

**MINUTES
CITY OF FARMINGTON HILLS
PLANNING COMMISSION REGULAR MEETING
31555 W ELEVEN MILE ROAD
FARMINGTON HILLS, MICHIGAN
JANUARY 14, 2021, 7:30 P.M.**

CALL MEETING TO ORDER

The Planning Commission Regular Meeting was held electronically as authorized under the Open Meetings Act, MCL 15.261, *ET SEQ.*, as amended, and called to order by Chair Stimson at 7:31 p.m. Commission members were asked to state their name and location, as to where they were attending the electronic meeting.

ROLL CALL

Commissioners Present: Brickner, City of Farmington Hills, Oakland County, Michigan
 Countegan, City of Farmington Hills, Oakland County, Michigan
 Mantey, City of Farmington Hills, Oakland County, Michigan
 Orr, City of Farmington Hills, Oakland County, Michigan
 Schwartz, City of Farmington Hills, Oakland County, Michigan
 Stimson, City of Farmington Hills, Oakland County, Michigan
 Trafelet, City of Farmington Hills, Oakland County, Michigan

Commissioners Absent: Turner
 One vacancy

Others Present: City Planner Stec, City Attorney Schultz, Planning Consultants Arroyo and Tangari

APPROVAL OF AGENDA

MOTION by Orr, support by Trafelet, to approve the agenda as submitted.

Roll call vote:

Yeas: Brickner, Countegan, Mantey, Orr, Schwartz, Stimson, Trafelet
Nays: None
Absent: None
Abstentions: None

MOTION carried 7-0.

REGULAR MEETING

A. Medical Marihuana Caregiving Zoning Regulations

Consideration of revision(s) to ordinances regulating medical marihuana caregiving

Planning Consultant Arroyo led this discussion, which was a continuation of the discussion at the December 17, 2020 Planning Commission meeting regarding AMENDMENT TO THE ZONING ORDINANCE: *An Ordinance to amend Chapter 34, Zoning, of City of Farmington Hills Code of Ordinances by adding and amending certain definitions, repealing section 34.4.27 Marihuana Uses, and*

creating a new Section 34-3.27 Primary Caregiver Overlay District to create an overlay zoning district and establish location requirements for the cultivation of medical marihuana by primary caregivers, under the Michigan Medical Marihuana Act (MMMA), Initiated Law 1 of 2008, MCL 333.26421 et seq., as amended, to protect the health, safety and welfare of the public, draft dated 12/8/2020.

Tonight the Commission would discuss four key areas, as directed by City Council. Once input was received, Planning Consultant Arroyo would complete the draft ordinance, and bring it back to the Planning Commission for review. The four areas of discussion were:

1. Where should primary caregiver facilities be located - in individual zoning districts, a combination of districts, or an overlay district?
2. How far should primary caregiver facilities be located from residential zoning districts or residential uses? Should a specific distance be referenced, or should the ordinance be silent, allowing district setback requirements to regulate distance?
3. Should a distance be established to other sensitive uses? There was already a 1,000 foot distance requirement between a primary caregiver facility and schools, day care centers, etc., in order to comply with Federal drug-free zones. Other uses that could be considered for distance requirements might include such uses as places of worship, playgrounds, parks, drug rehabilitation centers, etc.
4. Should the number of primary caregivers that could be located in a single building or on one zoning lot be limited, or should current ordinance requirements be the only limitation for this?

Discussion followed.

Question 1: Where should primary caregiver facilities be located - in individual zoning districts, a combination of districts, or an overlay district?

- The Light Industrial (LI-1) District met all the requirements for this industry. Distances to schools and other sensitive locations would not be an issue, and nuisance factors such as odor could be better addressed.
 - Commercial locations would not work because they had windows. Office locations would not accommodate odor issues.
 - LI-1 could best accommodate electrical requirements.
- Should this discussion also include large scale medical marihuana commercial/warehouse operations?
 - Right now City Council wanted to limit discussion to primary caregivers. Council wanted to move primary caregivers out of residential areas, where the use is currently allowed and where there were certain negative impacts, including odor.
- Advantages of being a primary caregiver under the compassionate care law (Michigan Medical Marihuana Act) included: 1) smaller operation, 2) the lower cost of entry into the business generally, 3) not subject to testing and regulatory requirements of larger operations.
- Primary caregivers were limited to 72 plants, but if several operators shared a single facility, the cost of operating that facility could also be shared.
- How were primary caregiver operations enforced? Did someone actually count the number of plants? Were registered primary caregiver operations ever inspected? Weren't there people growing their own plants or operating as primary caregivers who were not registered?
 - Again, tonight the discussion was focused on registered primary caregivers who were growing up to 72 plants. Did the Commission want to recommend that this stayed a residential use, or was there perhaps a better place to put that fairly large but non-commercial grow operation?

- In residential areas, a primary caregiving operation was regulated as a home occupation. No more than 15% of the home, which had to be resident occupied, could be used for the operation, although 72 plants in various stages of growth – from seedling to full plants – did not necessarily take up a large space. However, because the operation was in someone’s home, enforcement of any kind was difficult.
- Most complaints regarding residential primary caregiving operations involved odor, and sometimes noise.
- Registered primary caregivers operating legally in the City would be grandfathered, and could remain in their current location, even with this new draft ordinance.
- The Commission should be prepared to defend its choice of location, if placed outside of residential areas, especially in terms of whether or not grow operations that joined together in order to afford a building in industrial districts (or certain other areas), constituted unfair competition to the larger grow operations. Primary caregivers did not pay state taxes, inspection fees, and other significant costs associated with a large scale operation. In theory, primary caregivers performed an altruistic service, and did not actually make a profit. But no one kept track of how much money primary caregivers charged or made. Again, they were unregulated.
- The City had a 6.9% vacancy rate in LI-1, so there was space for this type of use.

The consensus of the Commission was to recommend that primary caregiving operations be located only in the Light Industrial District.

Question 2: How far should primary caregiver facilities be located from residential zoning districts or residential uses? Should a specific distance be referenced, or should the ordinance be silent, allowing district setback requirements to regulate distance?

and

Question 3: Should a distance be established to other sensitive uses? There was already a 1,000 foot distance requirement between a primary caregiver facility and schools, day care centers, etc., in order to comply with Federal drug free zones. Other uses that could be considered for distance requirements might include such uses as places of worship, playgrounds, parks, drug rehabilitation centers, etc.

- The discussion focused on whether the use should be able to abut residential districts and/or residential uses. Again, limiting the primary caregiver use to LI Districts eliminated most of the issues in the questions above. Additionally, any distance requirements required by State law will apply.
- LI-1 districts were primarily located along 8 Mile Road, and along the I-275 corridor, with one area south of Grand River and east of I-275 that was under a consent judgement and that was developed under the LI-1 requirements; this area could also be included as an approved location for this use.
- Odor issues should be contained because LI Districts were more strictly regulated for that type of nuisance, although the City was also researching strengthening odor regulations in residential areas in the nuisance section of the Code.
- Different portions of the LI Districts in the City had different characteristics. For instance, the LI District along 8 Mile Road included smaller lots with smaller buildings, and also contained nonconforming residential uses. While the smaller primary caregiving operator might be able to better afford this location, more residential homes might be impacted. Even if the use were prohibited from abutting a residential use or district, the lots were so small that a nearby residence could easily be impacted by odor.

- The ordinance could not limit the location so severely that in effect the City was precluding the use altogether. A reasonable opportunity needed to be provided to engage in legal primary caregiver use.
- Currently legal primary caregiver uses were located in residential areas, with residential neighbors. This had caused problems, especially with odor and sometimes with noise. If the use was moved to Light Industrial, where there were stricter controls on noise and odor, those residences abutting LI districts should experience minimal impact.
- The draft ordinance included site plan review, including addressing odor containment. No nuisance factors could go beyond the property line.

The consensus of the Commission was to keep the regulation simple, and to recommend no further restrictions to location of primary caregiving operations other than limiting the use to LI Districts, as LI standards protected nearby non-LI uses, including residential uses. Also, the Commission did not recommend an overlay district for this use.

City Planner Stec asked if the Commission wanted to include the primary caregiving use as a principle permitted use of the district, or a special land use or other use with special conditions. If the latter, the Planning Commission would see submissions and hold public hearings for the proposed locations.

The consensus of the Commission was to include the primary caregiving use as a principle permitted use of the LI-1 district, with conditions as defined in the ordinance.

Question 4: Should the number of primary caregivers that could be located in a single building or on one zoning lot be limited, or should current ordinance requirements be the only limitation for this?

- The danger of not limiting the number of primary caregivers in a single building would be the risk of getting greater economies of scale, e.g., a commercial operation.
- Discussion focused on allowing enough of an economy of scale to permit primary caregivers to band together to afford a shared building, with appropriate separation, locked facilities, etc., and yet not to allow such an economy of scale that the operation became a commercial grow operation, competing unfairly with legitimate large-scale operations.
- Again, the Commission should be prepared to defend this choice to large scale grow operations.
- It was the City's responsibility to provide a reasonable opportunity for primary caregiver operations; it was not the City's responsibility to ensure affordability. Primary caregivers could legally charge based on their costs.
- Another option was not to limit the number of growers, but allow the parameters of the building to dictate what could be done with it. However, this option could result in a very large overall operation.
- Yet another option was to limit the number of plants at a single location, without limiting the number of growers. However, this option would be difficult to enforce.
- Each grower would need approximately 500 square feet of space. Allowing 5 growers in a single location would require 2500 square feet of space – not a huge facility. On the other hand, a large building with multiple entrances could include several operations with 5 growers each.
- The solution appeared to be to limit the number of growers per zoning lot, not building.

The consensus of the Commission was to limit the number of primary caregiving operations to five per zoning lot in the LI District.

Planning Consultant Arroyo said based on tonight's discussion, he would return to the Commission with changes to the draft ordinance, for Commission discussion prior to setting it for a public hearing.

APPROVAL OF MINUTES November 5, 2020 and December 17, 2020

MOTION by Orr, support by Trafelet, to approve the November 5, 2020 and December 17, 2020 meeting minutes, with the following corrections to the December 17 minutes:

Page 8, paragraph 6: . . . ~~26-27 du/acre~~ units on the site.

Page 8, paragraph 7, line 1: . . . ~~28-29 du/acre~~ units on the site.

Roll call vote:

Yeas:	Brickner, Countegan, Mantey, Orr, Schwartz, Stimson, Trafelet
Nays:	None
Absent:	None
Abstentions:	None

MOTION carried 7-0.

PUBLIC COMMENT

Kristi Kelly, West Stonewood Court, said as a member of the cannabis community – owner, investor, advocate, and operator, and as someone who had represented patients, business, and industry, she was concerned about the proposed regulations discussed this evening potentially inviting organized crime to the community. In her work with other municipalities and with law enforcement, she had learned that the places where organized crime likes to congregate are places that are friendly to caregiver operations being allowed to congregate in mass, providing an environment that would welcome multiple caregivers to stack next to each other to create unregulated commercial enterprises. She restated her concerns from the December meeting that Farmington Hills was inadvertently creating an ideal scenario for caregivers who never would have looked at Farmington Hills to potentially come to the City. Allowing 5 caregivers to stack uses at 72 plants each equates to 4500 pounds of cannabis per year. Additionally, the smallest license is for micro-businesses, and is for 150 plants. Stacking 5 caregivers definitely competes with that. She urged the Commission to rethink this draft ordinance.

COMMISSIONERS' COMMENTS

Responding to questions from Commissioner Orr, City Attorney Schultz and City Planner Stec addressed process for stating Commission concerns during cluster option review – concerns could be stated throughout the review process, but again the applicants had a right to a public hearing, even if there were outstanding issues. Commissioner Countegan cautioned fellow Commissioners against stating a decision regarding supporting or denying a request before the public hearing was held.

Commissioner Schwartz commented that in his opinion, any ordinance regulating marijuana uses, including primary caregiver uses, was in effect providing rules and regulations which in many instances would simply not be followed.

Commissioner Mantey reminded the public that the Planning Commission had a vacant seat to fill.

In response to a question from Commissioner Trafelet, City Attorney Schultz said he thought it would be some time – at least mid or late summer – before the Commission could meet in person, even with appropriate vaccinations.

ADJOURNMENT:

MOTION by Orr, support by Trafelet, to adjourn the meeting at 8:55 p.m.

Roll call vote:

Yeas:	Brickner, Countegan, Mantey, Orr, Schwartz, Stimson, Trafelet
Nays:	None
Absent:	None
Abstentions:	None

MOTION carried 7-0.

Respectfully Submitted,
John Trafelet
Planning Commission Secretary

/cem