the standards of the underlying zoning (FBC, Mainstreet Waterfront), however, the original PUD should still be honored because of the publicly accessible boardwalk agreement. A project narrative and site plan were provided. The plan calls for two public access points to the water: One to the boardwalk, located north of the traffic circle, and the other to a seating area west of the traffic circle, between buildings G and H. The plan assumes the successful vacation of a portion of Viridian Dr, which is the topic of the following case. Staff recommends approval of the special use permit with the following conditions: 1) Public easements for access to the existing boardwalk and new waterfront gathering space shall be recorded with the Register of Deeds before any building permits are issued, and 2) Each separate use/building needs to individually obtain site plan approval. Any variation from the PUD, in terms of use or building placement, is acceptable as long as it meets the underlying zoning (FBC, Mainstreet Waterfront) requirements.

M. Franzak stated that the issue of riparian rights had been brought up since the staff report was written. K. Even, an attorney representing the adjacent condominium owners, submitted a letter outlining the condo-owners objection to the request, as they stated that the marina trespassed on their riparian rights. M. Franzak stated that the applicants had submitted a great plan, except for that issue. L. Spataro stated that the boardwalk and seawall had originally been built using Clean Michigan Initiative grant funds, and public waterfront access was a requirement. B. Mazade stated that, generally speaking, the property outside the buildings was considered common area, and it seemed like the condo owners would have riparian rights. He informed staff that the city's attorney on the project in the past had been Rhodes McKee. L. Spataro stated that, per attorney Even's letter, Planning Commission purview did not include the water side of the boardwalk and therefore did not include riparian rights.

D. Henrickson was the developer. He stated that he had been involved with this property since 2007, and explained its history. They had originally sought a casino for the property but they now wished to proceed with the current development proposal. S. Achram described the proposed plan, which included a mixture of uses, including about 400 residential units plus senior living. He displayed a rendering of the development and stated they would also like to alter Viridian Dr at the east end of the development. A request to vacate that portion was included in the next case. D. Johnson stated that they planned to start development with the waterfront units in June of 2021, and work inward. D. Henrickson stated that he would work with the neighbors on their concerns; he had intended for the marina to be a benefit to them and had only recently been made aware of their opposition to its location. J. Montgomery-Keast asked about any environmental issues. D. Henrickson stated that they had been working with EGLE and several consultants. L. Spataro asked if the streets in the development would be public. D. Henrickson believed they would be, and stated that they would work with staff to ensure that the form-based code requirements were met. L. Spataro asked if the sidewalk would continue past the Boardwalk Flats building shown on the rendering. D. Henrickson stated that it would, and would be accessible to the public. L. Spataro stated that he would like to see pedestrian access to the waterfront from the hotel to make it more walkable. B. Mazade questioned the compatibility of the different facets of the project, as a boat storage building would be located between two residential units. D. Henrickson stated that the development would be a boating anchor, and having the nearby boat storage would be an amenity. They planned to minimize the industrial look of the storage building.

Public comments were heard. A. Murphy was a resident of the adjacent condominiums and was concerned with her riparian rights. She objected to the location of the proposed boat slips and the additional traffic. T. Vitale was an attorney representing the condo owners and followed up on K. Even's comments regarding riparian rights. He wanted the Planning Commission to require a riparian survey. L. Spataro reiterated that it sounded like the Planning Commission's purview ended at the waters edge and as such, they had no jurisdiction over riparian rights. B. Mazade was concerned that the Planning Commission was being asked to approve a plan that included a marina. D. Henrickson stated that he understood the neighbor's concerns; he thought he was providing a solution for them, as he had previously heard that they had wanted boat access. He stated that he would have no problem moving the marina. M. Marcil stated that her back yard overlooked the area of proposed single-family homes, and she would like to see some kind of buffer between their properties. D. Henrickson stated that the plan called for 10-15 feet of green space there, but he had no problem creating a buffer.

A motion to close the public hearing was made by B. Larson, supported by L. Spataro and unanimously approved.

A motion that the request to amend the final Planned Unit Development at 600 Shoreline Dr be recommended for approval to the City Commission, with the following conditions as listed in the staff recommendation: 1) that public easements for access to the existing boardwalk and new

waterfront gathering space shall be recorded with the Register of Deeds before any building permits are issued, and 2) each separate use/building needs to individually obtain site plan approval. Any variation from the PUD, in terms of use or building placement, is acceptable as long as it meets the underlying zoning (FBC, Mainstreet Waterfront) requirements, was made by J. Montgomery-Keast, supported by B. Larson and unanimously approved, with T. Michalski, B. Larson, L. Spataro, J. Doyle, F. Peterson, E. Hood, J. Montgomery-Keast, B. Mazade, and S. Gawron voting aye.

B. Mazade asked if the marina was included in the approval. D. Henrickson stated that he was working with a marina consultant and they had several technical issues to consider. S. Achram stated the staff recommendation regarding each separate use/building requiring individual site plan approval should address any concerns. T. Michalski stated that he was satisfied with that. F. Peterson stated that Planning Commission approval was based on zoning; if there were problems between the developer and property owners, it would have to be worked out between them.

Hearing, Case 2020-29: Request to vacate a portion of Viridian Dr, east of Terrace St, by Harbor 31, LLC. M. Franzak presented the staff report. The applicant has requested to vacate a portion of the east end of Viridian Dr. in an effort to develop the property. Access to the proposed developments would be through a new private drive. Staff recommends approval of the vacation request.

D. Henrickson described the area of Viridian Dr to be vacated, and stated that the current road lead to nowhere, so the vacation would not affect any residents or businesses. They planned to use the area as part of the new development.

There were no questions from board members or the public. A motion to close the public hearing was made by J. Montgomery-Keast, supported by L. Spataro and unanimously approved.

A motion that the request to vacate a portion of Viridian Dr, east of Terrace St, be recommended to the City Commission for approval was made by L. Spataro, supported by J. Montgomery-Keast and unanimously approved, with T. Michalski, B. Larson, L. Spataro, J. Doyle, F. Peterson, E. Hood, J. Montgomery-Keast, B. Mazade, and S. Gawron voting aye.

Hearing, Case 2020-30: Request to amend Section 2331 of the zoning ordinance to include 420 Harvey St in the marihuana facilities overlay district and allow class B grower, processor, retailer, designated consumption establishment and marihuana special events license types, by Michigan Canna House, LLC. M. Franzak presented the staff report. In September, the applicant applied to amend the zoning to allow for microbusiness, designated consumption establishment and special event license types. The case was eventually tabled at that meeting. It was taken off the table and denied earlier in this meeting. Staff had started to work on an ordinance amendment that would allow for these three license types, among others, in B-2, B-4, MC, I-1 and I-2 Districts. This building is zoned B-2. The Planning Commission made a recommendation (3-3) to the City Commission on staff's suggested ordinance amendment; however, the City Commission tabled the case because of too many recommended conditions of approval. The applicant is no longer in favor of staff's recommended ordinance amendment because he is now seeking additional license types that staff is not recommending. In addition to bringing back the tabled item, the applicant is now seeking approval of additional license types (Class B grower, processor, retailer) at this location. Notice was sent to properties within 300 feet of this property. At the time of this writing, staff had not received any comments.

B. Larson asked if staff had a recommendation. M. Franzak stated that he did not. L. Spataro asked if this request was consistent with the proposed ordinance going through the City Commission process. M. Franzak stated that it was not.

C. Roberts stated that he was unhappy with the Planning Commission's rulings on previous cases,

and didn't think he had been treated fairly. He had no further comment.

A motion to close the public hearing was made by L. Spataro, supported by B. Larson and unanimously approved.

A motion that the request to amend Section 2331 of the zoning ordinance to include 420 Harvey St in the marihuana facilities overlay district and allow class B grower, processor, retailer, designated consumption establishment and marihuana special events license types be recommended to the City Commission for approval, was made by B. Larson and supported by F. Peterson, with discussion continuing on the motion.

M. Franzak clarified the difference between this request and the previous one. A vote was taken on the above motion to approve. The motion failed, with E. Hood and T. Michalski voting aye, and J. Doyle, S. Gawron, F. Peterson, L. Spataro, J. Montgomery-Keast, B. Larson and B. Mazade voting nay.

NEW BUSINESS

None

OLD BUSINESS

None

OTHER

T. Michalski asked that staff notify Planning Commissioners via a memo in the staff report when the City Commission overturned any of their decisions.

There being no further business, the meeting was adjourned at 6:32 PM.

DR