



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes - Draft Planning Commission

Thursday, May 16, 2019

8:30 AM

Council Chambers

6.A. [AR R](#)
[19-00118](#)

Multiple appeals of the administrative decision to approve administrative relief for 961 feet of separation for a new Medical Marijuana Center (MMC) at 1645 S. Tejon St. where 1,000 feet of separation are required by Code.

(QUASI-JUDICIAL)

Presenter:

Ryan Tefertiller, Urban Planning Manager, Planning & Community Development

Staff presentation:

Ryan Tefertiller, Manager of Urban Planning

Mr. Tefertiller gave a presentation with the scope and intent of this project.

The two applications for this project:

- An administrative relief allowing 961 feet of separation between medical marijuana center uses where 1000 feet are required by code.
- A non-use variance for parking to allow 37 parking stalls where 44 are required.

Mr. Tefertiller detailed the history of the building and the prior uses.

Questions:

Commissioner Eubanks asked about the distance requirement between medical marijuana centers.

- Mr. Tefertiller explained the requirement was established in August of 2018 when it was adopted by council.

Commissioner McMurray asked if the relocation of the MMC is involuntary.

- Mr. Tefertiller deferred that question to the applicant Pure Medical to answer, but he did say the site the applicant was operating out of is in the process of being demolished for the new Creekwalk development project.

Commissioner McMurray then asked if the demolition was a city action or a

developer action.

- Mr. Tefertiller explained Creekwalk redevelopment is a private project, but the city supports reinvestment, curing of blight, etc....in all our urban renewal areas.

Commissioner Almy asked Mr. Tefertiller to elaborate on the 1000 foot limit between MMCs.

- Mr. Tefertiller explained when the city first created for regulations for medical marijuana uses, including grows and product manufacturing, as well as the retail side of things, there was a separation requirement between those uses and schools, drug and alcohol rehabilitation centers, daycares, etc.
- Mr. Wysocki went on to explain that the City has a task force called Medical Marijuana Working Group that's made up of council members, marijuana industry representatives, neighborhood representatives as well as city administration. Mr. Wysocki said the group has been meeting now for about three years or so, and it has been developing various levels of medical marijuana regulations.

Commissioner Satchel-Smith asked what the distance was from Pure Medical's original building that is being demolished to the medical marijuana centers in the area.

- Mr. Tefertiller said he was unsure but said he thought from the previous location for Pure Medical it was roughly 1000 feet from the subject property and guessed by pedestrian path it would be a quarter to a half mile.

Appellant 1:

Shannon Fender, Director of Public Affairs for Native Roots Dispensary

Ms. Fender wanted it noted that the tenants of their building were not noticed in this process and requested consideration that the City notice the tenants of a building and not just the landlord/owner.

Ms. Fender wanted it known that she had great interactions with Mr. Tefertiller, but disagrees with the City's assessment and decision and believe it should be overturned.

- Decision is against the express language of the ordinance
- Against the intent of the zoning ordinance
- Is unreasonable and erroneous for the impacted businesses

- Does not provide significant community benefit
- Is within the 1000 foot buffer
- Collaborative effort by the industry to support the 1000 foot buffer
 - To protect existing industry businesses and employees
 - Prevent a high concentration of MMCs in one area
 - Competition is fierce and it's difficult to run a business in the environment
- Adding a 5th medical marijuana business into an already highly saturated area will adversely impact the business, decrease sales and potential loss for full time jobs
- Does not believe adequate time was given to them to respond on how the new MMC would impact their business further

Ms. Fender believes all of the criteria was met to overturn the decision that goes against the express language and intent, as well as it being erroneous and does not provide for any significant community benefit.

Appellant 2:

Norman Moss, representing Edelweiss Restaurant

Mr. Moss informed the Planning Commission the owners of Edelweiss Restaurant are not in favor of the parking non-use variance.

- Does not meet the City's zoning codes
- Site plan was wrongfully submitted
- City zoning codes are incorrectly applied
- Non-use variance application requirements were not met when it comes to the criteria for non- reasonable use and no adverse impact

Mr. Moss explained the prior parking non-use variance that was granted to Blue Star and Bristol were adverse to Edelweiss and caused harm to the business.

- Had to put up video cameras because Blue Star and Bristol customers would park in Edelweiss' parking area
- Spent thousands on video cameras
- Hired parking attendants every week
- Lost parking for Edelweiss customers because the Bristol and Blue Dot customers were taking up spaces
- In the past, each business in the building were looked at as individual businesses and the parking variances were based on that
- If building is classified as a commercial center, then any kind of business would be allowed there and the impact to parking could change. A new non-use variance application would not be required but

could impact the parking by reclassifying.

- Mr. Moss gave several examples on how many parking stalls should be required according to zoning code
- The 11 on street parking stalls being credited does not meet city zoning code and is half owned by the city that's in front of Blue Star and Bristol. The reason why the 11 on street parking stalls cannot be counted toward the onsite parking:
 - No parking analysis was submitted as required by code 7.4.204.2.B
 - Onsite parking is available for the purchase or lease
 - Other additional onsite parking is available as Joseph Coleman has two properties within one block of 1645 S Tejon that could be converted to parking
 - The theater across the street from 1645 and 1647 S Tejon is co-owned by Coleman and Bristol, which Mr. Moss said they could expand the parking either by adding a parking garage or removing the building
 - Coleman and Bristol owned property right next to Blue Star and chose to sell it
- The site plan has ADA code violations
 - No curb ramp
 - Permanent posts for signs preventing entry and exit from the vehicle and access to the sidewalk
 - No van accessible parking
- Types of businesses, operating hours or peak times cannot be used to justify adverse impact

Appellant 3:

Valerie Fix, resident in the Ivywild Neighborhood

Ms. Fix said the city did not present sufficient evidence to meet the review criteria for granting administrative relief for a Medical Marijuana Center (MMC) and was in conflict with city code 7.3.205.M.5.

- Does not meet the express language of the city code with a 1000 foot separation between MMCs
- Provides no unique benefit to the citizens in the Ivywild neighborhood
- City has not met the burden of proof to show why it's necessary to undermine the language written in the code
- Ms. Fix provided maps of the current MMCs in the area

- Adverse impacts: traffic, parking, public health and safety, and neighborhood desirability

Commissioner Raughton asked about the Family Life Center, where it was located, and if it was considered a drug rehab or alcohol rehab facility.

- Ms. Fix said it was located at 1880 South Cascade
- Mr. Tefertiller said it was not designated drug or alcohol, nor a childcare facility per medical marijuana regulations.

Commissioner Almy asked Ms. Fix if she was speaking for the Ivywild community or as a concerned citizen from Ivywild.

- Ms. Fix explained she was speaking as a concerned citizen from the community with several community members asking her to support the appeal.

Applicant One:

Carly Van Arnett, Pure Medical

Ms. Van Arnett gave a PowerPoint presentation with the scope and intent of the project. Ms. Van Arnett addressed the main concerns of the appellants:

- Concentration - went over how many MCCs were in the area, the measurements and locations
- Increase of crime and hospitalizations - showed data from a report from Colorado Division of Criminal Justice
- Competition - said this was not a concentration issue but competition issue
- Against the zoning ordinance language - spoke to concentration issue and their presence will not adversely impact the exiting MCCs.

Questions:

Commissioner Raughton asked if the 1,000 feet was from store front to store front.

- Ryan Tefertiller replied that the code is very specific on how the measurements are taken. Mr. Tefertiller explained it is from the nearest corner of the building in which the proposed MMC is to be located, to the nearest property line of the existing MMC properties via a route of pedestrian travel.

Commissioner McMurray asked Mr. Tefertiller if the any of the measurements

exceeded the thousand feet.

- **Mr. Tefertiller** said he and another staff member took the measurements with a measurement wheel and never got over 1000 feet on any of the attempts.
- **Mr. Tefertiller** believed the applicant did get over 1000 feet once or twice, but Mr. Tefertiller said he never did when he measured and it was always just under 1000 feet.

Commissioner Raughton asked about signage placement.

- **Ms. Van Arnett** said there would be a sign on the backside and possibly one on the front side, but those things would be worked out if the project was approved and through permitting.

Applicant 2:

Joseph Coleman, Fonseca 94, LLC

Mr. Coleman said he would like for the building to become a neighborhood anchor again, as it was when it was built in the 50's as a Safeway. Mr. Coleman added they want the building to be relevant and believed that could be accomplished through mixed use with different uses and sensitivity to the parking loads.

Questions:

Commissioner Eubank asked for clarification on if there would or would not be a music venue.

- Mr. Coleman explained there were three uses in the space they were going for:
 - One is the medical marijuana in the back, which is 1750 square feet
 - One is a small music venue that has standing room for about 120 people
 - One undefined 3,400 square foot retail space (which was originally proposed in January as a big venue which would have standing room for 500 to 700 people, but that is no longer on the table)

Commissioner Raughton asked about the whiskey distillery and if it was a bar.

- Mr. Coleman said he thought it was mostly manufacturing and there was a bar that you can buy drinks and also buy bottles to go, but it was mostly distributing to liquor stores and bars.

Supporters:**David Siegel**, Executive Director of the Bee Vradenburg Foundation

- Under venue-ed in the City, which was identified in the cultural master plan
- Venues like the Side Door play a critical role in the health of the music community
- Aligns with PlanCOS
- Commended plan around multimodal transportation
- Mr. Siegel said he rarely drives to music venues but uses rideshare, bike or walks

Rence Seyb, represents the band Dear Rabbit

- Side Door one of Mr. Seyb's favorite venues in town
- Attended 89% of the shows and had no problems with parking
- Shows start at 8:00 p.m. and no parking conflicts
- Bringing artist, the music, musical community, and eclectic, tasteful mix of music

Opponents:**Molly Merry**, serves on Ivywild Improvement Society Board

- No buffer between commercial and residential, so would like Planning to not just promote commercial zone but protect residential space
- Parking is a huge issue in the neighborhood
- Need adequate parking for the urban renewal process
- Support the appeal in terms of really looking at some solutions for parking

Kay Mitchell, resident of Ivywild

- Lives on Yucca Drive near 8th Street and Joseph's Fine Dining
- Said on Thursday, Friday, and Saturdays that Yucca is down to one lane because of people attending both Joseph's and The Point
- People fall asleep or pass out in their cars
- Too much congestion
- Traffic issues

Richard Reslin, resident on Cheyenne Blvd

- MMCs brings drug culture, panhandling vagrants, homeless
- People have blocked residential driveways, fire lanes, fire hydrants

- Mr. Reslin said people have parked in his driveway
- Major music venue would be 300 cars with only 27 parking spaces
- Thefts from vehicles
- Wants the 1,000 foot rule to be upheld
- Give time for parking studies to be completed

Kyle Purer, resident of Ivywild

- Wants the 1,000 feet upheld with the MMCs
- Children in the area and would like to keep it safe

Dieter Schnakenberg, owner of Edelweiss Restaurant

- Over last 15 years have had nothing but trouble with parking and the Blue Star building
- Blue Star building tremendously lacking in their parking
- When the buildings parking spaces get filled up, the customers will go across the street and park in our parking lot
- Has been happening continuously even now with the small music venue
- This adversely impacts Edelweiss Restaurant
- In the past, Edelweiss hired parking lot attendants to ensure customers from 1645 and 1647 Tejon did not park in their lot, so the previous variance for parking did not work
- Would like the City to apply parking codes to bars and restaurants for that building

Helga Schnakenberg, President of Edelweiss

- Have bought land to create more parking for Edelweiss' employees and customers
- Asking Joseph Coleman to spend money for parking like Edelweiss had to

Rebuttal:

Appellant One:

Shannon Fender, Director of Public Affairs for Native Roots Dispensary

- Sympathetic to Pure Medical's situation but Native Roots has dealt with that situation before in another jurisdiction
- City Council was very clear on the intent and creation of the rule with 1000 foot between MMCs

Appellant Two:**Norman Moss**, representing Edelweiss Restaurant

- The application is in violation of city code
 - Commercial center parking submittal of 46 parking stalls is incorrect by code
 - Correct code should be the entire site where it would require 63 parking places
- Joseph Coleman said there was no reasonable use
 - Manipulating the code by lumping together the warehouse and commercial center
 - Several other types of businesses could go in this space according to code
- Joseph Coleman owns three other properties that they can use to expand their parking, which would not require a variance

Appellant Three:**Valerie Fix**, resident in the Ivywild Neighborhood

- Ms. Fix questioned that if there is no reasonable use to this property, why did the applicant purchase it in the first place
- Parking was clearly not adequate, but a parking variance was granted, which has clearly caused distress to the neighborhood
- Said the building has been used in the past for offices and other small businesses and doesn't understand why those kind of businesses are not available this time and why the Medical Marijuana Center seems to be the only option
- Mentioned that a passersby should not be able to reasonably smell anything coming from the clinic and doesn't see how that would be possible

Applicant Rebuttal:**Carly Van Arnett**, Pure Medical

- Regarding parking, Ms. Van Arnett said with Pure Medical having off peak demand hours of the other uses in the building it will help mitigate the parking situation
- There are not four or five MMCs in the area, just would be the two on South Tejon (Pure Medical and Native Roots)

Joseph Coleman said he was available for any questions.

Questions:

Commissioner Raughton asked Mr. Coleman if he had looked at the option of providing a parking map or looked at Ivywild for some supplemental parking.

- Mr. Coleman said after the roundabout is completed, he believed that it will be one lane heading north coming out of the roundabout in front of the Blue Star so did not think it would affect the parking in front.
- Mr. Coleman said he rode his bike to this hearing today and would like more bike lanes, but that he would not tear a house down to create parking

Staff clarifications:

Ryan Tefertiller wanted to clarify some facts that were related to issues discussed during public comment:

- It is true that the commercial center designation does allow individual tenant spaces to change and evolve over time, which is a major point of the commercial center designation so if the facility loses one tenant and replaces with another, they don't have to make applications and go through public comment and review process
 - A commercial center designation does require at least three separate tenants
 - The argument that the applications are a way to achieve the large music venue is untrue and as far as city staff and city code, you could not get these approvals and then remodel the facility for a large music venue, as it would not be allowed under the commercial center definition
- An argument was made that the entire property of both 1645 and 1647 had to be parked at the commercial center rate in order to use the commercial center use designation is not true
 - Staff regularly use multiple different parking calculations and defined uses on individual properties
 - In this case, staff used the commercial center use designation for the 1645 building and a mix of different uses for the 1647 building (Distillery 291). The majority of that building is parked at a manufacturing type parking ratio
 - There is nothing in code that prohibits the use of different use types in parking requirements for different buildings even if they are on the same property
- The 11 street stalls immediately adjacent to the subject property have

been granted approval of a revocable permit

- The stalls are half on private property and half in public right of way
- The revocable permit gives the private permit holder (Mr. Coleman) the exclusive use
- Communicated with engineering and traffic to make sure those 11 stalls were not going away once the roundabout is in
- Later this year the city will begin some work on Cascade just west of this site
 - City will be rebuilding a narrow bridge that runs east/west and repaving Cascade north of the roundabout up to Brookside
 - The intent and initial designs call for changing all the parallel parking on Cascade to angled parking that more or less double the amount of publically available street parking on that roughly two block stretch of Cascade
 - City is trying to maximize the parking capacity in this area to address not only the subject property but other successful properties in the area
- A claim was made that staff does not have adequate expertise on medical marijuana related issues in order to evaluate the impacts that the proposed medical marijuana center would have on the community.
 - The claim is correct. Mr. Tefertiller said he does not have the expertise in medical marijuana; however, he did consult with the City's medical marijuana experts both from the planning department, as well as the City Attorney's office on reviewing these applications

Questions of Staff:

Commissioner McMurray asked if the parallel to angle parking diversion on Cascade was north or south of the roundabout.

- Mr. Tefertiller said on Cascade it is north of the roundabout

DISCUSSION AND DECISION OF PLANNING COMMISSION:

Commissioner Raughton said this was a complex presentation with good points made on all sides.

Commissioner McMurray asked for Mr. Tefertiller to elaborate on the intent of the zoning code to give a better sense of the overall intents.

- Mr. Tefertiller referenced his staff report and Figure 11 and explained the code covers a broad range of issues from obstacle growth, congestion of streets, safety from fire, panic, danger, other dangers, provisions of

light and air. The intents of the zoning code is the sum of the things just mentioned, so it is a very broad criteria.

Commissioner Almy agreed this was a complex item. Commissioner Almy spoke of the parking issue and that it does seem to impact the viability of the businesses in the area. Commissioner Almy asked if there was some other way of coming to accommodation that would take a fairly congested area and make sure there was enough allowance in there to provide the opportunity for success of both ventures.

Commissioner Raughton said that was his concern and thought there could be some cooperative or joint use of some of the parking in the facility.

Chair McDonald answered that there were two items before them to vote on as they were written, and the commission is no there to renegotiate the way the items are written.

Commissioner McMurray asked if there was a way of attaching a condition to prevent a net increase of MMCs in that area. **Attorney Ben Bolinger** said no, a condition could not be attached. Ryan Tefertiller added that it was unlikely that the Creekwalk Development would include any medical marijuana uses.

Commissioner Raughton asked Mr. Tefertiller if there were any joint use parking facilities proposed in the Urban Renewal Area.

- Mr. Tefertiller replied that there was some discussion among Mr. Coleman and some other developers within the South Nevada Urban Renewal Area as well as the Ivywild Urban Renewal Area on opportunities for joint parking facilities, specifically a parking structure, however, the economics of parking structures is extremely difficult and was his understanding that it was deemed unfeasible.

Commissioner Raughton asked if there was any conversation in the review of the project about joint use with Mat (Millibo Art Theater), Ivywild and this facility.

- Mr. Tefertiller said there might have been a little dialogue on that but it was extremely limited due to when the Ivywild School was initially resolved and redeveloped in 2010, the Millibo Art Theater property was included as a factor to help offset the parking demands at Ivywild School. So, Millibo essentially already serves as an overflow parking for Ivywild School, but does not apply when the theater is having an event.

After a motion was made for item AR R 19-00118 (Admin relief for Medical

Marijuana Center at 1645 S Tejon Street), Commissioner Raughton commented that there was room for interpretation between the difference between a 1000 foot buffer between an elementary school daycare facility and a medical marijuana facility, and two medical marijuana facilities and that would influence his vote.

Motion by Satchell-Smith, seconded by Eubanks, to deny the appeal, thereby upholding Staff's administrative approval, allowing 961 feet of separation between the proposed MMC at 1645 S. Tejon St. and the closest existing MMC based upon the finding that the request complies with the administrative relief review criteria in City Code Section 7.5.1102, as well as the finding that the appeal criteria found in Section 7.5.906.A.4. are not met.

The motion passed by a vote of 5:1:2:0

Aye: 5 - Raughton, Chair McDonald, Satchell-Smith, Eubanks and Almy

No: 1 - McMurray

Absent: 2 - Hente and Vice Chair Graham

6.B. [ARR](#)
[19-00141](#)

An appeal of Planning Commission's action to approve an appeal and overturn the administrative approval of a non-use variance to allow 37 parking stalls where 44 are required by Code at 1645 and 1647 S. Tejon St.

(QUASI-JUDICIAL)

Presenter:

Ryan Tefertiller, Urban Planning Manager, Planning & Community Development

See Item 6.A.

Motion by Satchell-Smith, seconded by Eubanks, to deny the appeals, thereby upholding Staff's administrative approval, allowing 37 parking stalls (26 off-street stalls and 11 stalls along S. Tejon St.) where 44 stalls are required, based upon the finding that the request complies with the non-use variance review criteria in City Code Section 7.5.802, as well as the finding that the appeal criteria found in Section 7.5.906.A.4. are not met.

The motion failed by a vote of 1:5:2:0

Aye: 1 - Chair McDonald

No: 5 - Raughton, McMurray, Satchell-Smith, Eubanks and Almy

Absent: 2 - Hente and Vice Chair Graham