



CITY OF BURTON

ZONING BOARD OF APPEALS

NOVEMBER 19, 2020

Council Chambers

Regular Meeting

5:00 PM

**4303 S. CENTER ROAD
BURTON, MI 48519**

ATTENTION APPLICANT:

In order to prove you are entitled to a variance, you should be prepared to show how your property meets the conditions listed:

1. The difficulty must be unique to your property and not generally shared by others in the same zoning district, and would constitute a hardship.
2. The variance will not adversely affect the public health, safety and welfare, or be contrary to the spirit and intent of the Ordinance.

The burden of demonstrating that the above conditions exist on your property falls on you, the applicant. The Zoning Board of Appeals will not argue or present your case for you.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

C. STAFF PRESENT

D. APPROVAL OF MINUTES

1. Zoning Board of Appeals - Regular Meeting - Sep 17, 2020 5:00 PM
2. Zoning Board of Appeals - Regular Meeting - Oct 15, 2020 5:00 PM

E. VARIANCE

1. ZBA #20-09

By: Lily G LLC / Northgate Packaging
3367 Corunna Rd
Flint MI 48532

Re: 4274 E. Court St Burton MI 48509
Parcel 59-15-100-021

For: To conduct an M-1 light industrial use in a C-4 planned shopping center for a warehousing processing and packaging use.

F. AUDIENCE PARTICIPATION

Now is the time set-aside for members of the audience to address the Zoning Board of Appeals. I would ask each individual to give their name and address for the record and to

limit their comments to three (3) minutes and to speak on the topics germane to City business.

Public comment may be sent to: publiccomment@burtonmi.gov. Comments received prior to the meeting will be read into the record.

G. BOARD DISCUSSION

The next regularly scheduled meeting will be held on Thursday, December 17, 2020, at 5:00 p.m.



CITY OF BURTON

ZONING BOARD OF APPEALS

SEPTEMBER 17, 2020

Virtual Meeting

Regular Meeting

5:00 PM

**4303 S. CENTER ROAD
BURTON, MI 48519**

This meeting was opened by Chairman Steve Welch at 5:12 PM.

A. MEETING INFORMATION

Zoning Board of Appeals
Hosted by Racheal Boggs

Thursday, Sep 17, 2020 5:00 pm | 2 hours | (UTC-04:00) Eastern Time (US & Canada)
Meeting number: 126 991 5080
Password: gWRPg3kEU32 (49774353 from phones and video systems)
<https://cityofburton.my.webex.com/cityofburton.my/j.php?MTID=m981af7e8de1cc1b2283ae8ca11b821c0>

Join by video system
Dial 1269915080@webex.com
You can also dial 173.243.2.68 and enter your meeting number.

Join by phone
+1-415-655-0001 US Toll
Access code: 126 991 5080

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Attendee Name	Title	Status	Arrived
Gary Kautz	Alt. Commissioner	Excused	
Christina Conley	Council Representative	Excused	
Scott Hynes	Commissioner	Present	
Tim Rapacz	Commissioner	Present	
Michaeline Ward-Terry	Vice Chairperson	Remote	
Steve Welch	Chairman	Present	
Joey Richvalsky	Alt. Commissioner	Present	
Rick Fuhst	Commissioner	Present	
Kevin Burge	Planning Representative	Present	

D. STAFF PRESENT

Racheal Boggs, City Clerk
Amber Abbey, Deputy DPW Director
Lindsey Bice, Record Tech

E. APPROVAL OF MINUTES

Minutes Acceptance: Minutes of Sep 17, 2020 5:00 PM (Approval of Minutes)

1. Zoning Board of Appeals - Regular Meeting - Jul 16, 2020 5:00 PM

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Scott Hynes, Commissioner
SECONDER:	Tim Rapacz, Commissioner
AYES:	Hynes, Rapacz, Ward-Terry, Welch, Richvalsky, Fuhst
EXCUSED:	Kautz, Conley

F. VARIANCE

1. ZBA #20-06

By: Matt Ovadek
1352 S. Oak Rd Davison MI 48423

Re: To be combined 59-29-551-028, 59-29-551-022, 59-29551-004, 59-29-551-006

For: 1. To conduct a marijuana use within 500 feet of an existing facility 2. To allow two marijuana licenses on one parcel of land.

Christopher Ebbott 221 W. Fifth Street, Attorney for Matt Ovadek who is the applicant. They are applying for a variance on Associates Drive. The property is currently Zoned M-1. There are no residents in the area. Mr. Ovadek owns 6 parcels, there is also one that is a parking lot at the south end. The one across the street is actually the next case. We are seeking a variance, however, this is a unique situation because it is a variance against himself. Mr. Ovadek owns those parcels and there is a tenant in place, and the tenant has a marijuana license already. The parcels have already received a variance to allow that but the Syko Gardens LLC would like to use their own license so that is what we are requesting a variance for. There are plans that have been approved by the City of Burton to start construction on those parcels once they are combined for a new structure and to improve the existing structures, creating approximately 75,000 to 80,000 square feet of new building that will be 35 feet high. They need this variance to allow them to conduct business. They already have their state license for the marijuana. It's a unique situation but like I said, the property itself has already received a variance to allow the marijuana grow pursuant to your local rules. This is not on Dort Highway or Center Road. It is not somewhere where there will be a restaurant next door, other retail shops or much traffic. It is a dead end road on both sides of Associates Drive. There is a Consumers Power sub station and there is green space. It is not going to increase any traffic or bother any residents, there is nothing but it being within 500 feet of the existing licensee, who is the tenant of the LLC. That is what we are seeking a variance here for is to allow them to utilize the property to make those improvements to build and conduct that business. I know that the City of Burton took advantage of the state allowing recreational marijuana and there has been numerous businesses open. It is a new change from the old way of thinking about marijuana and there are people who you wouldn't think would be involved in that type of business but they are now that it is legal, so you have to view it in a different way. Mr. Ovadek has been in Burton for about 15 years. At the 3302 there was his pet food and treat business. I think the board has some overviews that show the properties and explain what we are asking for here regarding these variances. We would ask that you approve the variance and allow them to have the license there so then they can improve all of that property and conduct business.

Ms. Boggs read from the Webex chat that Scott Smith has sent a letter for public comment. She responded to Mr. Smith that we have received his letter and we will read his letter into the record after the audience participation. Ricky Mahl sent a Webex chat that he also sent a letter and we will be reading your letter into the record as well. Is there anyone from the call in feature that would like to add anything to this case. Ricky did you want to Speak?

Ricky Maul 3297 Associates Drive, stated yes I do. We forgot to include in our letter that when Brink's drives there trucks into our parking lot, they have a guard that comes out and draws a weapon, he canvases the parking lot. At that time, he will radio for the guard inside to open the door, that armed guard will come out into the parking lot and they drive inside then close the door. That is why we would like the fence put up. There are only six parking spots in that parking lot next to us. We have seen the business that the marijuana facilities bring in and I do not think he is going to have parking.

Mr. Welch read into the record for public comment letters submitted from Scott A. Smith against the variance and Mr. and Mrs. Ricky Maul stating concerns for their tenant and request a fence be put up between properties.

Mrs. Abbey stated I know that this case is a little confusing for everybody because there are a lot of parcels involved and some information that was given to you. I did provide everyone a map to show exactly what parcels are being asked for. I think this gives a good idea of the overall picture of what you are looking at. The four parcels in black are the four parcels that I would say we would have to make them combined if they move forward with this application. That would absolutely be a stipulation of the approval that you give. I ask that you combine those four parcels. The other part to this is, you have another case tonight which is the 20-07, the parcel across the street. They would also be too close to that parcel. When they put it on the application, I put it as just too close to a marijuana facility within 500 feet. Tonight if the approval goes through on the First one, it does not effect the second one. The other part to is, the applicant mentioned they were getting a variance against their self, that is not exactly true. They are actually getting a variance for 3365 which is an existing licensing facility and has been since 2011. They are requesting a variance because they are within 500 feet of two facilities. One being potentially themselves across the street and the other being 3365 Associates Drive. Mr. Smith did talk about that in his letter. I do not know the exacts of why they were shut down, so I cannot say if it was a FANG raid or not, but in 2011, a previous owner had a license and did get shut down. It has changed three times since 2011 and now has a new owner with a new license which has nothing to do with what happened in 2011. The license has continued to move forward with the property. In 2018, the new law came about and a new license was issued. In 2020, the new owners took over. That business has been open and has occupancy. The other thing the applicant said was that the building has already been approved, that is not exactly true. In 2017, they asked to do an addition to the building at 3323, so it was just to add onto that building, which is the northern most parcel of land. That is the only building site that has been approved, nothing to do with the other parcels at all. I don't want anyone to be confused by that, no one gave them a building permit to build on other parcels.

Mr. Richvalsky asked is that the parcel that ends in 017?

Mrs. Abbey responded no that is the next applicant, the next case. It is the one in the black circle.

Mr. Rapacz stated it ends in 028, correct?

Mrs. Abbey stated, yes. So it would be parcel 59-29-551-028. They had proposed in 2017 an addition between the black building and the white building which would create almost an L shape. That is the plan he is referring to. Now we will go to that northern most parcel because that is the second part of this license. The existing facility, the white building on that parcel has an approved license for a grow facility. It was originally approved in 2015 and got an actual license in 2017, when the new law came in. He does not have occupancy to the building at this time because he does not have a suppression system so, there should not be any growing happening at this time. He does have a license, he has paid for it every year, since 2017. He has renewed it and that is the tenant they are talking about now that is in the existing white building. The other building on there, the little standing small office building, the one that is right next to the Maul's property, That property has pulled a permit to become a dispensary, however, they still have not applied for a license to be a dispensary because they will be a separate license holder. That is the second part of the variance. The way our ordinance works is you can collocate a dispensary with a grow but you must be the same person or entity. That is the second part of the variance. I would ask that you keep both of them separate as they are two completely different requests. One of them is to be too close to an existing facility the other is to have two separate licenses on the parcel of land. If I haven't confused everyone more by now, the biggest concern that we have is that this is the first request that has been made regarding two licenses held at a property. This comes up all the time, everyone wants to lease a property and then still run their facility. This one is a little bit different, they have a lease holder that has been there for about 10 years or has a 15 year lease. This is new to me as far as how we would handle this so, I do not have much of a recommendation for you all. Understand that you are approving a tenant to be in there along with an existing license that could take up the whole parcel. If he wants to build a building and move his business anywhere else he could do that. We are not going to limit that part of it. I do not know what their intention is with the other buildings on the parcel at this point because we have no commitment to a demo or any build. That might be something you want to talk to the applicant about to see if you are more comfortable with one building or with a specific use. Such as being okay with the dispensary but not okay with the grow or processing. Those are things that you are going to have to ask yourself and whether or not you would want that. But understand that they could take up the whole parcel and that would be the four parcels combined.

Mr. Welch stated that would be because it is one parcel if we voted on combining it to one parcel of land. We are voting on having it combined to become one parcel first, right?

Mrs. Abbey stated right, if their request goes through you can approve it as all of the parcels get combined use and say you are good with all of them except this other parcel. That part is up to you. You can put the stipulations on them anyway you see fit.

Mr. Welch stated my point is though, if we vote on combining it all and now it is just one parcel.

Mrs. Abbey stated yes then it is just one parcel and they can demo it or make the business as large as they see fit on the property.

Mr. Welch stated then the 500 foot doesn't apply because they are all together as one.

Mrs. Abbey stated yes, the 500 foot is basically zero to the business to the south. And the 500 foot, if approved tonight is about 63 feet from the parcel across the street.

Mr. Richvalsky asked does the relationship between the landlord or the lesser and lessee have any bearing on this overall use? It seems as if they are almost one of the same and they are in a way asking us to make them partners.

Mrs. Abbey stated well, no. They are asking not to be partners. That is the point. If you allow both licenses to exist on the facility they wouldn't have to be partners.

Mr. Richvalsky asked does that mean one of them would have to bow out? The existing guy would have to make his license null and void?

Mrs. Abbey stated if it was denied, his license would still exist as far as the city is concerned. How he is legally allowed to be there until he kicks him out, that is between the two of them. Until I receive something in writing stating the current tenant no longer exists or is no longer allowed to be there through legal purposes then at that point, his license would be void and a new license could be applied.

Mr. Richvalsky stated it would almost be an automatic because there is an existing license there and the other applicant would step into their shoes, so to speak.

Mrs. Abbey stated basically, yes. One would leave and the other would come in if you denied it tonight. Or they allow him to exist, I am not sure, I guess that is up to them.

Mr. Rapacz stated but they couldn't have two licenses on the same property correct?

Mrs. Abbey stated correct. Or they may partner together, and then they could have both of the licenses in there. But I don't believe that is what they want to do. We are not forcing them to partner.

Mr. Rapacz asked if we accept this, the area in black becomes their entire property to use, correct?

Mrs. Abbey stated, correct.

Mr. Richvalsky stated I think it is their property now isn't it?

Mrs. Abbey stated, yes but it is not one parcel of land.

Mr. Richvalsky stated I understand. They want to combine it into one parcel, they want to have all the building on one parcel.

Mrs. Abbey said that is correct.

Mr. Hynes asked how many feet is that after the combination of parcels?

Mrs. Abbey stated I did not get that number and asked to Mr. Ebbott if he had that number.

Mr. Ovadek estimated it might be about 400 to 450 feet.

Mrs. Abbey stated that is a reasonable estimate. I did not measure the sizes of the parcels.

Mr. Welch asked about the current tenant, how many years are you into that 15 year lease?

Mr. Ovadek stated they are 3 and a half years into that lease with the tenant.

Mr. Burge asked are any of the other building occupied at this time?

Mr. Ovadek stated all other buildings are vacant. We just bought the plumber building out so, they would be in succession with each other and he is moving out of there. Other than that, they are all vacant.

Mr. Hynes stated I share the concern of Mr. Smith. I am concerned that with another marijuana facilities going through, that Brinks will leave. Sooner or later they will not renew next to a marijuana facility, I would assume. So we may end up having a vacant building there, that is an assumption. I am just really concerned with what Mr. Smith talks about; the diversification that is happening in that community. Especially on Dort Highway and those business environments. I will probably be voting no.

Mr. Richvalsky stated I think Dort Highway looks a lot better now since it has been an advant of these things. There has been a lot of buildings between Hemphill Road and Maple Road that have been approved over the years. Delducas by fire and other buildings that have run into the cannabis business.

Mr. Hynes stated my concern is that we are locking into one type of business all the time with these every time we come in here. What is enough? I get the four lots into one and so forth, my concern is diversification and what is enough. That is just the way I stand.

Mr. Rapacz asked how many dispensaries are in the city at this time?

Mrs. Abbey stated there are 12 provisioning centers. Some of them collocate with their grow facilities.

Mr. Rapacz asked if we approve this then we are ignoring the variance we have set up for this law, correct?

Mr. Welch stated we are discussing number one right now.

Mr. Rapacz stated I know but if you approve that then you will definitely be 500 feet of the existing star at the south.

Mrs. Abbey stated yes, that is what the request is.

Mr. Rapacz stated I am trying not to violate the spirit of the ordinance. I know you are not going to answer this because you said you could only guide us in so many questions, but voting for this would basically violate the spirit of the ordinance, because it would allow three on one street. If everything went through tonight, it would allow three different types of marijuana facilities to exist within 500 feet of each other.

Mrs. Abbey stated if both cases get approved, yes. There would be three on the same street. I wouldn't necessarily look at it as the same street, I would look at it as approving it as being within 500 feet of each other. Because you can have three of them on Dort Highway.

Mr. Rapacz stated but this isn't like Dort Highway, this is a side road of Dort Highway. It is not the same.

Mrs. Abbey stated that is what I am saying, we want to make sure the 500 feet is the point you are looking at.

Mr. Richvalsky stated I have sat in on the discussions where we have talked about how we are going to take the measurements between the buildings and even changing that. The spirit of the 500 feet has been upheld many times over. I think this is a unique situation with this particular one, with the combination of the lots. Also, the situation between the tenant and the landlord creates a little bit of a concern that we have not seen before. Like I said in my statement before, it seem as if we are setting up a partnership of some sort. Whether they like each other or not, they have to co-exist on the same property.

Mr. Rapacz stated it depends on how iron clad that 15 year deal actually is if you are setting up a partnership or not.

Mr. Richvalsky stated you can evict people for whatever you want to evict them for also.

Mr. Hynes stated our rules are not for a partnership though.

Mr. Welch stated we are going to consider these one at a time, if you vote in favor of number one, the combination of all the parcels into one, that doesn't necessarily mean it is a done deal. My question is, if we vote yes on this, and the second part doesn't go through do they have to go through with this? Are they stuck with having it all one parcel?

Mrs. Abbey stated no, they can choose not to do a license at all. The contingency for the combination would be when they apply for the license. If they choose to never do a license, then that's on them.

Mr. Welch stated my point is, if we vote yes on the first then vote no on the second, are they obligated to make that one parcel or could they say we don't want to do that now?

Mrs. Abbey stated no, they can make the choice not to. They are asking to have the facility, if they don't ever have the facility then they don't have to move forward. The stipulation would be on having the facility, the combination would not be required.

Mrs. Ward-Terry asked what type of license is it for? Do they want to have a grow, processing and a provisioning center all in the same area? If they do, does that create a monopoly?

Mrs. Abbey stated that would be a question for the applicant as to whether or not they are pursuing all of them.

Mr. Ovadek stated if we had all three, it does not create a monopoly. There are other businesses that already have all three there. The properties that are right here that

already have a variance and are already licensed, all of those things can already take place on the one property, 3323, because that is already licensed for marijuana. We are just asking to use Syko LLC license with all those properties combined. It would not be a monopoly, no.

Mrs. Abbey stated for Mrs. Ward-Terry the next part to her question was, what type of license is it for? I will answer this one because unless you all have a strong feel one way or the other, I wouldn't necessarily limit them to which one it is because we allow for collocation. I don't want to pigeon hole one use unless you have strong reasons towards that. If you say you aren't comfortable with a certain one of the uses, I can understand that but, I wouldn't limit today's license based on one type of use. Let's say we do allow for all three or four if they want to use secure transport with the other licenses or a research facility, a testing facility, etc. So that is why it is very vague to use a marijuana facility. Unless you have strong convictions to a type that you are not okay with, I would stay with that.

Mrs. Ward Terry stated through the Webex chat and read by Mrs. Abbey, it sounded like the public did not care for the idea of the distribution center.

Mrs. Abbey stated when she says distribution center she means provisioning center, so everybody is clear.

Mr. Burge stated if all these vacant buildings that are here now get so much on tax rates, if they are all cleared out of there and tore down without commitment for anything else coming, the tax base is going to go way down. You would have an open parking lot that is considerably less compared to the buildings. We don't have a commitment to put a big building in there, I don't believe we can get a commitment.

Mrs. Abbey stated absolutely, you can. You can make it a stipulation of the approval.

Mr. Hynes stated that is my concern, the diversification part. If we go ahead and do this then Brinks probably leaves, now you are perpetuating. I understand what you are saying, you have four vacant properties. The thought process is just the domino effect.

Mr. Richvalsky stated I do not think GM is going to build another million dollar, 100,000 square foot facility somewhere close to that.

Mr. Hynes stated it is not just GM, but I get your point, just diversity in general. I will respect everybody and I always have, but we are now at 12. What is the number?

Mr. Rapacz stated leave the numbers at whatever the market can handle.

Mrs. Abbey stated if the license is approved, that does not mean that facilities open there.

Mr. Hynes stated I wouldn't apply for a license and not open a facility.

Mrs. Abbey stated there are several. I have a gentleman who has been approved for three years and has never opened a facility. I have several out there that have approved licenses that have not opened.

Mr. Hynes asked how many licenses do we have then?

Mrs. Abbey stated 12 is the number of licenses.

Mr. Burge stated one positive thing is that it is on a road that goes nowhere.

Mr. Welch asked do you propose to develop on the four parcels and if so, what is the time frame and size?

Mr. Ovadek stated if we get the approval we are going to start on the first piece where that 3309 is. In the back building we have all the blueprints done and approved so we will start on that piece immediately then move through as quick as we possibly can. We are ready to go immediately.

Mr. Welch asked has it been approved for the one building?

Mrs. Abbey stated the original part was approved through site plan, yes. Mr. Welch had furthered the question, I think you may have missed that part, he asked to what extent the development for the parcels occur, not just the main parcel.

Mr. Ovadek stated as fast as we can get people to work and get the buildings up. It won't be held up because of us or because of money. We want to be moving immediately and keep moving right through the entire parcel.

Mr. Richvalsky stated when are you going to be built out?

Mrs. Abbey asked is it one building, multiple buildings and when will it be built out?

Mr. Ovadek stated the first one will be that back building, then the addition that goes on that. Then we will go on the other side where the plumber is and take that piece along with the parking lot. We will put up there what is allowable by the city. It will be two buildings and the front building that will be the dispensary.

Mr. Hynes asked the plumber will exit then?

Mrs. Abbey stated for the applicant that the plumber is currently moving out.

Mr. Burge asked how many employees do you intend to have.

Mr. Ovadek stated 50 plus.

Mr. Richvalsky asked if they have enough parking spaces to accommodate 50 employees along with the buildings that you intend to put up?

Mr. Ovadek stated when we do the drawings, we will abide by the city's ratio and we will make it work.

Mrs. Abbey stated he will have to go through any site plan review before any construction can happen which will check the number of parking spaces.

Mr. Hynes asked about the Southmoor facility, is that pretty much dead? Remember the big facility that was supposed to go into Southmoor.

Mrs. Abbey stated no, there was never a big facility. There was a zoning case for the Southmoor Golf Course, it did get re-zoned and they do have a license for a provisioning center. They are not actively open or even attempted to open. They do have a license to have marijuana there.

Mr. Hynes stated so another facility could go in there.

Mr. Richvalsky asked about the zoning of the Southmoor facility, a portion of the property that fronts on Dort Highway gets split off from the balance of it. Is there some sort of split or division there with the 500 foot or 1,000 foot rule?

Mrs. Abbey explained yes, it is only the front parcel. The back part of it is C-2.

Discussion ensued regarding the Southmoor facility.

Mr. Welch stated he would like to address the concerns of Mr. and Mrs. Mahl regarding their request for a four foot privacy fence. Which motion would we add this fence request, the first or the second?

Mrs. Abbey stated I would put that on the first motion.

Mr. Welch stated to the maker of the motion, I recommend that you add to the first motion they will need to add a five foot privacy fence.

Mrs. Abbey stated you can put that recommendation on there but it is in the front yard. I would recommend that it stays at four feet. Their concern is people walking through, not necessarily being able to see.

Mr. Welch asked do you have any concern with why I should vote yes on this? The 500 foot is fairly new. You probably won't answer this but I am trying to figure out why we should do this.

Mrs. Abbey stated that is up to the applicant to convince you, it is not on me to explain to you why you should or should not vote for something.

Mr. Welch stated in view of the two comments, if we didn't have those, it would be a lot easier. We also try to keep balance and try to protect the current businesses there.

Mr. Richvalsky stated that new life on that street would not hurt. We would like diversity but new life is new life. Dreams are dreams and reality is reality. Doing something positive now can take us further. The only constant is change. Give these guys a shot, if they fail, it's their money.

Mr. Hynes stated sometimes there are costs that we do not always see, extra police force, etc. There are a lot of variables we have to think about beyond just this facility. What kind of clientele come in.

Mr. Richvalsky stated well if they don't have some sort of security then they would be fools.

Mrs. Abbey stated the license does require for security measures to be in place.

Mr. Richvalsky asked what type of security? Cameras or security guards?

Mrs. Abbey stated you don't necessarily have to have a person there. The state does have some licensing requirements as well as far as security goes.

Mr. Hynes asked to the applicant what type of security they will have in those facilities.

Mr. Ovadek stated we will have whatever the state recommends, all the cameras that the state requires, we will have a 24/7 security guard there as well as a fence.

Mr. Rapacz stipulated this motion adding a four foot privacy fence added from the front of the building to the front property line to cut down on foot traffic.

Mr. Burge asked if we can add to the motion that construction or destruction happens within six months? That would give more than enough time for permits to go before site plan.

Mrs. Abbey stated I would ask for enforcement purposes you state exactly what you mean. This would need to be very specific. You are leaving this up to me to enforce and I would need to know exactly what your expectations are.

Discussion ensued regarding enforcement of and expectations of demolition and use of buildings on applicants properties.

Mr. Welch stated we have a motion to approve this case with the addition of adding a four foot privacy fence. I think the maker of the motion needs to specify what type of fence.

Mr. Richvalsky stated didn't the letter state a screened fenced?

Mr. Welch stated that is what they requested, but they also requested for it to be approved.

Mr. Rapacz motioned to approve ZBA case #20-06, to combine the properties listed, to conduct a marijuana use within 500 feet of an existing facility, and to require a four foot fence to be added to the front property line. What type of fence do we want this?

Mrs. Abbey stated do you prefer wood, vinyl, chain link. It doesn't matter.

Mr. Rapacz stated I would say chain link at the very least, that would solve the problem of what they are asking for.

Mr. Burge suggested adding the privacy slats to the chain link fence.

Mrs. Abbey stated so they can add the slats or wood would be sufficient. You guys are okay with either of those. You do not care what kind it is, as long as it is privacy.

Mr. Rapacz stated it would be that, with those two conditions and that is it for item number one, correct?

Mr. Welch asked what are the conditions of the fence?

Mr. Rapacz stated a four foot high privacy fence. They are not specific on what type it was as long as it is a four foot privacy fence.

Motion to approve ZBA case #20-06 to be combined 59-29-551-028, 59-29-551-022, 59-29-551-004, 59-29-551-006 to conduct a marijuana use within 500 feet of

an existing facility with the stipulation of adding a four foot high privacy fence from the front of the building to the front property line.

RESULT:	FAILED [2 TO 5]
MOVER:	Tim Rapacz, Commissioner
SECONDER:	Kevin Burge, Planning Representative
AYES:	Richvalsky, Burge
NAYS:	Hynes, Rapacz, Ward-Terry, Welch, Fuhst
EXCUSED:	Kautz, Conley

2. ZBA #20-06 Part 2

Mrs. Abbey stated that property is still one parcel so they probably still want to have that request be acted on as the properties exist. In this particular case the license would be for parcel number 59-29-551-028. To have two licenses on that parcel of land.

Discussion ensued regarding making the motion to approve this case and clarification of what the second part of this case is for.

Mrs. Abbey clarified to the applicant that the first part of this was that they need a variance to be within 500 feet of an existing facility, the board denied that 2-5. I assumed you still wanted to allow two licenses on one parcel of land on the 028. If you don't want that, we can withdraw this. I assumed because you wanted to have your dispensary and your grow facility on that same parcel of land that you need your two licenses approved, correct?

Mr. Ovadek stated that is correct. The other parcels were going to be a big part of the operation.

Mrs. Abbey asked so you don't wish to have item number two be voted on?

Mr. Ovadek stated he does want them to vote on it.

Mrs. Abbey stated that is what they are doing right now. They are voting on item number two with the exception that it would be parcel number 59-29-551-028 only. You may continue.

Motion to approve ZBA case #20-06 Part 2 to allow parcel number 59-29-551-028 to allow two marijuana licenses on one parcel of land.

RESULT:	CARRIED [4 TO 3]
MOVER:	Tim Rapacz, Commissioner
SECONDER:	Scott Hynes, Commissioner
AYES:	Hynes, Welch, Richvalsky, Burge
NAYS:	Rapacz, Ward-Terry, Fuhst
EXCUSED:	Kautz, Conley

3. ZBA #20-07

By: Matt Ovadek
1352 S Oak Rd Davison MI 48423

Re: 3302 Associates Dr. Burton MI

Parcel ID 59-29-551-017

For: To conduct a marijuana use within 500 feet of an existing facility

Mr. Ebbott stated 3302 Associates was going to be the same license but would need the variance because of the license across the street. That would be mainly the grow operation to the dispensary. It wouldn't be commercial traffic. We need the variance because of the distance but it would be under the same license and would be the same operation.

Mrs. Mahul expressed they do not understand what is going on.

Mrs. Abbey explained to the Maul's that the first variance was denied. The second part, for the existing facilities that are already there did get approved. We have now moved onto the one that is across the street at 3302. This facility, as shown on the map is across the street. Now he is actually asking for a variance for himself. But keep in mind, the ownership should not be in consideration because you do not want to make that a condition of it. If you do that then we have to monitor who bought it if they try to sell it and I don't want to do that. The ownership shouldn't matter because the licensing is still the same so take out the fact that it is against himself. Just look at the facilities and whether or not you care if they are across the street from each other. The existing license is there. The one at 3323 is not going anywhere and the dispensary at 3309 will open, I assume. Now they are talking grow facility. I know that in the past we have said we will allow this but not to allow a provisioning center because you do not want too many of those on the same street. So keep in mind that might be something you would want to do. If they want to do a grow facility and you are okay with that, or they want to do a processing center and you are okay with that but you don't want provisioning centers on the same street, then make sure you put that requirement in there. I would also ask that you go a little bit further and think about the future for recreational marijuana and put in if you want a provisioning center or a retailer. That is the way the state decided to make those licenses with a little bit different wording. A provisioning center is a medical dispensary and a retailer is a recreational dispensary. I would ask that you include both of those requirements if you are not comfortable with allowing that on the street.

Mr. Richvalsky asked if you can hold both licenses at once?

Mrs. Abbey said you can.

Mr. Richvalsky stated so it is similar to a SBD and SVM package liquor and beer and wine.

Mrs. Abbey stated the way we look at it is if you are comfortable with the medical use, at least with what the city has brought in and allowed, then you have to be comfortable with the recreational use of it as well. So unless you are specific, you don't want one or the other or all, please put that stipulation in there.

Mr. Welch stated the applicant mentioned a dispensary, is that what his intention is?

Mrs. Abbey stated the applicant did mention grow facility. However, the request is for marijuana use. So unless there is a specific requirement set on by you, it would be any of the uses. They say they intend to do grow, so if that is the only thing you want to allow them to do then add that. But if you don't add that then they can put any type of marijuana use there.

Mr. Hynes stated I would have concerns with retail.

Mr. Rapacz asked would a growing facility and processing center meet your needs for what you are trying to do there? Because I am not comfortable with another retail shop.

Mrs. Abbey reiterated the question to applicant asking if they have any intention of making this facility into a retailer, provisioning center or a dispensary?

Mr. Ovadek stated no. That is what we are doing across the street.

Mr. Rapacz stated the way I am processing this, if you are going to allow a grow facility, you might as well allow them to process it. But selling it, that is what they have the business across the street for. It allows them to have their entire business within close proximity within each other. Not necessarily on four parcels of land but still there.

Mr. Burge stated I will be voting yes because of the location and possible tax base.

Mr. Richvalsky made a motion to approve ZBA case #20-07 to conduct a marijuana use within 500 feet of an existing facility, and will exclude being a retail and provisioning center.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Joey Richvalsky, Alt. Commissioner
SECONDER:	Rick Fuhst, Commissioner
AYES:	Hynes, Rapacz, Ward-Terry, Welch, Richvalsky, Fuhst, Burge
EXCUSED:	Kautz, Conley

G. AUDIENCE PARTICIPATION

Public comment may be sent to: publiccomment@burtonmi.gov. Comments received prior to the meeting will be read into the record.

Mr. Maul asked what type of dispensary is next to us, recreational or medical?

Mrs. Abbey stated the only facility that is next to them at this time is a grow facility. There is a provisioning center proposed by the applicant that has not applied for a license yet.

H. BOARD DISCUSSION

Mr. Burge stated he spoke with Mr. Smith regarding the Census. Today we are at 76% and we are up 1.8% from ten years ago. The deadline is September 30th and they are still down in the south end. Please reach out to friends or relatives you may have who live in that area and let them know time is running out.

The next regularly scheduled meeting will be held on Thursday, October 15, 2020, at 5:00 p.m.



CITY OF BURTON

ZONING BOARD OF APPEALS

OCTOBER 15, 2020

Council Chambers

Regular Meeting

5:00 PM

4303 S. CENTER ROAD
BURTON, MI 48519

This meeting was opened by Chairman Steve Welch at 5:08 PM.

A. MEETING INFORMATION

Zoning Board of Appeals
Hosted by Racheal Boggs

Thursday, Oct 15, 2020 5:00 pm | 2 hours | (UTC-04:00) Eastern Time (US & Canada)

Meeting number: 126 288 8450

Password: cfXmfDW8H34 (23963398 from phones and video systems)

<https://cityofburton.my.webex.com/cityofburton.my/j.php?MTID=m714e824771ec0de207f5e31858589a09>

Join by video system

Dial [1262888450@webex.com](tel:1262888450) <mailto:1262888450@webex.com>

You can also dial 173.243.2.68 and enter your meeting number.

Join by phone

+1-415-655-0001 US Toll

Access code: 126 288 8450

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

Attendee Name	Title	Status	Arrived
Gary Kautz	Alt. Commissioner	Present	
Christina Conley	Council Representative	Excused	
Scott Hynes	Commissioner	Present	
Tim Rapacz	Commissioner	Present	
Michaeline Ward-Terry	Vice Chairperson	Remote	
Steve Welch	Chairman	Present	
Joey Richvalsky	Alt. Commissioner	Excused	
Rick Fuhst	Commissioner	Present	
Kevin Burge	Planning Representative	Present	

D. STAFF PRESENT

Amber Abbey, Deputy DPW Director
Lindsey Bice, Record Tech

E. APPROVAL OF MINUTES

Minutes Acceptance: Minutes of Oct 15, 2020 5:00 PM (Approval of Minutes)

1. Meeting Minutes for the September 17th, 2020 meeting will be available for approval at the next scheduled Zoning Board of Appeals meeting.

F. VARIANCE

1. ZBA #20-05

By: Helios Security LLC
3075 Joyce St
Burton, MI 48529

Re: 3075 Joyce St., Burton MI 48529
59-28-553-016, M-2 Zoned

For: To conduct a secure transporter within a multi-tenant space

Mike Becker of Helios Security stated they are seeking a variance to operate their business with an attached warehouse. It is essentially a pole barn type building with cinder block walls. We occupy a 1,200 square foot office space in the front, CIT inspections have cleared this. The back half of the building is a warehouse in which epoxy floor chemicals are stored for another local business. Very little traffic enters or exits this warehouse, maybe once a day to pick-up those excess chemicals.

Tim Siler of Helios Security stated we received our medical license already through the City of Burton. We have been pre-qualified for transportation at the state level. The state will be coming in the next couple weeks to do their inspection on our building. There is a multi-tenant with us that pick up their supplies around 8:00AM and then are out on a job all day. We are a security company on top of a transport company. We will have a security guard on hand along with doing our transport. It is kind of a two business in one scenario that we are attempting. We are looking for the variance for the other company that is with us right now.

Mrs. Abbey stated to make this a little less confusing, something the applicant missed in telling you, this particular property has already been approved for a medical marijuana license. The original medical marijuana license didn't say anything about other tenants, it just said nobody under the age of 18 was allowed on the property. The business that is in the back and the landlord have put in the lease that nobody under the age of 18 is allowed on the property. They are allowed to have their medical license there, however, they wish to go into the recreational market as well. When we did the recreational ordinance we very specifically stated that you could not be with any other tenants. That is why he is here today. Keep in mind he is a secure transport and is not designed to hold marijuana on site at all, unless he has to hold it for some reason. You would have to ask Tim the exact time they are allowed to hold it on site, I believe it is 48 hours.

Mr. Siler stated yes, 48 hours is correct but that is being looked at to change to 96 hours.

Mrs. Abbey stated in general, there shouldn't even be marijuana on this property at all. They already have their medical secure transport, they just want to be able to do recreational as well. With the tenant that was there prior to them moving in, we see this as a hardship and recommend approval.

Mr. Burge asked, can a security guard be 18 years old and on the property?

Mr. Siler responded no. All our security guards are CPL holders and you have to be 21 years or older to be a CPL holder in the State of Michigan.

Mr. Hynes asked, are they transporting recreational or are they retailing recreational?

Mrs. Abbey stated this is just secure transport. Most of their operations are done from business to business and they don't even bring it back to their office unless they have to.

RESULT:	CARRIED [UNANIMOUS]
MOVER:	Kevin Burge, Planning Representative
SECONDER:	Tim Rapacz, Commissioner
AYES:	Kautz, Hynes, Rapacz, Ward-Terry, Welch, Fuhst, Burge
EXCUSED:	Conley, Richvalsky

2. ZBA #20-08

By: Mario Lucaj
29793 Harrow Dr.
Farmington Hills MI

Re: 3365 Associates Dr Burton MI
59-29-551-023, M-1 Zoned

For: To conduct a marijuana establishment on a property with another use not associated with a co-location.

Mario Lucaj 3365 Associates Dr, Burton stated on behalf of the Burton Cannabis Company we want to give a quick overview. They applied for and received a medical marijuana facility license from the City of Burton and from the State of Michigan. They are currently operating. They applied for a recreational license but because there is another business that is collocated on the property, a variance is needed. The other business there is the Macomb Group. The owner of the Macomb Group is Jim Tucker who is also the owner of the building. He, along with the other employees of the Macomb Group are in full support of allowing the Burton Cannabis Company to sell recreational marijuana in addition to the medical marijuana they are currently selling. Jim Tucker signed an acknowledgment that should be in your packet that was submitted with the variance request. If the Burton Cannabis Company wasn't allowed to sell recreational marijuana, it would essentially shut down their business. All the other provisioning centers that have been approved by Burton sell both recreational and medical marijuana. Without the recreational component, they wouldn't be able to compete with the other establishments. Selling recreational goes along with the ordinance that was passed in September of last year. The Burton Cannabis Company does have a separate parking lot from the Macomb Group. There are no other ways to get into the Burton Cannabis Company so they are completely separate for all intents and purposes.

Scott Smith 3364 Associates Dr, Burton stated through the Webex chat and read by Mrs. Abbey, City of Burton ordinance number 2017-157.046 in section three, sub section C states that a facility cannot be within 1,000 feet of a school building where children may visit. Griffith Court is about 300 feet from this facility. Please define the definition of this school admin building. I ask, as we currently have one on site

already. However, when my business was robbed in June I went to this school building to seek viewing their video camera as the perpetrators had cut through the fence there. There were two students in the building that day for some reason.

Mrs. Abbey stated I will read you the definition. Within 1,000 feet of any school, nursery, licensed daycare or other building used for the care or instruction of children under the age of 18. The admin building is not used to care for or instruct children. This was asked from the original license. I spoke with the Attorney about if that building counted under that definition, and her opinion was no. They have had a license at that facility for quite a few years.

Mr. Smith asked through the Webex chat and read by Mrs. Abbey, does this fall in the school category?

Mrs. Abbey stated no.

Mr. Smith stated through the Webex chat and read by Mrs. Abbey that he is not opposed as long as this is made clear the definition of said location.

Mr. Burge asked Mr. Smith what type of business he owns.

Mr. Smith stated a landscape company.

Mr. Hynes asked the applicant if he also has facilities in Farmington Hills or if this type of business is not allowed there, where they are from.

Mrs. Lucaj stated Farmington Hills has not opted in yet.

Mr. Hynes asked, why Burton then?

Mrs. Lucaj stated he does have other businesses in Farmington Hills. The main reason he decided to come to Burton was the fact that they allow both medical and recreational marijuana. In the State of Michigan right now, because we are recreational, a lot of people do have their patient card and are no longer renewing it for various reasons. Because Burton has opted into both, it makes it a good location business wise. If the city only had medical, it would limit their customer base substantially, especially because their neighboring communities have logged recreational.

Mr. Hynes stated I was curious because Farmington Hills population is so much greater than ours.

Mr. Welch stated it has been brought up that the owner of the property is in support of this. Do we take that into account or do we have something signed by them?

Mrs. Abbey stated they signed an owner acknowledgement, that is what the applicant was referring to. The owner of the property has to sign this and understand what their property is being asked for.

Mr. Welch asked, so you have that then?

Mrs. Abbey said, yes, I do.

Mr. Hynes asked how many recreational licenses do we have?

Mrs. Abbey stated I do not know how many recreational off the top of my head. We have four provisioning centers that are open and they all applied for the recreational on top of it. We have twelve approved provisioning licenses and four recreational in conjunction with the ones that are actually open.

Mr. Hynes stated so there is a possibility that we could have twelve recreational.

Mrs. Abbey stated they are in combination with the provisioning centers, we have zero just recreational facilities.

Mr. Burge asked about the break-in at Mr. Smith's business. Is this a problem on that road or just something that happened to your business?

Mr. Smith stated through webex chat and read by Mrs. Abbey it has been consistent. We spent \$40,000.00 on bin block around the fence and \$150.00 a week on nightly security. As well as bullet proof glass and steel doors.

Mrs. Abbey stated I will add the fact that this is a dead end road with about ten businesses on it. Most of them aren't there at night.

Mrs. Lucaj stated since the Burton Cannabis Company opened, there is security there. Had they been opened at the time of this June event, their cameras probably would have captured it. They have cameras on all sides of the building, so it would have been beneficial then. Moving forward it is something we can use if there is any activity on that street.

Mr. Hynes stated there has been a level of concern on how many of these types of facilities are opening up from the community members that I talk to.

Mr. Smith stated through the Webex chat and read by Mrs. Abbey the street is a good location for this business if you have the guy patrol it and have the guy who bought the other five buildings keep this stuff up.

RESULT:	CARRIED [6 TO 1]
MOVER:	Tim Rapacz, Commissioner
SECONDER:	Michaeline Ward-Terry, Vice Chairperson
AYES:	Kautz, Rapacz, Ward-Terry, Welch, Fuhst, Burge
NAYS:	Hynes
EXCUSED:	Conley, Richvalsky

G. AUDIENCE PARTICIPATION

Public comment may be sent to: publiccomment@burtonmi.gov. Comments received prior to the meeting will be read into the record.

No audience participation.

H. BOARD DISCUSSION

Mr. Rapacz asked about the property behind Bubba O'Malleys. What are the plans for that?

Mr. Burge stated it will be outdoor storage.

Mrs. Abbey stated it is a storage facility, yes.

Mr. Rapacz asked, is ABC Pharmacy moving to the other location?

Mrs. Abbey stated yes, they are working on that as well and have done a lot of improvements.

Discussion ensued regarding construction projects around the city.

Mr. Burge stated I spoke with Councilman Smith last night and the Census is at 76.4% but that does not give any numbers.

The next regularly scheduled meeting will be held on Thursday, November 19, 2020, at 5:00 p.m.

Minutes Acceptance: Minutes of Oct 15, 2020 5:00 PM (Approval of Minutes)



Burton Zoning Board of Appeals

4303 S. Center Road
Burton, MI 48519

SCHEDULED

AGENDA ITEM (ID # 4914)

Meeting: 11/19/20 05:00 PM
Department: Department of Public Works
Category: Variance
Prepared By: Leandra Swayne
Department Head: Charles Abbey

E.1

DOC ID: 4914

ZBA #20-09

By: Lily G LLC / Northgate Packaging
3367 Corunna Rd
Flint MI 48532

Re: 4274 E. Court St Burton MI 48509
Parcel 59-15-100-021

For: To conduct an M-1 light industrial use in a C-4 planned shopping center for a warehousing processing and packaging use.

ATTACHMENTS:

- Backup 20-09 (PDF)



City of Burton
Department of Public Works
4093 Manor Drive
Genesee County, Burton, Michigan 48519
(810) 742-9230

Date Filed: 10/22/2020
Fee Paid: \$450.00
Receipt #: _____
Check #: 108370
Received by: LSOANNE
Date Mailed: _____

APPLICATION FOR ZONING BOARD OF APPEALS HEARING:

ZBA Case #: 20-09 5 Votes Required

DATE OF ZONING BOARD OF APPEALS HEARING: NOVEMBER 19, 2020 AT 5:00 P.M.

PLEASE PRINT

APPLICANTS NAME: Lily G LLC / Northgate Packaging

APPLICANTS ADDRESS: 3367 Corunna Road

CITY: Flint, MI 48532

APPLICANTS PHONE: 810-235-8110

APPLICANTS EMAIL: agoggins@go2northgate.com

ADDRESS AND PARCEL OR LOT NUMBER: 4274 E Court Street - Burton, MI 48509

Parcel ID# 59-15-100-021

NOTE: ZBA meets on the 3rd Thursday of each month. All applications and associated drawings must be on file at least six (6) weeks prior to the meeting. Notification of property within 300' must be postmarked at least 15 days prior to the meeting. Including publication in local newspaper.

VARIANCE REQUESTED: Seek to vary from the Ordinance to allow a land use variance for warehousing, processing and packaging.

To conduct an M-1 light Industrial use in a C-4 Planned Shopping Center for a warehousing, processing and packaging use

I hereby certify that the proposed application is authorized by the owner of record and that I have been authorized by the owner to make this application as his agent. I agree the statements made on the attached application are true, and if found not to be true, any permit that may be issued may be void. Further, I agree to give permission to officials of the City of Burton to enter the property subject to this permit application for the purposes of inspections. Further I understand that this is an application and any fees paid will not be refundable regardless of the decision of the Commission. Mandatory attendance at the above meeting is acknowledged.

APPLICANTS SIGNATURE: Andrew D. Goggins
Andrew D. Goggins

Attachment: Backup 20-09 (4914 : ZBA #20-09)

APPLICANT:

Please explain your hardship or reason this variance is needed and attach to the application. Any information provided to the board will be public information and will be given to the board approximately 2 weeks prior to the meeting.

The retail use of this property is, unfortunately, no longer viable. Therefore, an alternative use needs to be found.

Northgate Packaging's use for warehousing, processing and packaging is a viable and reasonable alternative use of this property. Northgate's primary customer is General Motors located at Davison and Genesee Roads.

The proximity of this building works well for both GM and Northgate.

Attachment: Backup 20-09 (4914 : ZBA #20-09)

OWNER ACKNOWLEDGMENT:

I, Travis Spicer am the owner of property
known as: Lowe's / 4274 E Court Street - Burton, MI 48509 located in the City of Burton. I give permission
to Andrew Goggins to make an application to the Zoning Board of
Appeals on behalf of my property. I understand unless specified by the Zoning Board of Appeals, any action
taken by the board is permanently associated with this property in accordance with the State of Michigan
Zoning Enabling Act. If the sale of the Property to Lily G, LLC is not consummated, any variance
granted shall not take effect and the Property shall remain subject to current zoning.
If I need to be contacted for any reason please contact me at:

Owner Name: Lowe's Home Centers, LLC
Address: PO Box 1000
City: Mooresville, NC 28115
Phone: 704-758-1000
Email: travis.j.spicer@lowes.com

SIGNATURE: DATE: 10.19.20

Attachment: Backup 20-09 (4914 : ZBA #20-09)