

**MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS
TUESDAY, JANUARY 15, 2019
6:30 P.M., IN COUNCIL CHAMBERS, CITY HALL,
MIDLAND, MICHIGAN**

1. Roll Call

PRESENT: Board Members – O'Brien, Poprave, Siemer, Mead, Green

ABSENT: Board Member – None

OTHERS PRESENT: Grant Murschel, Director of Planning & Community Development;
Nicole Wilson, Community Development Planner, and three (3) others.

2. Approval of the Minutes

It was moved by Green and supported by Poprave to approve the meeting minutes of the regular meeting dated December 18, 2018 as written. The motion was approved unanimously.

3. Public Hearings

- a. **No.18-14/19-01 – Michael R. Zimmerman:** for a use variance to allow retail sales and a cigar lounge in the OS Office Service district located at 705 Bayliss Street.

Murschel presented petition 18-14 located at 705 Bayliss Street and zoned OS Office Service.

Green inquired as to the nature of the letter in opposition to the petition. Murschel identified the opposition to originate from an adjacent residential property owner at 718 Bayliss Street and their concern of an increase in traffic.

Mead asked when the previous user of the salon vacated. Murschel identified late 2014.

Poprave asked if the allowance of retail sales of cigars can be narrowly defined and would disallow other retail sales to locate in this area, or does the allowance of cigar sales then open up the area to expanded retail offerings. Murschel provided clarification in the ability to include conditions to limit the use to cigar sales noting that issues of monitoring make this condition more difficult to enforce.

O'Brien asked if the property could be rezoned to accommodate the desires of the applicant. Murschel explained that due to the incompatibility with the future land use it would be difficult to make the accommodation of rezoning this property to allow for the proposed use.

Siemer opened the public hearing.

Michael Zimmerman, 2107 North Harvest Circle, Midland

The petitioner explained that he and a partner (who owns a Cigar store nearby) seek to open a club where members could purchase and smoke cigars. Mr. Zimmerman commented that he does not anticipate a higher level of traffic above what is already in place with the credit union a short distance from the property and does not feel that this allowance would change the dynamic.

Chris Jones, 1115 Wildwood Street, Midland

Mr. Jones, a supporter of the petition and writer of a letter of support, spoke to the intent of providing an alternative office space for meetings where cigars could be consumed. Mr. Jones added that there is not a large difference between the previous salon business and that of the cigar lounge.

Green inquired as to what other locations had been evaluated. Mr. Zimmerman offered that locations along Saginaw Road had been considered.

Green asked if the existing location of Chatham Cigar would close if the petition were approved. Mr. Zimmerman answered that it would. Mr. Zimmerman continued that no more than twenty percent (20%) of the subject building would be used for retail sales and that the sales currently completed at Chatham Cigar were considered when an estimation of traffic volumes were calculated.

Poprave commented to the petitioner that with the OS Office Service district the signage is smaller. Mr. Zimmerman responded that that is not an issue.

O'Brien asked if the addition of retail sales open to the public changes the nature of the petition. Murschel explained that it does not.

Mead asked if the petitioner believes that most sales would come from members or the public. Mr. Zimmerman commented that they anticipate that most sales would come from members, and that the building will have a separate entrance for members.

Peter Sykes, 2109 Springwood Drive

Mr. Sykes is a potential investor in the business and wrote one of the letters of support for the facility. Mr. Sykes commented that such a small portion of the property is dedicated to retail, and that primarily the building will feature office space. Mr. Sykes continued that the proposal seems to be within the intent of the district.

Mead asked if outdoor activities could be expected in warmer weather. Mr. Zimmerman commented that it would not include outdoor use.

Aaron Sade - 4912 Tucker Street

Mr. Sade, a supporter of the petition, spoke to the interest in the club being that parking would be located in the rear of the club, out of public view. Mr. Sade commented that some of the potential members may have higher profile careers and value the privacy this location can offer.

Siemer asked if the need for the facility is as a result of the laws passed disallowing smoking. Mr. Sade affirmed.

Mead asked if there was interest in sales of alcohol. Mr. Sade stated that he has no interest in additional regulatory bodies and as such no interest in the sales of alcohol. Mead also asked if there will be improvements to the air handling system to accommodate the smoke. Mr. Sade indicating that the upper floor will have a new HVAC system.

Mead inquired about the potential for expansion to the sale or consumption of marijuana. Mr. Sade indicated that he has no interest in expanding to marijuana. Mead further inquired if Mr. Sade would be willing to ban the consumption of marijuana within the establishment. Mr. Sade affirmed.

O'Brien inquired about the ability to smell smoke outside of the building. Mr. Sade responded that due to the filtration he did not believe so but that it is possible.

No comments were made in opposition.

Siemer closed the public hearing.

Poprave moved to approve petition 18-14/19-01 based on the findings of fact; Green seconded the motion.

Findings of Fact:

1. Property is located at 705 Bayliss Street,
2. Zoning is OS – Office Service,
3. Property is bounded to the west and south by RB Multiple Family Residential, to the east by RC Regional Commercial, to the north by OS Office Service.
4. Three (3) public comments in support, and one (1) public comment in opposition from an adjacent resident have been received,
5. Building constructed in 1966,
6. Property zoned as OS in 1973,
7. Building is vacant at present,
8. Building was previously used as a beauty salon,
9. Proposed use would be the lounge, accommodating approximately 35 persons,

10. Parking is on-property and located in the rear of the building,
11. Zoning code does allow for club uses for non-profit organizations,
12. Traffic is suggested at approximately 30 cars per day, which is less than the adjacent use of a credit union,
13. Chatham Cigar would be the operating retailer included in the space
14. Operation must comply with state licensing requirements.

Mead expressed concern that this use could lead to marijuana sales. Murschel explained that there is discussion at the City Council level of the manner in which marijuana sales will be handled city-wide via police power, not that of land use or zoning regulation.

Additional deliberation was around the ability to locate this use within an appropriate zoning district and as such the hardship is self-created and that the building can reasonably be used for other purposes. Further the sales of product changes the manner in which the request is considered.

O'Brien: No
Poprave: No
Mead: Yes
Green: No
Siemer: Yes

The motion to approve this motion was defeated by a vote of 3-2.

4. **Old Business** – None.
5. **Public Comments (not related to items on the agenda)** – None.
6. **New Business** – None.
7. **Decision Sheet Signatures**
8. **Adjournment**

The meeting was adjourned at 7:35 p.m.

Respectfully submitted,



Grant Murschel - Director of Planning & Community Development

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