



THE PRINCE GEORGE'S COUNTY GOVERNMENT

BOARD OF ZONING APPEALS

BOARD OF ADMINISTRATIVE APPEALS

COUNTY ADMINISTRATION BUILDING, UPPER MARLBORO, MARYLAND 20772
TELEPHONE (301) 952-3220

NOTICE OF FINAL DECISION

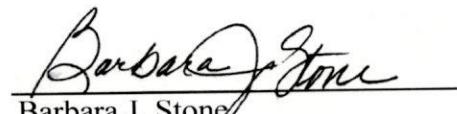
OF BOARD OF APPEALS

RE: Case No. V-108-18 Cipriano Square Plaza Corporation

Enclosed herewith is a copy of the Board Order setting forth the action taken by the Board of Appeals in your case on the following date: November 28, 2018.

CERTIFICATE OF SERVICE

This is to certify that on December 17, 2018, the above notice and attached Order of the Board were mailed, postage prepaid, to all persons of record.



Barbara J. Stone
Administrator

cc: Petitioner
Adjoining Property Owners
M-NCPPC, Permit Review Section
DPIE/Building Code Official, Permitting
Other Interested Parties

BEFORE THE BOARD OF APPEALS FOR PRINCE GEORGE'S COUNTY, MARYLAND
Sitting as the Board of Zoning Appeals

Petitioner: Cipriano Square Plaza Corporation

Appeal No.: V-108-18

Subject Property: Parcel 5, Greenbelt Plaza Subdivision, being 8833 Greenbelt Road, Greenbelt,
Prince George's County, Maryland

Counsel for Petitioner: Bradley Farrar, Esq., Shipley & Horne P.A.

Witnesses: Terri White, CEO, Time for Healing, LLC

Michelle Marcus, Time for Healing, LLC

Elizabeth Newkirk, Time for Healing, LLC

Jeff Lieber, Cipriano Square Plaza, Glazier Properties

Frances Silberholz, Sr., Land Planner, AICP, Shipley & Horn, P.A.

Abdullah Hijazi, Esq., Greenspring Community Homeowners Association, Inc.

Karen Bell, Yorkberry HOA

Arthur H. Robinson, Yorkberry HOA

Lennia M. Robinson, Yorkberry HOA

Zenia M. Robinson, Resident

Cheryl Owens, Resident

Sandra A. Parks, Resident

Hayder Qradri, Greenspring HOA

Adriennes Corder, Resident

Dr. Frederick Corder, Resident

Dr. Bilal Kahan, Resident

Laura Minor, Resident

Samuel Uwahemo Jr., Resident

Hayeemar Rahaman, Resident

Muhmmed Abdulla, Resident

Emily Hicky, Seabrook Acres Neighborhood Association

Alaa Negeda, Resident

Heard: October 24, 2018; Decided: November 28, 2018

Board Members Present and Voting: Bobbie S. Mack, Chairperson

Albert C. Scott, Vice Chairman

Anastasia T. Johnson, Member

RESOLUTION

This appeal is brought before the Board of Appeals, sitting as the Board of Zoning Appeals for the Maryland-Washington Regional District in Prince George's County, Maryland (the "Board"), requesting variances from the strict application of the provisions of Subtitle 27 of the Prince George's County Code (the "Zoning Ordinance").

In this appeal, a proceeding pursuant to Section 27-229 of the Zoning Ordinance, Petitioner requests that the Board approve a variance from Section 27-464.08(a)(1) of the Zoning Ordinance which prescribes that the boundaries of property used as a medical cannabis dispensary shall be at least 300 feet from any R-A, R-E, R-L, R-R, R-S, R-80, or R-55 Zone. Petitioner proposes to obtain a use and occupancy permit for a Maryland Medical Cannabis Commission dispensary on property that borders R-80 residentially zoned land. A variance of 300 feet from the R-80 Zone is requested.

Evidence Presented

The following testimony and record evidence were considered by the Board:

1. The property was created in 1982, contains 56,335 square feet, is broken into 6 separate Parcels (identified as Parcels 1-6) is zoned C-S-C (Commercial Shopping Center) and is improved with a moderately sized integrated shopping center. The subject use is located on Parcel 5. Exhibits (Exhs.) 3, 4, 8, 9, and 10 (A) thru (G).

2. Petitioner would like to obtain a use and occupancy permit to operate a Maryland Medical Cannabis Dispensary (Time for Healing, LLC) on Parcel 5. The subject property is surrounded on three sides (north, south and west) by C-S-C zoned property and to the rear (east) abutting R-80 zoned property.¹ Therefore, a variance of 300 feet from the R-80 Zone was requested. Exhs. 2, 3, and 15 (A) thru (W).

3. Bradley Farrar, Counsel for the Petitioner, stated that the rear of the subject unit, at the shortest distance is 300 feet from the nearest single-family dwelling. In between, and separating the shopping center and single-family homes in R-80 is a 100-year flood plain easement. Exhs. 2, 3 and 11. He stated that the flood plain constitutes a unique topographical condition and there is a state "mandate" for a dispensary.

4. Ms. Terri White, CEO of Time for Healing, LLC, described "Time for Healing" as a cannabis dispensary business that has received a stage one award from the Natalie M. LaPrade Maryland Medical Cannabis Commission ("the Commission"). Exh 6. She shared that four years ago she endured a personal journey through the illness and death of her husband during which she became acutely aware of the effects and limitation of medications. She subsequently found in researching, the scientific medical benefits of cannabis. Exhs. 6 and 27.

5. Ms. Terri White explained that the Commission requires a dispensary to have both a public zone and an operation zone. She stated that only persons that are certified to purchase the medicine marijuana are permitted to enter the operation zone or the retail area from the public zone.² She further explained that the dispensary does not provide any recommendations or issue prescriptions for the cannabis. She emphasized that any prescription or recommendation is strictly between the patient and a doctor certified by the State of Maryland. She said that the patient will be registered in the State tracking system ("Metric"), which will verify that the individual on the card has been certified to receive the medication. The individual with the appropriate ID then may go to any dispensary for service. She stated that the State regulates all of the growing, processing and testing of the cannabis. Exhs. 27 and 28.

6. Elizabeth Newkirk stated that two dispensaries are permitted in Senatorial District 22, one of which is already operating on Hanover Parkway in a medical complex.

7. Michelle Marcus testified that (in the county) there are dispensaries currently operating in Capitol Heights, Suitland, Hyattsville and one will be opening in Bowie. She believed that a lot of the concern from the community stems from miseducation or lack of education regarding the purpose and operation of a medical cannabis dispensary. She explained that a dispensary is very similar to a pharmacy and because of the state regulations, security for the dispensary is the number one priority. She stated that the proposed dispensary will have 24-7 security.

8. Ms. White stated that she has been looking for three years for a suitable location for the dispensary in the county.

9. Mr. Jeff Lieber explained that Glazier Properties is a privately-owned company that operates as a commercial landlord that manages many units in the shopping center, including the subject unit. Mr. Lieber testified that the lease for Time for Healing was signed approximately 6 months ago. He stated that the

¹ The shopping center is located at Greenbelt Road and Cipriano Road.

² She informed the Board that in the public zone, there will be "wellness" services, such as yoga therapy, massages, Reiki, as well as an educational component.

shopping center uses are very mixed. He further stated that cannabis dispensaries in the last twelve months have become significantly more popular because legislation for them has increased.

10. Karen Bell, representing Yorkberry HOA, testified that the shopping center is a family-friendly operation. That a church may be located in the shopping center and that no input from the community was solicited concerning the proposed cannabis dispensary. She stated that schools, churches, and community centers are located nearby. She further stated that she is concerned about the security of the dispensary. She accentuated that the 300 feet prohibition pertains to the zone, not a specific residential dwelling. She believed the dispensary should be a stand-alone business at another location.

11. Zennia Robinson, Yorkberry HOA, contributed that there is a high school, NASA, townhouses, churches and residential living in the area. She noted a liquor store is in the shopping center where a robbery has occurred. She added that young homeless people sleep in the shopping center.

12. Cheryl Owen, Yorkberry HOA, stated that a church may be located in the shopping center where the K-Mart was located, four units away from the subject unit.

13. Hayder Qaadri stated that the floodplain is a wooded area and has a little creek (a storm drain area is located in Parcel A). He further stated that the floodplain area is a place where kids play, loitering occurs, and liquor bottles are thrown. He believes that Muhammad Abdullah's house is located less than 300 feet from the subject site. He explained that it is already risky at night and is concerned about the security related to the dispensary. He further explained that there are no sidewalks on that part of Greenbelt Road and the flood plain area is used to walk to the shopping center and that kids play in the floodplain zone.

14. Muhammad Abdullah testified that he lives within 300 feet of the subject unit. He stated that the flood plain area is where strangers pass through. He further stated the shopping center is a family friendly place and is concerned about the security and the smell of marijuana around kids. He explained that there are lots of activities in the flood plain area and people travel though it into his backyard. He mentioned stores like Dunkin Donuts and Hershey Ice Cream are nearby. He is concerned about break ins at the dispensary and the smoking of marijuana in the woods.

15. Hayeemar Rohaman contended that his property, 7208 Greenspring Lane, is within 300 feet of the subject unit. He speculated that persons may purchase the marijuana at the dispensary and be robbed.

16. Samuel Uwahemo, Jr., stated that young people are educated on the use and effects of marijuana and are aware of the pros and cons.

17. Emily Hickey, Seabrook Acres Neighborhood Association, explained that no outreach occurred to educate the community about the proposed dispensary. She stated that a dispensary already exists on Handover Parkway, 5-7 minutes away. She is concerned about the character reflected in the community. She is also concerned about the proximity of the dispensary to Robert Goddard Middle School, Duval High School and Gaywood Elementary School. She believes the shopping center was never intended to be a place for a dispensary and its presence will lower property values.

18. Alaa Negeda, 7219 Greenspring Lane, stated that he lives next door to Muhammad Abdullah and his house is the first house entering the community from Greenbelt Road. He testified that the proposed location of the dispensary has caused him "anxiety" and "panic attacks."

19. Arthur Robinson stated that a dispensary already exists on Hanover Road and is concerned about the potential of robberies.

20. Mr. Abdullah Hijazi, Esq., stated that State legislation does not dictate where cannabis dispensaries should be located but COMAR 10.62.27.02 prescribes that "the premises and operation of a licensee shall conform to all local zoning and planning requirements". He added that the law does not say with exceptions or variances. He stated the State handed over to each County the authority to decide where dispensaries could be located within the County. He further stated that "CB-005-2016" required that medical marijuana dispensaries be at least 500 feet from any residential zone (not a dwelling). And that in 2017,

"CB-103-2017" reduced the County requirement to 300 feet.³ Counsel contended that the difficulty in which Petitioner is found, is self-imposed and does not constitute a hardship.

Applicable Code Section and Authority

Section 27-230 of the Zoning Ordinance authorizes the Board to grant variances when, by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property, the strict application of the Zoning Ordinance would result in peculiar and unusual practical difficulties or an exceptional or undue hardship upon the owner of the property, provided such relief can be granted without substantial impairment of the intent, purpose and integrity of the General Plan or Master Plan.

Findings of the Board

After hearing all the testimony and reviewing the evidence of record, the Board finds that the requested variance does not comply with the applicable standards set forth in Section 27-230, more specifically:

1. Petitioner would like to obtain a use and occupancy permit to operate a Maryland Medical Cannabis Dispensary (Time for Healing, LLC) on Parcel 5
2. Section 27-464.08(a)(1) of the Zoning Ordinance prescribes that the boundaries of property used as a medical cannabis dispensary shall be at least 300 feet from any R-80 Zone. Petitioner proposes to obtain a use and occupancy permit for a Maryland Medical Cannabis Commission dispensary on property that borders a R-80 residentially zoned land. There is no dispute by the parties that the R-80 Zone is zero feet from the location of the proposed cannabis dispensary. A variance of 300 feet from the R-80 Zone was requested.
3. Section 27-230 of the Zoning Ordinance authorizes the Board to grant variances by reason of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of specific parcels of property.
4. The Board find no evidence presented of exceptional narrowness, shallowness, shape, topography, or other extraordinary situation or condition of the subject property or unit.
5. The existence of the flood plain area adjoining the property may present an argument for the topography of the adjoining property, but not the subject unit. It may be presented, arguendo, that the flood plain area is somehow a mitigating circumstance or an extraordinary situation that favors the Petitioner. In this instance, however, the mere proximity and existence of the flood plain does not support granting of the variance. The Board finds probative that several witnesses testified that the flood plain area is where children play, loitering occurs, and people passed through because there no sidewalk to use, among other activities. In short, the flood plain area does not serve as a buffer between the proximity of residential activities in the R-80 Zone and the location of the dispensary.
6. Even assuming that the first test of Section 27-230 was met, the second test requires examination of whether any peculiar and unusual practical difficulties or an exceptional or undue hardship

³ The Board has requested that briefings be submitted by both counselors. On November 6, 2018, Bradley Farrar informed the Board that a brief would not be forthcoming and requested by email that the Variance (V-108-18) be placed on the agenda as a discussion/decision item. As of November 28, 2018, no brief was submitted.

upon the owner of the property is in existence. The difficulty that Petitioner is confronted with was self-imposed by its business decision to locate within zero feet of the R-80 Zone.

7. The Board gives credence to the concern of the residential community, including three community associations, about the lack of prior discussion of the location of the proposed business, given the novelty and nature of the business and the friendly/family nature of the shopping center where the business would be located.
8. Because the conditions of the property have not met the first two statutory requirements, the Board does not deem it necessary to consider the remaining requirement of Section 27-230.

BE IT THEREFORE RESOLVED, unanimously, that a variance of 300 feet from the R-80 Zone in order to obtain a use and occupancy permit for a Maryland Medical Cannabis Commission dispensary on property that borders residentially zoned land on the property located at Parcel 5, Greenbelt Plaza Subdivision, being 8833 Greenbelt Road, Greenbelt, Prince George's County, Maryland, be and are hereby DENIED.

BOARD OF ZONING APPEALS

By: 
Bobbie S. Mack, Chairperson

Bgs

NOTICE

Within thirty (30) days from the date of this decision, any person, firm, corporation, or governmental agency who was a party to the Board's proceedings and is aggrieved by its decision may file an appeal to the Circuit Court of Prince George's County.

Further, Section 27-234 of the Prince George's County Code states:

If the Board denies an appeal involving a variance, no further appeal covering the same specific subject on the same property shall be filed within the following twelve (12) month period. If the second appeal is also denied, no other subsequent appeals covering the same specific subject on the same property shall be filed within each eighteen (18) month period following the respective denial.