



SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, MARCH 24TH, 2022 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, March 24th, 2022, at Venetian Center.

Chairman Ted Bowersox called the meeting to order at 4:30 p.m.

The following Commission members were present:

Ted Bowersox – Chairman
Tim Sennett – Vice-Chair
John O’Kelley
Chris Wood
Ze’Shieca Carter

The following Commission members were absent:

Alfred Haliday
Frazier Marshall
Nathaniel Sanders

City staff in attendance included Dan Miller, Planning & Zoning Manager, Sabrina Mitchell, Administrative Assistant II, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Christine Rock, Senior Planner, and City Attorney Grant Watson was also present.

The meeting opened with an invocation given by Chairman Bowersox, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker’s registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

DRAFT SUMMARY MINUTES OF THE PLANNING COMMISSION MEETING FOR THURSDAY, FEBRUARY 24TH, 2022.

Vice-Chairman Sennett moved to APPROVE the draft minutes from the FEBRUARY 24TH, 2022 meeting. Commissioner Wood SECONDED the motion, which PASSED by a vote of 5-0.

Sabrina Mitchell swore in staff as well as anyone in the audience wishing to speak.

Chairman Bowersox called for the first case under new business be brought forward.

NEW BUSINESS

1) PUBLIC HEARING CASE # CUP-22-56 – HARLEM AVENUE DUPLEX – CONDITIONAL USE PERMIT

REQUEST FOR A CONDITIONAL USE PERMIT IN THE R-2 (MEDIUM DENSITY RESIDENTIAL) ZONING DISTRICT, PER SECTION 25-284 DISTRICT USE REGULATIONS, TO ALLOW CONSTRUCTION OF A DUPLEX, FOR A PROPERTY GENERALLY LOCATED WEST OF TUSKEGEE STREET AND NORTH OF HARLEM AVENUE, AS LEGALLY DESCRIBED IN SECTION 22, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(FINAL DECISION IS BY THE PLANNING COMMISSION)** (Harlem Duplex)

Dan Miller introduced case number #CUP-22-56 – Harlem Avenue Duplex – Conditional Use Permit into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location, zoning, requests, and went over Leesburg Code of Ordinances, the Use Table found in Section 25-284(3), City's Comprehensive Plan; Future Land Use Element Section B.1.a.b., standard conditions, reviewed maps, lot size; 130' wide, nearby lots; approximately 65' wide, lot; combined; in past, mixed of single family/duplex residences; in area, permitted density; duplex; won't increase density; property, consistent; with general area.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for the case.

Department Review Summary: This case was sent out to all the different City departments for review, there were no comments or concerns. The Lake County School Board noted that this particular project will not be subject for school concurrency as it is a residential development of 4 units or less; actually, it's only 2 units. Public responses we received one

approval and no disapproval responses from the surrounding property owner letters, newspaper advertisement and sign posting.

Mr. Miller read the Staff Recommendations into the record for the case; Staff recommended approval for the following reasons:

1. This request meets the criteria set forth in Section 25-141 Conditional Uses of the City of Leesburg Code of Ordinances for the granting of a conditional use permit to allow a multifamily residential complex.
2. The Conditional Use for the subject property is consistent with the City's adopted Growth Management Plan, Future Land Use Element, Goal 1, Objective 1.6.
3. Subject to the conditions listed below, the proposed Conditional Use does not appear to be a detrimental impact on the surrounding properties.

With the following condition(s):

1. This conditional use permit is granted to the permittee to allow one (1) duplex building (total of two (2) units), in an R-2 (Medium Density Residential) zoning district as per Section 25-141 Conditional Uses and Section 25-284 District use regulations of the Land Development Code.
2. This conditional use permit is subject to all City of Leesburg Code requirements, including zoning and building code regulations as amended.
3. The transfer of ownership or lease of any or all of the property described in these conditions shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions and agreements stated herein. Any change or deviation from conditions shown herein may be revised through procedures as described in the City of Leesburg Code of Ordinances, as amended.
4. The granting of this Conditional Use Permit does not exempt the applicant from other applicable regulations of the City of Leesburg and other governmental agencies, as well as, assessment of the impact fees necessary for the completion of this project.
5. Violation of any of the said conditions may result in this permit becoming null and void.
6. This conditional use permit must be properly executed by the applicant and filed with Leesburg Planning & Zoning Division within ninety days (90) from the date of approval or it shall become null and void and the Permittee must reapply for re-hearing of the request. Until the Permit has been properly executed by the Permittee, no building or other permits will be issued.

Action(s) Requested:

1. Vote to approve the Conditional Use for the subject property to allow a duplex residential

development based on compliance with the stated conditions.

Chairman Bowersox stated if the Commission have any questions of Staff.

Chairman Bowersox entertained a motion, and then the voting took place.

Vice- Chairman Sennett made a MOTION for APPROVAL of case # CUP-22-56 – HARLEM AVENUE DUPLEX – CONDITIONAL USE PERMIT as presented with change in item one from multi-family residential complex to duplex Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5-0.

Chairman Bowersox called for the second case under new business be brought forward.

2) PUBLIC HEARING CASE # VAR-22-48 – APPEAL OF ADMINISTRATIVE DETERMINATION - VARIANCE

APPEAL OF ADMINISTRATIVE DETERMINATION OF DISTANCE MEASUREMENT FOR A MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY FROM PUBLIC OR PRIVATE ELEMENTARY, MIDDLE OR SECONDARY SCHOOLS, CITY OF LEESBURG, CODE OF ORDINANCES, CHAPTER 5 – ALCOHOLIC BEVERAGES, SECTION 5 – 16 MEDICAL MARIJUANA, FOR A PROPERTY GENERALLY LOCATED EAST OF NORTH 14TH STREET AND NORTH OF CITIZENS BOULEVARD, AS LEGALLY DESCRIBED IN SECTION 23, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AS EFFECTIVE DATE. (Appeal MMD)

Dan Miller introduced case number #VAR–22-48 – Appeal of Administrative Determination – Variance into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, and staff recommendations.

Mr. Miller gave a background and explanation of the appeal of administrative decision, proposed use, distance, location, zoning, City of Leesburg Code of ordinances, requests, and went over maps.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for the case.

Chairman Bowersox states if the Commission have any questions of Staff, any discussion, or any questions of the applicant.

Mr. Miller read the Staff Recommendations into the record for the case.

BACKGROUND

A medical marijuana dispensing facility is defined under Section 5-16, City of Leesburg Code of Ordinances as an entity “which is engaged in the retail sale of medical marijuana and

related supplies pursuant to constitutional amendment or other provisions of state law.” Planning and Zoning Staff frequently receive requests for zoning confirmation letters for various uses, including those for medical marijuana, as seen in the attached “Zoning Verification Letter List” in Exhibit F.

In August 2021, P&Z staff received a request for a zoning confirmation letter regarding 914 North 14th Street for use as a medical marijuana dispensary. This address is located at the northeast corner of 14th Street and Citizens Boulevard, as seen on the attached maps. The previous uses of this property have been a vitamin/natural foods store, and a fast food restaurant with a drive through. In its response to the request for a zoning letter, staff did note that the location does lie within five-hundred feet (500) feet of a school, and therefore would not qualify as a location for an MMD. The measurement method for this distance is a straight line, drawn from the nearest property line to the nearest property line, using the city’s geographic information system and database.

The requestor did ask for a re-interpretation of the letter, and did provide an argument indicating that the measurement method used by staff was incorrect. As a result of this request, staff did consult with the City Attorney, Mr. Fred Morrison, who did concur with staff’s opinion of the distance measurement method as seen in Exhibit D. A response was then provided, affirming the original findings.

REQUIREMENTS

Within the City of Leesburg, medical marijuana dispensaries are governed under Section 5-16, City of Leesburg Code of Ordinances, as well as various sections of Florida Statutes. In addition, the city uses the setbacks provided in Section 5-3, which are consistent with the setbacks provided in Chapter 381.986 Florida Statutes. Medical marijuana dispensing facilities are permitted in the same locations and under the same conditions as pharmacies, subject to setback requirements noted. Thus, both City of Leesburg and State Statute require a distance of 500 feet between an MMD and a public or private school. As noted earlier the City of Leesburg is consistent in measuring distances for alcohol and marijuana uses from property line to property line.

FINDINGS AND RECOMMENDATION

In the City of Leesburg, medical marijuana dispensaries are permitted under the same conditions and zoning districts as pharmacies. The City of Leesburg does use the setbacks noted in Chapter 381.986 F.S. when reviewing requests for medical marijuana dispensaries, which are the same setbacks reviewed for alcohol uses under Section 5-16 City of Leesburg Code of Ordinances. Staff did review the request to allow a medical marijuana dispensary at the 914 North 14th Street location, and did provide information to the applicant that the request did not meet the setback requirements for distance from a school. Additionally, staff did consult with the City Attorney’s office, which did concur with Staff’s interpretation.

Thus, a review of the code requirements of Section 5-3, City of Leesburg Code of Ordinances, Chapter 381.986 Florida Statutes, consistent interpretation of the setback requirements, and consultation with the City Attorney’s office, does form the basis for this recommendation.

Therefore, as this request does not meet the requirements of Section 5-3, City of Leesburg Code of Ordinances and Chapter 381.986 Florida Statutes; the City of Leesburg has been is consistent in its use and measurement of these required setbacks in previous requests for medical marijuana uses; and the City Attorney's office did concur in this opinion; based on these findings, the Planning and Zoning Department recommends **DENIAL** of the request to allow a medical marijuana dispensary at 914 North 14th Street.

Attachments:

Exhibit A, Section 5-16, City of Leesburg Code of Ordinances

Exhibit B, Excerpt, Chapter 381.986, Florida Statutes

Exhibit C, Chapter 5, Alcoholic Beverages

Exhibit D, Legal Opinion, Fred Morrison

Exhibit E, Map, 500-foot Buffer

Exhibit F, Zoning Verification Letter ZV-21-285

Exhibit G, MMD Zoning Verification letter list

Exhibit H, Basis of Appeal

Commissioners, Mr. Miller, Staff, and Grant Watson, City Attorney discussed how far within the buffer zone is that parking lot of the Catholic school; Kandi Harper replied we don't get specific like that if it falls within the 500' buffer it's inside it, any exceptions to any other dispensaries; Kandi Harper replied no ma'am we have not, distance between the two properties; Kandi Harper replied 494'; distance, have we always measured the same way; Kandi Harper replied yes sir it's property line to property line; same as the liquor licenses, intent of Statue to keep a dispensary at arms lengths; from the school, 6' difference isn't going to make a bit of difference; opinion, don't have a problem; grant Variance, worthy of a consideration, not far from a pharmacy; step above that, drive through type; very hazardous looking facility there, if open.

Dan Miller replied as an existing drive through that's been there for a long time, use; retail to retail, based on zoning knowledge; don't see how we can say no, biggest problem; so long to process, previous Council comments; current Attorney comments, don't think State for licensors, have anything to do with our rules; certain things in Leesburg; Code, don't have to allow them; leaning toward voting for it. Dan Miller stated he wanted to bring to note exhibit G letters; and went over cases that were denied; Staff position use for alcohol; wanted to be consistent; private school; Lake Square Mall; will have affect for any requests; future, Ordinance amendment to be State intent and requirements and allow Staff to have clear direction, alcohol; clear, property line to property line; understand Mr. Willard point; definition of facilities, Staff will like take away from this some clear direction; future, Staff wants to be sure we will bring back; Ordinance; adjustment, allow; clear direction, front door to front door, no usage at the facility; alcohol; Dan Miller stated in the future utilize; (CUP) Conditional Use Permit process; current City Code, amend Section 25-284; use chart, written deeper in the Code; apply for CUP; instead of Variance; may not have to make a Code change; direct appeal; permitted under Code; establish bench mark; future we can move to the CUP process.

Chairman Bowersox stated if any questions of the Council, or Staff, and any discussion among the Commission.

Grant Watson, City Attorney replied I think generally he falls in line with Mr. Morrison previously; more leeway in terms of the measurement on the dispensary site versus the parcel where the school located, considering that the school is a part of that single parcel; measuring to property line of school parcel is an appropriate interpretation; maybe more flexibility on the dispensary site itself as opposed to measuring from property line; consider the improvements that are necessary for that facility to operate; parking, sidewalks; not just the Bldg. itself, Administrative Code, and Statue; could perhaps be worded a little more clearer; don't think the FSA definition; adds a lot more clarity; to situation, and then read into the record, doesn't say any enclosed structure or Bldg.; product dispensed, reasonable to consider improvements; parking area; in depth, landscape buffer; south side of the property; unimproved, not being utilized by the Public; not necessarily needed to be included in the measurement; this situation parking go to the property line; fall in line with Mr. Morrison comments.

Jim Willard, Attorney down in Orlando at the Schutts Law firm stated he lives at 228 West 7th Avenue in Windermere, Florida gave a detailed presentation on behalf of the current owner of the property and stated HDR Investments bought the parcel; back in December; through the current of the property, appreciates the opportunity to speak with the Commission; interesting case, Mr. Miller summary is spot on; good summary of how we got here today, question of how to measure from point A to point B, Statue; governs the approval of medical marijuana in the State of Florida; pretty specific, State law, specific section; very closely, not exactly the same, 500' separation; dispensary facility, real property; comprises a public or private school, closest distance, point A; dispensary; starting point, definition; medical marijuana dispensary facility; in Florida Administrative Code; that expand upon; State statue, dispensary facility, Bldg., requirements; Florida area/ratio; secure, product located/sold, measurement of point A; closest Bldg. to the Catholic school, point B; start from Bldg. wall; go south; property line.

St. Paul Catholic Church; hired surveyor; 500.6; dispensary; allowed, location; school, St. Paul; 19 acres, school; south end, public school; easier; multiple uses; church, surveyor measure; to sanctuary; 800+/_ ,1100'; to school, reasonable, most reasonable; State statue, 19 acre tract, size of property, large packets; survey included, aerial maps; reviewed, Staff measured went from property line to property, research; took them over 500', close, meets the intent; maintain distance, wants Commission to consider that; and only need to break 500' threshold; asking for, be surprised, much business; drive-through, understand Mr. Watson, City Attorney interpretation and then went over Chapter 381, reviewed the definition of a facility; reasonable interpretation to measure from the Bldg.

Grant Watson, City Attorney stated doesn't it also require parking and property lines; plans for facility; that section of Administrative Code; 64-4.002, information for parking and lot lines, the current City Code does provide for a (CUP) Conditional Use Permit to change that 500', State statue allows a dispensary to be located closer than 500'; if there's a Public Hearing; determination made public health and welfare.

Jim William replied to Grant Watson, City Attorney question and stated it could be additional information, but the dispensary facility has to be a secure location; outside the Bldg.; not a secure location anymore, wall of the Bldg.; stand-alone out parcel or power center someplace; 10, 15, or 30 acres in size; and then gave explanation to the Commission of Federal government laws/State level; particular situation distance from the dispensary facility; State Code; controls; no usage at the facility.

Chairman Bowersox closes discussion from Public entertained a motion, and then the voting took place.

Vice-Chairman Sennett made a MOTION for APPROVAL of case # VAR-22-48 – APPEAL OF ADMINISTRATIVE DETERMINATION – VARIANCE Commissioner O’Kelley SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 4-1.

3) PUBLIC HEARING CASE # VAR-22-53 – APPEAL OF ADMINISTRATIVE DETERMINATION USE OF STRUCTURE - VARIANCE

APPEAL OF ADMINISTRATIVE DETERMINATION THAT THE PROPOSED USE OF AN EXISTING STRUCTURE LOCATED IN ARLINGTON RIDGE PLANNED UNIT DEVELOPMENT IS NOT A SUPPORT FUNCTION FOR THE ARLINGTON RIDGE COMMUNITY AS A WHOLE AS REQUIRED BY PLANNED UNIT DEVELOPMENT ORDINANCE NUMBER PUD-16-33 FOR A PROPERTY GENERALLY LOCATED SOUTH OF ARLINGTON RIDGE BOULEVARD AND WEST OF ANTIETAM CREEK TRAIL, AS LEGALLY DESCRIBED IN SECTION 14, TOWNSHIP 20 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AS EFFECTIVE DATE. (Appeal Arlington)

Chairman Bowersox entertained a motion, and then the voting took place.

Vice-Chairman Sennett made a MOTION for APPROVAL of case # VAR-22-53 – APPEAL OF ADMINISTRATIVE DETERMINATION USE OF STRUCTURE – VARIANCE Commissioner Wood SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5-0.

DISCUSSION

None

ANNOUNCEMENTS

Dan Miller welcomes Grant Watson from the law firm of Stone and Gerken as the new City Attorney. Chairman Bowersox announced our next meeting will be held upstairs in City Hall and he won't be in attendance for the April meeting.

ADJOURNMENT

Approximately 5:25 p.m.

Ted W. Bowersox, Chairman

Sabrina Mitchell, Administrative Assistant II