



City of New Bedford Department of City Planning

133 William Street · Room 303 · New Bedford, Massachusetts 02740
Telephone: (508) 979.1488 · Facsimile: (508) 979.1576

MAYOR
JON MITCHELL
PLANNING DIRECTOR
TABITHA HARKIN

PLANNING BOARD

November 18, 2019

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: MARIJUANA ESTABLISHMENT ZONING
CASE #19-33 Ordinance Amendment Marijuana Establishment Zoning

Dear Chairman Dunn:

This is to advise you of Planning Board action on Monday, November 4, 2019 regarding the proposed request to amend the marijuana establishment zoning ordinance. **The Planning Board sends an unfavorable recommendation for this proposal.**

Councilor Joseph P. Lopes, who submitted the request was not in attendance to present the case to the board. In his absence, Chairwoman Kathryn Duff requested that Director of City Planning Tabitha Harkin explain to the board and members of the public in attendance how the request would change the City's current marijuana establishment regulations. Ms. Harkin explained that the amendment would remove the phrase "marijuana establishments" from section 4131 B II of the city's code of ordinances, in order to allow the "clustering" of marijuana establishments.

Ms. Harkin and Ms. Duff discussed the current ordinance, which limits marijuana establishments to industrial zones and prohibits them within 500 feet of a residential area, thereby restricting them to small pockets of the city. As it currently reads the code would prohibit marijuana establishments to exist within 500 feet of each other. Mr. Alex Kalife asked if the amendment was proposed with a specific marijuana purveyor in mind, while Ms. Kamile Khazan wondered if it was intended to allow the establishment of marijuana production facilities and retail stores in mill buildings. Ms. Harkin responded that it was not clear if the proposal was meant to aid a specific purveyor or intended to allow a specific location to be used.

Mr. Arthur Glassman and Mr. Peter Cruz discussed the prudence of changing the current marijuana ordinance without knowing how current regulations would affect the community at large. After discussion among the board members, it was decided that if the board were to send a favorable recommendation regarding the amendment they might assist in setting a precedent that would allow the city to change rules without having seen the effect of the original regulations. The Board noted that three marijuana establishments are in pre-permitting and the city has yet to establish a facility using the existing ordinance.

At Chairwoman Kathryn Duff's invitation to speak in favor or in opposition to the motion, none spoke in favor and two spoke in opposition.

Mr. Norman Vieira of 19 Worcester St., a lifelong resident of New Bedford, explained that he was an opponent of marijuana. As a direct abutter to the proposed MetroHarvest marijuana retail store on Tarkiln Hill Road, he explained that motorists currently use his street as a throughway because of the heavy congestion in the area. Mr. Vieira argued that the marijuana ordinance should be looked at extremely carefully and possibly made even more stringent because a 500-foot buffer was not large enough. He went on to say that the board should take into consideration Fall River's experience with traffic congestion caused by marijuana establishments, which required police details. Mr. Vieira concluded with a warning that once these establishments are allowed to open, residents of the surrounding community will have to live with them.

Ms. Michelle Pacheco of 136 Jarry St. echoed similar concerns. Ms. Pacheco argued that the ordinance was not stringent enough and that the buffer should be enlarged. She took issue with the fact that in the case of MetroHarvest, the buffer was measured between lot boundaries rather than the front door of nearby residences and the marijuana establishment. Ms. Pacheco was also frustrated with the process because it allowed City Council members to amend the ordinance and make changes before the City was able to see the effect of even a single marijuana establishment in operation. With regards to the specific amendment before the board that evening, Ms. Pacheco argued that a favorable recommendation could open the door to the creation of "marijuana districts" and it would be more prudent to maintain the city's conservative approach to date.

As it does with all rezoning requests, the Planning Board's review included consideration of the following specific criteria to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact and discriminating benefit.**

After closing the public hearing, a motion was made in the affirmative to recommend the removal of the phrase "marijuana establishments" from the list of places included in the 500 foot buffer, limiting the placement of marijuana establishments. **The motion failed on a vote of 0-5**, with no board members recorded in favor; board members A. Kalife, K. Khazan, P. Cruz, A. Glassman and K. Duff recorded in opposition.

As such the **Planning Board sends an unfavorable recommendation for this proposal.** Please find enclosed a copy of the Planning Division Staff Report regarding this matter for the Council's convenience and reference.

Sincerely,



Tabitha Harkin, LEED AP ND
Director of City Planning

encl. Staff Report

cc. Christina Connelly, COO
Danny Romanowicz, Building Commissioner

Mikaela McDermott, City Solicitor
Dennis Farias, City Clerk



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STAFF REPORT

REPORT DATE
October 2, 2019

PLANNING BOARD MEETING
October 9, 2019

Case # 19-33: Ordinance Text Amendment – Marijuana Establishment Zoning

Petitioners: City Councilors Joseph P. Lopes, Ward 6
133 William Street, Rm 215 New Bedford, MA

Proposal: Request by City Councilor Joseph P. Lopes for the Planning Board to review and make a recommendation to the City Council for its consideration of amending City of New Bedford Zoning By-Laws, Chapter 9- Comprehensive Zoning to Chapter 9, Section 4131B, Relative to Marijuana Establishment Zoning:

The proposed text amendment is related to the marijuana establishment zoning location requirements and restrictions sections. Which currently reads as follows:

Current Ordinance Text

4131B. Location Requirements and Restrictions.

- (i) Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC).
- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:
 - (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, **Marijuana Establishment**, or Medical Marijuana Treatment Center; or
 - (b) 200 feet of any dwelling or dwelling unit.

The distance under this provision shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment or Medical Marijuana Treatment Center will be located.

- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located inside a dwelling or building containing a dwelling unit or inside any building containing transient housing, including a hotel, motel, or dormitory.

(iv) Marijuana Establishments shall satisfy the conditions and requirements of all other applicable sections of the Zoning Ordinance, including but not limited to dimensional and parking requirements.

Case 19-13:

Proposes removing the following phrase:

Marijuana Establishment

Paragraph will read as follows:

No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:

- (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, ~~Marijuana Establishment~~ or Medical Marijuana Treatment Center; or

Background:

What change might removing the phrase “marijuana establishments” from the city ordinance have?

As it currently stands, marijuana establishments are allowed only in industrial zones and are also subject to buffer restrictions barring them from locating, among other places, 500’ or closer to schools, churches, residences, and other marijuana establishments. The city ordinance is designed to protect vulnerable populations, such as youth or substance abuse victims from any possible discomfort posed by marijuana use and to allow for the location of establishments in less populated areas.

By removing the phrase “marijuana establishments” from the ordinance, the proponent seeks to allow marijuana dispensaries to setup business in close proximity, even adjacent to each other or within the same building, such as within a mill complex. This could lead to the clustering of these establishments in specific areas of the city.

Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department. Although no comments have been received as of the production date of these Planning Staff Comments, any such comments subsequently received will be provided at the Planning Board’s public hearing.

For Board Member Consideration:

Merits: Some literature suggests that allowing the clustering of marijuana establishments may provide an economic boost to areas in need of economic development. In other cities and towns, marijuana establishments have trended towards development in low-income neighborhoods, not necessarily to target specific income groups, but because of the availability of retail space in industrial zones located in these communities. Also of note, is the fact that those seeking to open marijuana establishments have found difficulty finding landlords to rent, lease or sell property to them because of the reluctance of federally-backed financial institutions to lend money to a marijuana industry that is still illegal under federal law. Therefore, one benefit of clustering is the possibility it will create economic empowerment in low-income communities that have been disproportionately impacted by the enforcement of the prohibition against marijuana.

If clustering is not allowed it may make it harder for purveyors to find retail space available, thereby prohibiting the industry from taking root and flourishing.

Advocates from the industry have also stated that clustering allows for many different types of establishments to be located in proximity to each other, or even within a vertical retail model. Marijuana cultivation, retail, manufacturing, and research and development labs are all types of establishments that could benefit from co-location. In large unused buildings such as empty mills, several establishments could be co-located.

Concerns: In other states where multiple marijuana establishments coexist in the same area there have been complaints of the pervasive and inescapable aroma permeating their neighborhoods.

There is documented concern regarding the potential impact to medical and public safety services. Medical personnel in jurisdictions that have approved marijuana establishments have seen an increase in emergency room visits and mental-health crises from marijuana-related issues.

It is yet to be proven as to whether clustering marijuana establishments may also have a negative effect on local property values in nearby residential areas as the area becomes known for the sale of marijuana. Allowing clustering could therefore become inherently discriminatory to certain neighborhoods that are forced to bear more than their share of the burden without necessarily realizing the economic benefits.

Other communities have set larger buffers between marijuana establishments, Boston's is half a mile or 2,640 feet while Cambridge is 1,800 feet. New Bedford's current buffer of 500 feet may conceivably allow establishments to spring up within a few blocks of each other or at either end of the street.

Furthermore, allowing clustering now would be impossible to undo in the future, while maintaining the status quo would allow the Planning Board to revisit doing away with the buffer zones between establishments at a later date, when the effect these establishments have on our community becomes clearer and more documented.

Attachments:

1. Written Motion by City Councilor, Joseph P. Lopes (Ward 6).



Planning Bd.

CITY OF NEW BEDFORD

CITY COUNCIL

September 12, 2019

WRITTEN MOTION

Requesting that the Committee on Ordinances amend the New Bedford Code of Ordinances, Chapter 9, Section 4130B, by deleting the words "Marijuana Establishment" from Section 4131B(j)(4). (To be Referred to the Committee on Ordinances.)

Joseph P. Lopes, Councillor Ward Six

IN CITY COUNCIL, September 12, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest

Dennis W. Farias
City Clerk