

**KENT PLANNING COMMISSION
BUSINESS MEETING
MAY 21, 2024**

MEMBERS PRESENT:

Amanda Edwards
Naser Matar
Earl Clausson
Kenneth Crookston

STAFF PRESENT:

Bridget Susel, Community Development Director
Eric Fink, Assistant Law Director
Tim Sahr, Development Engineer

I. Call to Order

Ms. Edwards called the meeting to order at 7:00 p.m.

II. Roll Call:

Amanda Edwards, Naser Matar, Earl Clausson, and Ken Cookston were present. Mr. Salustro was absent.

MOTION: *Mr. Clausson moved to excuse Derek Salustro from the 5/21/24 meeting.
Mr. Matar seconded the motion. The motion carried 4-0.*

III. Reading of Preamble

Ms. Edwards read the Preamble, which describes the purpose and procedures of the Planning Commission as well as the applicant's right to an appeal.

IV. Administration of Oath

Mr. Fink instructed those members of the audience wishing to be heard on the case to be presented at this meeting to raise their right hand. Mr. Fink administered the Oath, "Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God? Please say "I do." The participants responded, "I do."

V. Correspondence

None.

VI. Old Business

None

VII. New Business

**A. PC24-006 Rascal House/MPG Architects
1630 E. Main Street**

The applicants are seeking a Zoning Use Certificate and site plan approval for a restaurant to be located at 1630 East Main Street. This property is currently located in the C-R: Commercial High Density Multifamily Residential Zoning District.

Mr. Sahr presented the project as submitted to the Commission. He stated that the site is located in the C-R: Commercial- High Density Multifamily Residential Zoning District and is surrounded by commercial uses to the north, east, and west, and residential uses to the south. He stated that the subject property is currently vacant but previously operated as a restaurant for many years. He stated that the applicants are proposing to demolish the existing structure and construct a restaurant, which is a permitted use in the C-R district. He stated that the proposed project meets the required setbacks and exceeds the parking requirements by 8 spaces. He stated that the site has a recorded Access Reservation Easement (ARE) on the east and south sides, which was granted to the subject property by the adjoining property to the south for the purpose of ingress/egress along the east and 9 parking spaces along the south. He stated that there will be a trash dumpster with an enclosure as shown on the plans. He stated that the landscaping plans with the variances approved by the Board of Zoning Appeals meet all the zoning requirements. The lighting on the east and south sides do trespass onto abutting properties in order to provide lighting for safe access within the area of the ARE. The lighting along the north and west property lines does not trespass onto those abutting properties. He stated that the current submittal does not include signage, and the Comprehensive Sign Plan will be submitted for review at a later date. He added that a variance for the location of the monument sign was granted. He stated that review by the Architectural Review Board was not required, however, the Board of Zoning Appeals granted 3 variances: one variance to allow the monument sign to be constructed 0 feet from the public right-of-way line, and 2 variances to eliminate the landscape buffer on both the east and south sides, which are located in the ARE. He stated that staff finds that the permitted use as presented to be in accordance with the applicable sections of the City of Kent Zoning Code in conjunction with the variances that have been granted.

Ms. Susel explained that the ARE is a recorded easement and stays with the property regardless of the land use. She stated that it was put into place to allow access for the apartments located to the south. Ms. Susel stated that the monument sign was granted a variance to allow it to be constructed at the property line due to the right-of-way line reaching far back into the parcel. She added that the new monument sign will be located further back from the road than the former Arby's sign.

Applicant Presentation

Niko Frangos, Rascal House, 1836 Euclid Ave., Cleveland stated that it is a fast casual restaurant that has operated for about 45 years in Cleveland and the surrounding areas.

Denon Hubbard, MPG Architects, 3660 Embassy Pkwy, Fairlawn, stated that the proposed restaurant is 2,200 square feet with limited seating for dining in house and a drive-thru. He stated that although only one ADA parking space is required, they are providing two. He stated that they are proposing a large green space in the front of the building to make it more inviting. He stated that the signs will be submitted later. He described the building as presented in the drawings.

Mr. Mater questioned the lighting in the ARE.

Ms. Susel stated that the light is allowed to cross the property lines and into the ARE on the other property to provide lighting for the ingress/egress and parking as the easement grants them control and authority to use the land.

Ms. Edwards questioned who will be responsible for maintaining the parking spaces that are located in the ARE and if it will be paved and re-stripped.

Mr. Hubbard stated that the plans show that they are repaving up to the property line but haven't specified that area.

Public Comment

None

Planning Commission Discussion

Mr. Clausson stated that the project seems straightforward, and he doesn't have any further questions.

Mr. Crookston stated that he would like to see the parking in the easement area paved as well so that it flows with the other space. He stated that he likes that they have included the green frontage.

Mr. Mater stated that it looks good.

Ms. Edwards stated she is very happy to see the space being re-purposed and likes the green space versus the "sea of concrete." She stated that there should be adequate parking for the future possibility of a covered patio due to the extra spaces. She stated that she feels that the back parking area should be paved so that it's clear where parking is available for the restaurant.

MOTION: *In the case of PC24-006, Rascal House/MPG Architects, 1630 E. Main St., Mr. Clausson moved that the Planning Commission approve the Zoning Use Certificate and site plan to allow a restaurant as presented with the following conditions:*

- 1. Technical Plan Review.*
- 2. Future submittal of the Comprehensive Sign Plan for Planning Commission Review*

Mr. Matar seconded the motion.

Mr. Crookston suggested an amendment to add the condition to pave and stripe the parking spaces in the ARE on the south side of the parcel.

Mr. Matar moved to add the condition:

- 3. Pave and stripe the parking spaces in the Access Reservation Easement on the south side of the parcel.*

Mr. Clausson seconded the amendment to the motion. The amendment motion carried 4-0.

The motion as amended carried 4-0.

B. PC24-007 The City of Kent

Proposed Zoning Code Text Amendments are being forwarded to the Commission for review and comment.

- **Chapter 1102: Definitions**
- **Chapter 1103: Zoning Districts, Land Use, and Zoning Map**
- **Chapter 1105: Conditions Applicable to Specific Land Uses**
- **Chapter 1107: Parking, Loading and Access Management**

Ms. Susel stated that in 2016, the City passed a temporary moratorium for medical marijuana until the State of Ohio could finalize the definitions, regulations, and requirements, which took approximately 15 months. She stated that once everything was finalized on the State level, the City adopted 5 different medical marijuana classifications into the City's Zoning Code as new land uses. She stated that tonight, they are discussing land uses that will apply to the entire community and not a specific business that currently exist or a specific future business. She stated that with the passing of Issue 2 in 2023, the staff followed the same process for Adult Use Cannabis and in January placed a temporary moratorium to allow the State time to sort out the rules and regulations so that the City could then identify how and where it would be adopted as a new land use in the Zoning Code. She stated that in April, members of the public came before Council regarding adult use cannabis and Council advised the administration to look at where adult use cannabis facilities could be added to the Zoning Code based on the current regulations as they exist. She stated that at the same time there was also an inquiry about looking at land use regulations for new vape shops. She stated that the proposed language regarding vape shops applies to retail establishments that sell vapes only. The proposed vape shop land use is a separate and distinct land use from anything associated with the adult use cannabis land use. She explained that if the land use is approved, any existing vape shops that are currently in operation will become pre-existing non-conforming uses and their operations can continue unless the use is abandoned for 2 years at which time, they cannot backfill that space with another vape shop unless it meets the current Zoning Code requirements. She stated that the same goes for the existing medical marijuana dispensary. She stated that the new proposed land uses do not change in any way the land uses for the medical marijuana classifications that are already approved and included in the Zoning Code. She stated that the source that the City uses for information regarding the State of Ohio's progress with this issue is the Ohio Department of Commerce, Division of Cannabis Control as it was designated under the Ohio Revised Code to administer this process. She stated that according to this source, the application for adult use cannabis needs to be made available by June 7, 2024. She stated that it states that potentially licenses may be issued by September, however, at any time the General Assembly can step in and pass law that changes this timeline. She stated that the State Legislator can amend the law at any time, which is why the City prefers to establish zoning law once all laws and regulations have been finalized by the State and the City is aware of what the parameters for such a use will be. She stated that Council has asked staff to work on the text amendments so what is being presented is based on what the Division of Cannabis Control and the Ohio Revised Code have approved. She stated that the ORC section for adult use cannabis is different than the medical marijuana section. As an example, she explained that in the ORC for adult use cannabis, one definition covers all of the uses that are separately

delineated in the medical marijuana dispensary and that is why they are not delineated in the City of Kent proposed language. She stated that the ORC adopted the initiative as presented and it can be altered or changed at any time by the State General Assembly. She stated that with that understanding and background and the fact that it is a land use not associated with any specific business or use, and that it is separate and distinct in the ORC from medical marijuana, it is being treated as a separate land use in the proposed City of Kent language. She stated that proposed text amendments are authorized by Council and Planning Commission makes a recommendation to Council either partially or in whole, in favor or against. She stated that she will take the recommendation that is made tonight to Council on June 5th for a public hearing and Council Committee time and discussion. Ms. Susel stated that staff reviews the current code and identifies the chapters that will be affected by the text amendment change with the proposed two new land uses. She asked the Commission for input as to a reasonable percentage of retail display floor area as a recommendation for a vape shop materials. She stated that an example is a gas station that sells other items including vape products that meets the proposed percentage and is categorized as a vape shop and may not be able to be located in that zoning district versus a very small presence of display space below the recommended percentage that is not categorized as a vape shop.

Ms. Edwards stated that it is her opinion that with the number of vape shops that are currently located in the City and that will all remain as non-conforming uses, she is leaning towards 25%.

Mr. Crookston questioned what the intention of limiting vape shops is.

Ms. Susel stated that she believes that it is just the health factor.

Mr. Clausson stated that 25% sounds reasonable to him but what occurs to him is that it may not have practical significance as it seems that the City may already be saturated with vape shops.

Mr. Fink stated that it would be difficult to base the limits off of sales, which is why staff decided to go with retail space.

Mr. Crookston stated that he isn't comfortable suggesting a number without having anything to base it on.

Mr. Matar stated that he would like 20% or less because of the issue with teenagers purchasing the product.

Ms. Susel stated that while that isn't a reason for establishing a level for a land use but it is a reason why people want it categorized as a different land use.

Mr. Crookston questioned the difference between a vape shop and a cigarette shop.

Ms. Susel stated that the Health Department regulates tobacco and that's why they were trying to regulate the vape with the density restrictions.

Mr. Clausson stated that 20% wouldn't be an issue for him.

The Commissioners, with the exception of Mr. Crookston, stated that they would recommend 20% of the square footage as categorizing a vape shop.

Ms. Susel presented proposed definitions for the Commission to review and discuss. She stated that staff looked at putting both the vape shop and adult use cannabis uses in the I: Industrial District as there are many I districts throughout the community and also because it addresses some of the concerns that were raised by residents that were in districts for the medical marijuana. She stated that staff considers the adult use cannabis different from the medical marijuana because no control through prescriptions means that it is open to everyone and without any idea of the approval process through the State. She stated that the Industrial District can accommodate and allow for the fact that abutting residential neighborhoods may not want this. She stated that it is easier to add districts where adult use cannabis facilities may be able to locate after the laws are finalized by the State rather than take them away once the State laws are established. She stated that it would be a conditionally permitted use in the Industrial District. Ms. Susel read the proposed additions and changes to the code.

Public Comment

James Russell, 331 E. Main St., General Manager at Bliss Ohio, stated that after Issue 2 passed in November, existing licensed medical marijuana operators such as their business were deemed first in line for adult use licenses due to their demonstrated capacity for compliance and community stewardship. He stated that he feels that the proposed Zoning Code amendment threatens their ability to continue serving the community as the changes restrict the adult use facilities to Industrial Zoning Districts, which is not the district that they are currently located in. He stated that the addition of adult use cannabis to their medical marijuana facility is crucial to the survival of their business. He suggested that the Commission consider approving language that would approve state licensed medical cannabis dispensaries to engage in adult use retail operations at existing locations that are not in the Industrial Zoning District.

James Dulick, 331 E. Main St., stated that he is the owner of the property where the medical marijuana dispensary is operating. He stated that he feels that the proposed changes will be a tremendous hardship to their tenant, Bliss Ohio. He stated that he also feels that it runs in the face of the State's choosing medical dispensaries to introduce adult use. He stated that Issue 2 grants existing licensed medical cannabis dispensaries the right to legally convert their license to a dual license use, which includes the sale of recreational cannabis. He stated that they will not allow onsite consumption. He stated that the current facility is exceptionally secure and is partially why facilities such as this have been given a priority by the State to expand into adult use. He stated that as he understands it, once the initial round of dual licenses are awarded, the State will wait two years before evaluating if more adult use dispensaries should be allowed. He added that this is not like Michigan or New York, and they are not going to be on every block. He stated that the State rules as he currently knows them, states that no dispensary can open within a mile of an existing dispensary. He stated that he feels that the proposed amendments to the City of Kent Zoning Code goes against the wishes of Ohio voters and the State. He stated that he doesn't feel that the proposed new use fits within the Industrial Zoning District and should be treated like other retail businesses such as Rite Aid and CVS. He stated that none of the neighborhood concerns that were expressed at the meeting proposing the medical marijuana dispensary have come to fruition. He stated that no additional operating hours are planned for adult use and also there will be changes requested for the current lighting or signage. He stated that he would like the Commission to consider amending the proposed zoning changes to allow an existing state licensed medical dispensary to seek a dual use approval and the ability to operate at their existing location even if zoned differently from an Industrial Zoning District.

Planning Commission Discussion

Ms. Edwards questioned if any of the Commission members have concerns with the adult use cannabis definition that is being used from the Ohio Revised Code.

Mr. Clausson stated that they do not have the authority to change it. He added that he does not like that all the different types of facilities are lumped into one category.

Ms. Edwards asked for input regarding the proposed amendments for land use by district as it pertains to the vape shops in the Industrial District as a conditionally permitted use. Ms. Edwards stated that she feels that it is appropriate.

Mr. Crookston stated that he would have liked to have seen a map showing the school, church, and park locations with a 500-foot radius when considering what is available.

Ms. Edwards stated that the State set the restriction that the medical marijuana couldn't be within a certain distance of the schools. She stated that the State hasn't given any specific restrictions at this point.

Mr. Crookston stated that he agrees and feels that they are putting the cart before the horse in making a decision at this time.

Ms. Susel added that the reason that staff first requested the temporary moratorium to be continued is because the specificity and the rules to appropriately set the district do not exist at this time. She continued that because there is a lack of specificity, staff is requesting the Industrial District because it has the least amount of conflict with the City's residential areas and other criteria that may come out. She stated that if continuing the temporary moratorium on adult use cannabis until such time the State issues more up-to-date regulations is something that the Planning Commissions is in agreement about, she will communicate that to Council but that needs to be done through Planning Commission discussion and not as a separate motion on the proposed text amendments.

Ms. Edwards stated that she would prefer to keep the moratorium in place until the State issues more information.

Mr. Clausson stated that he feels that lumping all of the types together presents some problems such as not allowing a processing facility right next to a cultivator, etc.

Ms. Edwards stated that her preference is to keep it conditionally permitted in the Industrial District as the facilities are not delineated and they do not have enough information to thoughtfully plan out what other districts this should be in. She stated that she agrees with staff's recommendations.

Mr. Clausson stated that he is also in favor of extending the moratorium. He stated that he feels that cultivators and processors are industrial operations and belong in the Industrial District, but dispensaries are a different case.

Ms. Susel stated that because the Ohio Revised Code lists all types under one definition category, the proposed Zoning Code text amendments also have them all in one.

Ms. Edwards stated that if in the future the State separates them, then this could potentially come back before the Planning Commission and they can at that point delineate the types. She stated that unfortunately, if they approved the proposed land uses in the Commercial Downtown (C-D) District right now, all the types would be allowed in that district.

Ms. Susel agreed and then explained the process for the medical marijuana that was done back in 2018.

Mr. Crookston asked if it would be the same process for the adult cannabis.

Ms. Susel stated that staff went forward with the temporary moratorium in anticipation of that happening. She stated that the only guidance that staff has is the newly created ORC Chapter 3780.

Ms. Edwards clarified that City Council is asking for a recommendation based on what little information the Commission has right now.

Mr. Clausson stated that it is his opinion that the proposed amendments should more closely mirror what exists for the medical marijuana.

Ms. Edwards stated that until there are State regulations, she can't say that it should mirror the medical marijuana as it is unclear if it will be as strict. She asked if the Commission feels that there is another district where all of the types would better fit.

Mr. Clausson stated that he doesn't feel that it is an issue to have them all in an Industrial District. He added that it is possibly overly restrictive for some of the types listed in the definition.

Mr. Sahr explained that if the land use isn't placed in a Zoning District, then it is allowed in all districts. He stated that if Council agrees, placing the use in the Industrial District is a safe place to start with the anticipation that some things will probably change based on the State's actions in the past.

Ms. Susel explained that this is not driven by the Administration. She stated that they placed a temporary moratorium in place because staff wanted to wait for the rules. She explained that public comment at a Council meeting drove Council to charge the administration with developing the proposed text amendment language. She stated that all the uses are in one definition in one line of the ORC and because of that, staff cannot pull them apart and place them in multiple districts. She stated that staff decided on the Industrial District as it had the most limited impact on residential use of abutting properties. She stated that the language can always be amended once the State rules are established in the future.

Ms. Edwards questioned if the members were okay with the Vape Shop proposed text amendments.

The other Commission members stated that they did not have any issues with this section.

Ms. Edwards questioned if the members had any issues with the Adult Use Cannabis Conditions and other proposed text amendments that will apply to the new land uses operations and/or maintenance under the Zoning Code. She stated that she would be in favor of mirroring the 500-feet from a residential district.

Mr. Clausson stated that he doesn't have an opinion on what impact an exact distance would have. He agreed with 500-feet.

Mr. Crookston questioned what the Industrial District will look like once you removed the residential, schools, parks, and other restricted areas.

Ms. Edwards stated that the 500-feet in the current definitions mirror the medical marijuana restrictions, which are State mandated. She stated that she is assuming that the adult use cannabis will mirror the medical marijuana restrictions once the regulations are established.

Mr. Crookston stated that his concern is with all the restrictions where it can't be located that it will eliminate sections in the current Industrial Districts in the City and leave only one area as an option.

Ms. Edwards stated that currently they can't pick another district that all of the types will fit in without the State's completed regulations.

Mr. Clausson questioned if there are any other Industrial District uses with restrictions.

Ms. Edwards stated that Sexually Oriented Businesses are restricted to 1,000 feet from a residential district.

Ms. Susel stated that industrial uses are 100 feet from residential uses.

Ms. Edwards reminded the members of a recent case, where many residents expressed their concern for a business that will be located in their area. She stated that this is the time [when establishing text amendments] to consider the residents and what will be in their back yards.

Mr. Matar suggested increasing the buffer to 1,000 feet.

Ms. Edwards stated that 1,000 feet really isn't that far.

Ms. Susel stated that it is measured from the use itself and not the parcel line.

Ms. Edwards stated that her recommendation is 500 feet.

Mr. Clausson, Mr. Matar, and Mr. Crookston all agreed 500 feet from a residential district.

Ms. Susel explained that the residential districts that this would affect are R-1, R-2, R-3, R-4, and R-C; because the C-R district begins with commercial it will not be included. She added that 100-feet from a residential district is what is currently in affect for the medical marijuana dispensaries.

Mr. Matar and Mr. Crookston also agreed that they would prefer the temporary moratorium to remain until the State solidifies its regulations.

MOTION: *In the case of PC24-007, The City of Kent, Mr. Clausson moved that the Planning Commission make a favorable recommendation to Kent City Council to hold its public hearing review and to approve the proposed Zoning Code Text Amendments for KCO Section 1102.03 Vape Shop as presented with a 20% square foot display area restriction.*

Mr. Matar seconded the motion. The motion carried 3-0-1. Mr. Crookston abstained.

MOTION: *In the case of PC24-007, The City of Kent, Ms. Edwards moved that the Planning Commission make a favorable recommendation to Kent City Council to hold its public hearing review and to approve the proposed Zoning Code Text Amendment for KCO Chapters 1102, 1103, 1105, 1107 as presented with 500 feet from a residential district as the distance restriction.*

Mr. Matar seconded the motion.

Mr. Crookston asked that their discussions regarding the continuation of the moratorium be shared with Council.

The motion carried 4-0.

VIII. **Meeting Minutes**

MOTION: *Mr. Clausson moved to approve the April 23, 2024 Meeting Minutes as presented. Mr. Matar seconded the motion. The motion carried 4-0.*

IX. **Other Business**

None

X. **Adjournment**

MOTION: *Mr. Clausson moved to adjourn. The motion was seconded by Mr. Matar. The motion carried 4-0. The meeting adjourned at 9:20 p.m.*