



**NAPERVILLE PLANNING AND ZONING COMMISSION
APPROVED MINUTES OF NOVEMBER 20, 2013**

**UNOFFICIAL PRIOR TO PZC APPROVAL
APPROVED BY THE PZC ON DECEMBER 4, 2013**

Call to Order

7:00 p.m.

A. Roll Call

Present: Bruno, Coyne, Dabareiner, Frost, Gustin, Hastings, Messer, Meyer, Williams
Absent:
Student Members: Heavener, Chopra
Staff Present: Planning Team – Allison Laff, Ying Liu
Engineer – Amy Ries
Legal – Kristen Foley

B. Minutes

Approve the minutes of the November 6, 2013 Planning and Zoning Commission meeting.

Motion by: Meyer
Second by: Williams

Approved
(9 to 0)

C. Old Business

**C1.
PZC Case 13-1-126
Medical Marijuana**

Consider an amendment to Title 6 (Zoning Ordinance) of the Naperville Municipal Code to add regulations related to medical marijuana (continued from November 6, 2013).

Allison Laff, Planning Services Team, gave an overview of the request.

Planning and Zoning Commission inquired about:

- Whether surrounding uses will affect where dispensing facilities can be located. Laff – The surrounding uses of a property will be a factor in evaluation of the appropriateness of a proposed dispensing facility.
- Whether additional conditions should be added to regulate the industrial areas. Laff – No. The proposed conditions allow the City to consider each case on a case by case basis.
- What type of day care facilities would trigger the 1,000' requirement? Would it only include day care facilities that are primary uses or would it also include day care facilities that are accessory to other uses? Foley – Any facility that has a licensed day center (by the State) would trigger

the 1,000' restriction for cultivation and dispensing facilities.

- What is the difference between the State Act and the proposed text amendment with respect to retail sales at dispensing facilities? Laff – The State Act requires that paraphernalia and related supplies are to be dispensed to registered qualifying patients only. The text amendment proposes to limit accessory retail sales within dispensing facilities to 10% of the total square footage. The intent is to make sure that the primary use of the facility is dispensing not general retail.
- Does the State Act address pharmacies specifically? Foley – No. However, based on the security requirements for such facilities, existing pharmacies may not be able to comply with the State Act.
- What will a cultivation center look like? Foley – The State Act requires that cultivation centers to be a closed and locked facility. Also, based on the growing seasons in IL, I foresee them to be closed indoor facilities.
- What is the rationale to allow items unrelated to medical cannabis to be sold at dispensing facilities? Foley – Per the State's definition of dispensing facilities, only paraphernalia or related supplies and educational materials can be sold at a dispensing facility.

Public Testimony:

Anissa Olley, 101 Springwood

- Agrees with the addition of the requirement for a conditional use for a dispensing facility, the elimination of the 1000' requirement from residential use and prohibition of drive-thru facilities.
- Doesn't agree with the 10% restriction on retail areas. The sale of paraphernalia should be bundled with the sale of medical marijuana instead of a stand-alone retail component.
- Concerned about the requirement (Section 5.3) that the dispensing facility shall be the primary use of the tenant space. Such requirement would prohibit many pharmacies from dispensing medical marijuana. Doesn't believe such requirement is consistent with City Council's direction.
- Doesn't believe the State Act is intended to require dispensing facilities to be stand-alone facilities.
- Doesn't believe it is necessary for the City to impose additional regulations on dispensing facilities beyond the State requirements.

Planning and Zoning Commission inquired about:

- Do we have any indication from the State on how much of a dispensing facility will need to be used for retail sale? Laff – As currently written, if a facility requires more than 10% of the space to be retail areas, they will be able to seek a variance to the 10% restriction, which can be reviewed concurrently with the conditional use request. We can also amend the 10% restriction in the future when more information becomes available.
- What is the difference between a stand-alone facility and a facility in a strip center? Laff – The intention of the State Act is to ensure that a

dispensary primarily dispenses medical marijuana to qualifying patients, rather than conducting general retail sales. We don't feel it is appropriate to allow such facility to be open to the general public. Given the distance requirements from day cares and schools, we have written the text amendment based on the assumptions that it will be a stand-alone facility.

- Whether the law specifically prohibits pharmacies from dispensing medical marijuana. Foley – The Act doesn't specifically prohibit pharmacies from dispensing medical marijuana. However, logically it would be difficult for a pharmacy to meet the State requirements for a dispensing facility. The intent of the Act is to have separate, stand-alone dispensing facilities.
- Hastings – Agrees with speaker Olley's testimony. If the City imposes additional regulations on the use, it will further deter businesses from even considering operating a dispensing facility in the City. Since such use will require a conditional use, Hastings doesn't believe additional restrictions are needed.
- Coyne – There seems to be a concern that we will approve something that the State doesn't allow. But in reality, a dispensing facility cannot open without the State's approval.
- Dabareiner – Would it be easier for the State Act to simply allow pharmacies to dispense medical marijuana in pharmacies? To the contrary, the State imposed many requirements on dispensing facilities that are not in place for pharmacies. The State clearly treats dispensing facilities differently from pharmacies.

Planning and Zoning Commission closed the public hearing.

Planning and Zoning Commission Discussion: 10%, drive-thru

- Williams – The State law preempts the City's requirements. To pass an ordinance that repeats the State requirements is redundant. I believe that pharmacies are appropriate places for dispensing medical cannabis. I support the conditional use requirement for dispensaries. But the 10% retail area limit and the primary use requirement are speculative and are not necessary.
- Frost – I am convinced that the State Act treats dispensing facilities differently from pharmacies. I am not particularly interested in the 10% retail area restriction as long as the sales comply with the State Act. The factors staff recommends will give us an important tool to evaluate such uses. We are here to protect our residents and not to enforce the State law. I am comfortable with the 10% and stand-alone requirements as a starting point. It is easier to start off in a conservative position and relax the rules if we need to.
- Hastings – There is a fair amount of uncertainty associated with the medical marijuana uses. We should not try to impose regulations based on assumptions. I appreciate the conditional use requirement for dispensaries, but do not agree with the 10% retail area limitation and the

drive-thru restriction. I would recommend striking Section 5.3.

- Meyer – We are reacting to the State Act to make sure that the City is protected. The conditional use requirement for dispensing facilities is a good idea. Agree that pharmacies are the best places to dispense medical marijuana. However, we don't want to leave this wide open at this point. We can always approve variances to the restrictions if warranted. But not to have the restrictions in place now could be a very slippery slope.
- Dabareiner – It is better to start with the 10% square footage restriction and then loose the requirement if needed to. Let's start conservatively since this is a new thing. The conditional use gives us a chance to look at each proposal on a case by case basis. I am comfortable with staff's text amendment.
- Coyne – Agree with the conditional use requirement for dispensing facilities. I don't like the 10% and stand-alone requirements because we do not know what the State is intended. A dispensing facility cannot open unless the State approves it. We don't need to have additional requirements based on our assumption of the State's intent. There are drugs that are sold at pharmacies that are more dangerous than marijuana. I would hope there is strong security in all pharmacies. I don't think selling marijuana is going to dramatically increase security issues at pharmacies.
- Bruno – Taking the City's Legal Team's opinions into consideration, the text amendment as written is a good first step. As the attitudes change toward medical marijuana, my hope is to be able to use pharmacies as dispensing facilities in the future.
- Messer –I support the conditional use requirement for dispensaries in all the zoning districts recommended by staff. I think it is fine to allow dispensaries in more zoning districts. I also support elimination of the 1000' buffer from residential zoning districts. Dispensaries cannot obtain a State license without meeting local ordinance. If we put a lot of restrictions in place, they will have a hard time obtaining a State license. I also think it would make sense to treat dispensaries like pharmacies. I am torn on the 10% and primary use requirements, but can see the intent in both requirements.
- Gustin – I want to be carefully liberal. This is a new legislation with a lot of gray areas. The intent of the State Act appears to require a stand-alone facility. If we don't have the 10% retail area restriction, the commission will not have the opportunity to look at the percentage of retail sales at dispensing facilities. If the 10% requirement is too restrictive, they can seek a variance along with the conditional use request.

Planning and Zoning Commission moved to recommend approval of Motion to approve the proposed amendments to Title 6, with the exception of the provisions included in Sections 6-2-32:5.3 (related to retail restrictions) and Section 6-2-32:5.4 (related to drive-through prohibitions).

Motion by: Meyer
Seconded by: Williams

Approved
(7 to 2)

Ayes: Bruno, Coyne, Dabareiner, Frost, Gustin, Meyer,
Williams

Nays: Hastings, Messer

Planning and Zoning Commission moved to delete that portion of Section 6-2-32:5.3 pertaining to the 10% maximum square footage allocation of a dispensing facility for retail activity.

Motion by: Williams
Seconded by: Hastings

Not Approved
(4 to 5)

Ayes: Coyne, Hastings, Messer, Williams

Nays: Bruno, Dabareiner, Frost, Meyer, Gustin

Planning and Zoning Commission moved to maintain that portion of Section 6-2-32:5.4 that prohibits the inclusion a drive-through facility at a dispensing organization.

Motion by: Williams
Seconded by: Messer

Not Approved
(4 to 5)

Ayes: Frost, Gustin, Meyer, Williams

Nays: Bruno, Coyne, Dabareiner, Hastings, Messer

Planning and Zoning Commission moved to strike “the dispensing organization shall be the primary use of the tenant space in which it is located” from Section 6-2-32:5.3.

Motion by: Coyne
Seconded by: Williams

Not Approved
(4 to 5)

Ayes: Coyne, Hastings, Messer, Williams

Nays: Bruno, Dabareiner, Frost, Meyer, Gustin

D. Public Hearings

D1. PZC Case 13-1-032 Extended Stay America

The petitioner, Extended Stay America, requests approval of a variance from Section 5-4-9:2.1 (Special Areas of Control: Tollway Corridor) of the Naperville Municipal Code to allow construction of a ground sign along the I-88 corridor on a property with less than 500’ of Tollway frontage, located at 1827 Centre Point Drive.

The petitioner has withdrawn the request.

**D2.
PZC Case 13-1-133
300 E. Ogden Ave.**

The petitioner, Bob Kettell, requests approval of a variance from Section 6-9-3:4 (Schedule of Off-Street Parking Requirements) of the Municipal Code to reduce the number of required off-street parking spaces from 23 to 18 spaces for the property located 300 E. Ogden Avenue.

Ying Liu, Planning Services Team, gave an overview of the request. The PZC had no questions for staff.

Len Monson, Attorney spoke on behalf of the petitioner:

- Provided an overview of existing tenants and their parking demands.
- Provided an overview of the proposed tenant and parking data available from its existing location.
- Petitioner concurs with the conditions proposed by staff.

Planning and Zoning Commission inquired about:

- Dabareiner – The Parking study was done over a period of one week; however, the specific dates were not provided. Monson indicated that the parking study was completed approximately 1 month ago.
- Bruno – In the unlikely event that parking is insufficient and parking overflows onto the neighboring streets, would a complaint trigger an investigation by the City to determine compliance with the variance conditions? Liu – Yes. Monson – If need, there would be an opportunity to seek off-site overflow parking agreements with adjacent businesses; does not anticipate that any parking will spillover onto the neighborhood streets.

Public Testimony: None

Planning and Zoning Commission closed the public hearing.

Planning and Zoning Commission Discussion:

- All commissioners noted their support for the proposed variance.

Planning and Zoning Commission moved to recommend approval of PZC 13-1-133, a variance from Section 6-9-3:4 (Schedule of Off-Street Parking Requirements) of the Municipal Code to reduce the number of the required off-street parking spaces from 23 to 18 spaces for the property located 300 E. Ogden Avenue.

Motion by: Williams
Seconded by: Meyer

Approved
(9 to 0)

Ayes: Bruno, Coyne, Dabareiner, Frost, Hastings, Messer,
Meyer, Williams, Gustin
Nays:

**D3.
PZC Case 13-1-132
3808 Looking Post**

Dawn and George Shanine request approval of a variance from Section 6-2-12 (Fences) of the Naperville Municipal Code to allow an open fence in the corner side yard setback (along Lapp Lane) to exceed the 4' height limit for the property located at 3803 Looking Post Court.

Allison Laff, Planning Services Team, gave an overview of the request.

- We have received five letters of support for the fence variance request.

Planning and Zoning Commission inquired about:

- The staff report noted that the original fence was modified, but staff presented that the fence was replaced. Laff – The City issued a permit for a fence which complied with both IRC and zoning code requirements. Unfortunately, the petitioner installed a modified version of the fence, which did not meet the IRC barrier requirements. The petitioner then removed the fence and installed the current fence, which is in excess of the zoning code maximum height of 4', thus necessitating the current variance request.
- The conflict between the minimum 4' fence requirement around a pool and the maximum 4' fence requirement in the corner side yard. Laff – The fence doesn't have to be installed around the perimeter of the site but can be installed around the perimeter of the pool (outside of the corner side yard), in which case it can be 6' tall.
- Does staff have the ability to approve similar minor variances administratively? Laff – No. PZC noted that staff should investigate the possibility of adding an administrative approval process into the Code for minor variances such as this case.

George Shanine, 3803 Looking Post Court, owner and petitioner

- Petitioner confirmed that the original fence was removed and replaced with the fence currently on the property.

Public Testimony: None

Planning and Zoning Commission closed the public hearing.

Planning and Zoning Commission Discussion: None

Planning and Zoning Commission moved to recommend approval of PZC 13-1-132, a variance from Section 6-2-12 (Fences) of the Naperville Municipal Code to allow an open fence in the corner side yard setback (along Lapp Lane) to exceed the 4' height limit for the property located at 3803 Looking Post Court.

Motion by: Meyer
Seconded by: Hastings

Approved
(9 to 0)

Ayes: Bruno, Coyne, Dabareiner, Frost, Hastings, Messer,
Meyer, Williams, Gustin

Nays:

D4.
PZC Case 13-1-129
Noah's of Naperville

The petitioner requests approval of a preliminary/final plat of subdivision for Shuman Crossing, a conditional use for a public assembly use in ORI (Office, Research and Light Industrial District), a variance from Section 6-8B-5 (ORI: Area Requirements), and a variance from Section 6-9-3 (Schedule of Off Street Parking Requirements) in order to construct a conference center/banquet facility, known as Noah's, on the property located at 103 Shuman Boulevard.

Ying Liu, Planning Services Team, gave an overview of the request.

Planning and Zoning Commission inquired about:

- What is the parking requirement for offices? Liu – 3.3 parking spaces/1000 sq.ft. The proposed use is not classified as an office use, but a public assembly use which has a higher parking requirement.
- Does the shared parking agreement exist yet? Liu – No. But the petitioner will be required to formalize the shared parking agreement prior to City Council approval.
- Would staff recommend approval of the project absent of a shared parking arrangement? Liu – No, we would require the petitioner to present other options to accommodate overflow parking needs for larger events.

Russ Whitaker, 23 W. Jefferson Street, Suite 200, Naperville, IL, Attorney spoke on behalf of the petitioner:

- Lot 2 was created when Delta Dental was constructed 6-7 years ago.
- Lot size variance necessitated by existing service drive in place to access Delta Dental.
- The proposed facility is different than a standard banquet space. Noah's facility includes no commercial kitchen or beverage service. 50% of Noah's events occur within the business community, thus the proposed facility is located in the business park areas.
- Gave an overview of the high quality building design and materials.
- Landscaping design highlights the outdoor environment, particularly the outdoor patio, which can be used for ceremonies and events.
- Minor items remain to be negotiated with Delta Dental to finalize the shared parking agreement, but the petitioner is confident that the agreement will be in place between the two properties.

Planning and Zoning Commission inquired about:

- What are the outstanding items of the petitioner's negotiation with Delta Dental regarding the proposed shared parking agreement? Whitaker – Easements (likely for the access drive); location of the main entrance to the building (primary entrance will face Shuman); ability to terminate the agreement if tenant changes; financial compensation for use of the shared parking; and term limit of the agreement (the petitioner originally proposed 35 year term).

- Would the petitioner be willing to include the term of the agreement in the condition of approval? Whitaker – Not comfortable at this point given that the term is not finalized yet. But agreeable to including a condition in the conditional use ordinance that a shared parking agreement be in place at all times or other alternative acceptable measures be provided.
- The building is highly exposed on all 4 sides. More articulation is needed on the board room elevation. Whitaker provided more information on the architectural details of the elevations.
- Does the building comply with the Citywide Building Design Guidelines (elevations, materials)? Whitaker – Yes.
- Will signage meets all Code requirements? Whitaker – Yes.
- Clarification on the proposed outdoor speakers. Whitaker – The outdoor speakers will be used for background music for ceremonies and events. They will not be used to amplify music and will comply with City's noise restrictions.

Public Testimony: none

Planning and Zoning Commission closed the public hearing.

Planning and Zoning Commission Discussion:

- Bruno – Adequate parking is most important to the petitioner and its customers. Doesn't have significant concerns about the proposed parking based on this and is confident that a shared parking agreement will be reached.
- Coyne – Confident that the City's legal department will ensure that an adequate parking agreement will be in place. Will support the case.
- Dabareiner – Supports the subdivision and conditional use requests. Has concerns with the shared parking agreement, but is glad that these details will be worked out prior to City Council.
- Frost – Supports the proposal provided that the shared parking agreement and staff's condition will be in place.
- Gustin – Will be supporting the case. The petitioner has opportunities to obtain shared parking from other business locations along the Corridor if the shared parking agreement with Delta Dental is not in place. Believes the business owner will make sure adequate parking is in place for their customers.
- Hastings – Will be supporting the case. It will be a great addition to the City of Naperville. Has concerns with shared parking, but feels comfortable with the recommended conditions.
- Messer – It is an attractive building. It fulfills the design standards and is a use that makes sense for the area.
- Meyer – I will be supporting this. It's a much needed use in this area.
- Williams – This is a splendid project in a perfect location. It is a very creative use of a small parcel and fulfills a need in Naperville. But adequate parking needs to be provided.

Planning and Zoning Commission moved to recommend approval of a preliminary/final plat of subdivision for Shuman Crossing, a conditional use for a public assembly use in ORI (Office, Research and Light Industrial District), a variance from Section 6-8B-5 (ORI: Area Requirements), and a variance from Section 6-9-3 (Schedule of Off Street Parking Requirements) in order to construct a conference center/banquet facility, known as Noah's, on the property located at 103 Shuman Boulevard, subject to condition that a shared parking agreement be in place for benefit of the property at all times or other alternative acceptable measures be provided.

Motion by: Williams
Seconded by: Messer

Approved
(9 to 0)

Ayes: Bruno, Coyne, Dabareiner, Frost, Hastings, Messer,
Meyer, Williams, Gustin
Nays:

**E. Reports and
Recommendations**

F. Correspondence

G. New Business

H. Adjournment

9:45 p.m.