

**WESTBROOK PLANNING BOARD
TUESDAY, JANUARY 2, 2018, 7:00 P.M.**

MINUTES

Present: Ed Reidman, (Chair) (Ward 5), Rene Daniel (Vice-Chair) (At Large), Rebecca Dillon (Ward 1), Dennis Isherwood (Ward 2), Joseph Marden (Ward 3), Robyn Tannenbaum (Ward 4), Greg Blake (At Large)

Absent: John Turcotte (Alternate)

Staff: Jennie Franceschi, Rebecca Spitella, Richard Gouzie

MINUTES MAY NOT BE TRANSCRIBED VERBATIM. SECTIONS MAY BE PARAPHRASED FOR CLARITY. A COMPLETE RECORDING MAY BE OBTAINED BY CONTACTING PLANNING AND CODE ENFORCEMENT at 207-854-0638 ext. 1220 and lgain@westbrook.me.us

PUBLIC HEARING

1. **2017.31 – Amendment to the Land Use Ordinance – Medical Marijuana (Cultivation/Dispensary): Establish requirements for operations of medical marijuana caregiver cultivation facilities in the Industrial Park Districts and medical marijuana dispensaries in the Gateway Commercial District.**

Jennie Franceschi presented the amendment to the Land Use Ordinance.

Ordinance Description:

To establish performance standards for medical marijuana dispensary or medical marijuana caregiver cultivation facility within the City of Westbrook and specify locations for use.

Project History:

November 2009 – State of Maine approved legalizing, regulating and taxing marijuana for medicinal purposes, known as the “Maine Medical Use of Marijuana Program”

November 2016 – State of Maine legalized marijuana for recreational use

June 5, 2017 – City of Westbrook approved a 6-month moratorium ordinance on medical growing (cultivation) facilities & dispensaries.

June 20, 2017 – Planning Board Workshop

August 1, 2017 – Planning Board Workshop

October 3, 2017 – Planning Board Workshop

January 2, 2018 – Public Hearing

Staff Comments:

Since the enactment of the Maine Medical Use of Marijuana Act, communities have been seeing a steady rise in medical marijuana growing facilities locating within their communities. The proposed ordinance establishes performance standards for medical marijuana dispensaries and medical marijuana caregiver cultivation facilities, as well as locations where these uses are considered permitted within the City. The intent of the proposed ordinance is as follows:

1. Define the use Medical Marijuana Caregiver Cultivation Facility and Medical Marijuana Dispensaries, as well as associated terms
2. Permit Medical Marijuana Caregiver Cultivation Facility in the Industrial Park District and Medical Marijuana Dispensaries in the Gateway Commercial District as a conditional use
3. Establish performance standards to all growing facilities that includes a 500-foot buffer from established “sensitive uses”, as defined in the ordinance, and require specific life-safety measures to facility infrastructure.

Proposed Definitions

Collective

"Collective" means an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.

Qualifying Patient

"Qualifying patient" or "patient" means a person who has been diagnosed by a medical provider as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana in accordance with section 2423-B.

Medical Marijuana

Marijuana that is acquired, possessed, cultivated, manufactured, used, delivered, transferred or transported to treat or alleviate a qualifying patient's debilitating medical condition as defined by State law or symptoms associated with the qualifying patient's debilitating medical condition.

Medical Marijuana Caregiver

A person, licensed hospice provider or licensed nursing facility that is designated by a qualifying patient to assist the qualifying patient with the medical use of marijuana in accordance with state law. A person who is a medical marijuana caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense as defined by State law.

Medical Marijuana Dispensary

A not-for-profit entity registered pursuant to state law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Note that a dispensary may be either a single facility, or it may be divided into two separate but related facilities where growing is done at only one of the facilities. This shall be considered a commercial land use.

Medical Marijuana Caregiver Cultivation Facility

An enclosed, locked facility used for cultivating, processing, and/or storing medical marijuana by one or more medical marijuana caregiver(s) at a location which is not the medical marijuana caregiver's residence or his or her patient's residence. This shall be considered a commercial land use.

Medical Marijuana Home Cultivation

Cultivating, processing and/or storing of medical marijuana by a qualifying patient at his or her own residence or a medical marijuana caregiver at his or her own residence for use by a qualifying patient. This use shall be considered an accessory land use.

To ensure that certain Land Use definitions cannot be misinterpreted to include Marijuana based uses, the following statement will be added to the definitions of the uses listed below:

“This term does not include the growing of medical marijuana by medical marijuana dispensaries, caregivers, or patients.”

Definitions

<i>Business Office & Business Office 2</i>	<i>Industry</i>
<i>Commercial Service Business</i>	<i>Manufacturing</i>
<i>Farm</i>	<i>Medical Office</i>
<i>Florist</i>	<i>Service Business</i>
<i>Greenhouse</i>	<i>Warehousing</i>

Proposed Language

Section XX. Medical marijuana – Dispensary & Caregiver cultivation facility.

- A. Before submission of a conditional use application, the applicant must demonstrate his or her authorization to cultivate, process and store medical marijuana pursuant to the Maine Use of Medical Marijuana Program.
- B. As an accessory use, medical marijuana home production shall be allowed in any qualifying patient's residence or any medical marijuana caregiver's primary year-round residence in every base zone and overlay zone, without any requirement for land use permitting.
- C. Only one medical marijuana dispensary shall be allowed in the City of Westbrook.
- D. Location criteria/buffer zones. No medical marijuana dispensary or medical marijuana caregiver cultivation facility shall be closer than 500 linear feet, measured in a straight line from the dispensary or facility building entrance, to the nearest point on the boundary of any property which is occupied by any of the following sensitive uses:
 - 1. A licensed child day care facility;
 - 2. a church, synagogue or other house of religious worship;
 - 3. a public or private school; public library
 - 4. a lot zoned residential or used as a residence;
 - 5. an athletic field, park, playground or recreational facility;
 - 6. any juvenile or adult halfway house, correctional facility, or substance abuse rehabilitation or treatment center;

The City will only verify distance of the proposed premises from existing uses listed in (1) through (6) above; A medical marijuana dispensary or caregiver cultivation facility may continue to operate in its present location as a preexisting use if a sensitive use listed in (1) through (6) above later locates within the applicable buffer zone; however, the medical marijuana dispensary or caregiver cultivation facility does so at its own risk, and City-issued licenses, permits or approvals provide no protection or indemnification against enforcement of federal or other applicable laws that may prohibit operation of a medical marijuana dispensary or caregiver cultivation facility near a sensitive use listed in (1) through (6) above.

- E. Before granting an approval, the Planning Board shall ensure the applicant has reviewed his or her property and building security plans with the Westbrook Police Department and the Police Department finds the security measures are consistent with state requirements.
- F. No public advertising is permitted. No signs containing the word "marijuana," or a graphic/image of any portion of a marijuana plant or otherwise identifying medical marijuana shall be erected, posted or in any way displayed on the outside of a medical marijuana dispensary or a medical marijuana caregiver cultivation facility. No advertisement for marijuana or marijuana products is permitted on signs mounted on vehicles, temporary signs, hand-held or other portable signs, handbills, leaflets or other flyers directly handed to any person in a public place, left upon a motor vehicle or posted upon any public or private property. This prohibition shall not apply to (1) any advertisement contained within a newspaper, magazine or other periodical of general circulation within the City or on the Internet; and (2) advertising which is purely incidental to sponsorship of a charitable event not geared to or for the benefit of children or youth.
1. Interior advertisements, displays of merchandise or signs depicting the activities of a medical marijuana dispensary or a medical marijuana growing facility shall be screened to prevent public viewing from outside such facility.
- G. Hours of operation. Medical marijuana dispensary or caregiver cultivation facility may be open for business only between the hours of 8:00 a.m. and 8:00 p.m., locally prevailing time. If other hours of operation apply, the more restrictive hours shall control.
- H. Security requirements. No approval shall be granted by the Planning Board until the Police Chief or his/her designee has made a positive recommendation on the applicant's proposed security measures, which must be in compliance with State requirements. Security measures at a medical marijuana dispensary or caregiver cultivation facility establishment shall include, at a minimum, the following:
1. Security surveillance cameras installed and operating 24 hours a day, 7 days a week, to monitor all entrances, along with the interior and exterior of the premises, to discourage and facilitate the reporting of criminal acts and nuisance activities occurring at the premises;
 2. Door and window intrusion robbery and burglary alarm systems with audible and Police Department notification components that are professionally monitored and maintained in good working condition;
 3. A locking safe permanently affixed to the premises that is suitable for storage of any cash stored overnight on the licensed premises;
 4. Exterior lighting that illuminates the exterior walls of the licensed premises and complies with applicable provisions of the Code of Ordinances; and
 5. Deadbolt locks on all exterior doors and locks or bars on any other access points (*e.g.*, windows).
- All security recordings shall be preserved for at least 30 days by the medical marijuana dispensary or caregiver cultivation facility. The medical marijuana dispensary or caregiver cultivation facility shall provide the Police Chief or his designee with the name and functioning telephone number of a 24-hour on-call staff person to whom the City may provide notice of any operating problems associated with the medical marijuana dispensary or caregiver cultivation facility.
- I. On-site consumption of marijuana. The consumption, ingestion or inhalation of marijuana on or within the premises of a medical marijuana dispensary or caregiver cultivation facility is prohibited. For purposes of this subsection, the term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the medical marijuana dispensary or caregiver cultivation facility establishment's entrance.
- J. Visibility of activities; control of odors and emissions; sealed walls; disposal plan.
1. All activities of medical marijuana dispensary or caregiver cultivation facility, including, without limitation, cultivating, growing, processing, displaying, selling and storage, shall be conducted indoors. Medical marijuana dispensary or caregiver cultivation facility are not permitted to have outdoor sales or services of any kind.

2. Under no circumstances shall activities related to the cultivation, production, processing, distribution, storage, display, or sales of marijuana and marijuana-infused products be visible from the exterior of the business.
3. Odor management. For all medical marijuana dispensary or caregiver cultivation facility, the odor of marijuana must not be perceptible at the exterior of the building at the premises or at any adjoining use of the property. Medical marijuana caregiver cultivation facility must implement appropriate ventilation and filtration systems to satisfy the odor standard contained herein. This can be achieved through technologies, such as but not limited to air scrubbers and charcoal filtration systems.
4. Noxious gases and fumes. Medical marijuana dispensary or caregiver cultivation facility shall include appropriate ventilation systems to mitigate noxious gases or other fumes used or created as part of the production.
5. Sufficient measures and means of preventing smoke, debris, dust, fluids and other substances from exiting a medical marijuana dispensary or caregiver cultivation facility must be provided at all times.
6. All medical marijuana dispensary or caregiver cultivation facility shall have in place an operational plan for proper disposal of marijuana and related byproducts in a safe, sanitary and secure manner and in accordance with all applicable federal, state and local laws and regulations. Dumpsters and trash containers must not be overflowing, and the surrounding area must be kept free of litter and trash. All dumpsters and containers shall be screened from public view. All trash receptacles on the premises used to discard marijuana products must have a metal cover or lid that is locked at all times when the receptacle is unattended and security cameras must be installed to record activities in the area of such trash receptacles.

K. Size and occupancy limitations.

1. The growing area of medical marijuana caregiver cultivation facilities shall not exceed 3,000/10,000 square feet in area. (QUESTION – do we say a facility or one building)
2. A caregiver cultivation facility owner cannot be permitted for more than one permitted location in the City of Westbrook.

L. Pesticides.

1. If a Medical marijuana caregiver cultivator plans to use any pesticides (including all conventional, organic, or ‘natural’ insecticides, rodenticides, weed-killers, fungicides, rooting hormones or other plant hormones), evidence of a Pesticide Applicators License from the Maine Board of Pesticides Control must be provided to the Code Enforcement Officer.

M. Cultivation, manufacturing and testing. Any cultivation, manufacturing or testing of marijuana shall take place in an enclosed, locked facility. “Enclosed, locked facility” means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by the individual authorized to cultivate, manufacture or test the marijuana.

Other laws remain applicable. A medical marijuana dispensary or caregiver cultivation facility shall meet all operating and other requirements of state and local law and regulation. To the extent the State of Maine has adopted or adopts in the future any stricter law or regulation governing medical marijuana dispensary or caregiver cultivation facility, the stricter law or regulation shall control.

Jennie Franceschi the planning office has received a couple of comments about the language and have made suggestions in how to make it flow and be a little more consistent what goes to cultivation facilities and what goes to dispensaries.

Additionally, I did not realize that I had repeated a statement within the language regarding security measures which is item “E” in the language and I will strike that from the language and it is repeated in item “H”.

We are adding definitions as they relate to medical marijuana and other ancillary items.

In order to ensure that

we have our uses stated accordingly we are putting in the term at the very end that sheet that states the following terms will not be inclusive of any sir of medical marijuana use. It will have that statement put at the end of the current definition and there are ten uses that the statement will be put at the end.

‘The only other change that I would support that was brought up as a question from the public was under item “F”. I would like to strike the first statement where it says no public advertising permitted and replace the wording with the term signage. We have parameters for the signage.

Action for the Board’s consideration:

- Consider public comments provided
- Provide any further feedback on ordinance
- If any amendments are proposed to the document, add in the motion after ordinance “as amended by the Planning Board”

Ed Reidman any questions from the Public?

No Questions

Public Hearing closed

Ed Reidman any questions or comments from the Board?

Dennis Isherwood one word that stands out to me, in “F” - prohibition – That is a scary word for anything.

Jennie Franceschi could I use the word regulation?

Dennis Isherwood yes maybe it would be better. After reading it all, I wish we have the same regulations for cigarettes or beer.

I understand this language is new to the city and it is a good starting point.

REGULAR MEETING

2. **Call to Order.**
3. **Approval of Minutes.**

Rene Daniel move to accept December 5th minutes as presented.

2nd by Dennis Isherwood

The vote is unanimous in favor 7-0

4. **2017 Chairman’s Report**

Ed Reidman read the 2017 Chairman’s Report by summary only.

Rene Daniel move to recommend the 2017 Chairman’s Report to the City Council.

2nd by Dennis Isherwood

The vote is unanimous in favor 7-0

5. Planning Board Election of Officers – Chairman and Vice-Chairman

Nominations opened for Planning Chair

Rene Daniel, I nominate Ed Reidman for Planning Chair

2nd by Dennis Isherwood

No other nominations.

The vote is 6-0 (Ed Reidman abstaining)

Nominations opened for Planning Vice-Chair

Dennis Isherwood, I nominate Rene Daniel for Planning Vice-Chair

2nd by Rebecca Dillon

No other nominations

The vote is 6-0 (Rene Daniel abstaining)

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Action for the Board’s consideration:

- Consider public comments provided
- Provide any further feedback on ordinance
- If any amendments are proposed to the document, add in the motion after ordinance “as amended by the Planning Board”

Rene Daniel move to recommend the proposed ordinance as amended for adoption by the City Council.

2nd Dennis Isherwood

The vote is unanimous in favor 7-0

6. **2017.04 – Amended Site Plan – 20 School Street Commercial Building – Owner, MTR Development, LLC: The applicant is proposing to amend their previous approval to construct a 3,285-square foot single story commercial building for a café and rental space. (Previously approved project was a two-story commercial building.) Tax Map: 33 Lot: 277 Zone: City Center District.**

Project Description:

The applicant is proposing to amend their previous approval to construct a 3,285-square foot single story commercial building for a café, conference room, and associated child play area and office rental space.

Meeting History:

February 24, 2017 – Neighborhood Meeting

March 21, 2017 – Sketch Plan Meeting

April 6, 2017 – Village Review Committee Meeting

April 15, 2017 – Site Walk

May 2, 2017 – Public Hearing

December 5, 2017 – Workshop on amended site plan and elevations

January 2, 2018 – Amended site plan final review

Staff Comments:

1. Final elevation plans need to be title blocked and provide architects company information.
2. Please show how structure addresses the 70% articulated criteria on sides facing streets.
3. Provide by December updated final plan sets in both mylar and paper, with signature block.

Chris Wilson the developer for MTR Development. Dustin Roma the Civil Engineer could not be here tonight as he had another meeting that conflicted with this one so since you are familiar with the project, I would present aspects of the project at 20 School Street. Chris Delano the architect is here to answer any questions the Board may have.

Ed Reidman have you read the memo that was just passed out?

Chris Wilson yes

Ed Reidman Jennie would you go over the point you explained to me earlier?

Jennie Franceschi part of the criteria of our new Village Review Overlay Zone. One of the criteria is that 70% of the façade facing the street needs to be articulated. In the view that you will see from William Clarke Drive, the actual percentage actually ends up being 63%.

What I handed out to you now is an exchange from Chris Delano, that architect who provided an explanation as to why he did not reach the 70% threshold on this side of the building on the side of the building that abuts to the William Clarke Drive area.

Staff is supportive of the waiver to allow the applicant to only go up to the 63% based upon on the constraints of the site. This land does not lend itself to the Main Street requirements. We think with the elements that the applicant has provided and with the explanation provided by the architect, the waiver would be warranted.

Ed Reidman may I have a motion to grant the waiver?

Dennis Isherwood move to grant the waiver 403.7.A.10 due to the nature of the lot being along a major thoroughfare but not having true access to it, where the intent of the standards were for lots that have direct frontage on a street like Main Street where the building is directly adjacent to the street.

2nd by Rene Daniel

Ed Reidman discussion?

Rene Daniel Chris as you know that I usually do not grant waivers. When you came before us originally, I was very excited about your project. I am still very excited and want to commend you

on the gorgeous building for our gateway. This is the type of buildings that I would like to see more of in our City. Thank you

The vote is unanimous in favor 7-0

Ed Reidman the waiver is in place; do I have a motion to approve the project?

Rene Daniel move the Amended Site Plan application to construct a 3,285-square foot single story commercial building for MTR Development, LLC, Tax Map: 33 Lot: 277 Zone: City Center District is to be approved with conditions and the following finding of fact, conclusions and conditions as stated on pages 3 through 5 of the Staff Memo dated December 22, 2017 are adopted in support of that approval.

Site Plan – Finding of Fact:

Utilization of the Site – Adequate

Adequacy of Road System - Adequate

Access to the Site – Adequate

Internal Vehicular Circulation - *Adequate*

Pedestrian and Other Modes of Transportation - *Adequate*

Stormwater Management - *Adequate*

Erosion Control - *Adequate*

Utilities – *Adequate*

Hazardous, Special and Radioactive Materials – *N/A*

Technical and Financial Capacity - *Adequate*

Solid Waste – *Adequate*

Historic, Archaeological and Botanical Resources – *Questions regarding soil contamination – We are not aware of any laws or ordinances that would mandate an environmental study of this site at this time. As with any construction project, if materials are encountered during construction that are potentially hazardous, the Owner would notify Maine DEP and remediate the contaminated area in accordance with Maine DEP requirements. – Response from applicant*

Landscape Plan – *Adequate*

Conclusions:

1. The proposed site plan **will not** result in undue water or air pollution.
2. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed site plan **will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

6. The proposed site plan **will** provide for adequate sewage waste disposal.
7. The proposed site plan **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms** to the duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet the standards of this section.
11. The proposed site plan **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have** been shown on the site plan.
15. Any river, stream, or brook within or abutting the site plan **has** been identified on any maps submitted as part of the application.
16. The proposed site plan **will** provide for adequate storm water management.
17. The proposed plan **will not** negatively impact the ability of the City to provide public safety services.

Conditions:

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated April 6, 2017 and amended November 9, 2017 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Planning Board, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the City Planner or the Planning Board.
2. Consistent with Section 504.3, the Code Enforcement Officer shall not issue any permits until a site plan has been approved by the Planning Board and a Mylar signed by the Planning Board. *Mylars must be submitted to the City within 90 days of Planning Board approval or the approval shall be null and void.*
3. Prior to any permits being issued for the project:
 - a. All Staff comments must be addressed.
 - b. Review of building elevations to be consistent with submitted documentation or testimony.
 - c. The applicant shall provide the digital data as required by Section 504.5.B.12 and 13. – verification with GIS coordinator
 - d. An updated construction schedule needs to be provided to the City as well as points of contact.
 - e. Best management practices shall be adhered to during all ground disturbance operations. All Street Catch basins in the vicinity of earthwork operations shall have silt sacks installed & maintained for the duration of the work.
4. Prior to commencing any work in the City Right-of-Way, the applicant must obtain a road-opening permit from the Public Works Department.

5. Prior to the first Occupancy Permit issuance:
 - a. All parking lot/access improvements must be installed and provide documentation of maintenance contractor for Stormwater Best Management Practices.
 - b. The second story space needs to be visually finished space.
6. Prior to release of the performance guarantee, the site will be in compliance with the approved plan and as-built plan provided in City approved format for the GIS system.
7. The applicant shall comply with Chapter 37, the local Post Construction Stormwater Management Ordinance. On January 15th every year, a copy of the maintenance log for the previous year for the stormwater treatment features associated with this project needs to be provided to the Planning Office.
8. The applicant shall comply with the requirements of local and state authorities for life and safety requirements.
9. Signage shown in this packet was not final and would need to be reviewed for consistency with the VROZ, and a sign permit must be applied for through the Code Enforcement Dept. and size of size will need to be reviewed and approved of as part of that process.

2nd by Dennis Isherwood

Ed Reidman any discussion?

No discussion

The vote is unanimous in favor 7-0

Ed Reidman is there any additional items before the Board?

No items

Adjourn

THANK YOU, respectfully submitted by Linda Gain lgain@westbrook.me.us

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