

CITY OF MITCHELL
CITY PLANNING COMMISSION MINUTES
January 10, 2022

NOT APPROVED

1. Vice-Chairperson Molumby called the January 10, 2022 City Planning Commission Meeting to order at 12:00 P.M. noon in the Council Chambers, City Hall, 612 N Main Street.
2. Roll Call-quorum is met, simple majority vote required for all items.
Present: Larson (telephonically), Molumby, Osterloo, Penney, Genzlinger, Jirsa (telephonically), Allen (City Council liaison due to Doescher being ill).
Absent: Sonne.
Staff Present: Jenniges, Schroeder, T Johnson, J Johnson, Hegg, Sandoval.
3. Declare conflicts of interest-None
4. Approval of proposed agenda: Motion by Genzlinger, seconded by Osterloo, to approve the proposed agenda. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.
5. Approval of proposed minutes: Motion by Osterloo, seconded by Genzlinger, to approve the minutes of the December 13, 2021 Planning Commission meeting. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.
6. Schedule next meeting: Motion by Penney, seconded by Osterloo, to schedule the next meeting for January 24, 2022. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried..
7. Plat: Plat of Lot 1 of Plains Addition, in Section 23, Township 103, Range 60 West of the 5th P.M. to the City of Mitchell, Davison County, South Dakota; as requested by Plains Commerce Bank. The applicant was not present to answer questions.

Jenniges noted the applicant has purchased the land and is cleaning up the legal for future development, the existing parcels will be vacated. An elevation certificate will be required prior to a building permit being issued. Any future development will come back to Planning Commission for Plan Approval.

Motion by Genzlinger, seconded by Larson, to approve the Plat. Roll call vote: Larson – aye, Molumby – aye, Jirsa –aye, Osterloo – aye, Genzlinger – aye, Sonne –absent, Penney– aye. 6 aye, 0 nay, 1 absent, motion carried.

8. Plat: Plat of Lot 5, Block 1 of Woodland Heights First Addition, a subdivision of Lot 2, Crane's Addition in the SE ¼ of Section 24, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota; as requested by Ethan Lumber. The applicant was not present to answer questions.

Jenniges explained this follows the master plan for the area. An elevation certificate is being worked on.

Motion by Genzlinger, seconded by Penney, to approve the Plat. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

9. Variance: FSST Pharms LLC d/b/a Native Nations Cannabis has applied for a variance of approximately 16 feet vs 300 feet as required to be from an educational institution and a variance of approximately 950 feet vs 1,000 feet as required to be from another medical cannabis dispensary located at 1620 S Burr St, Suite #5, legally described as Lot 4 of AMOCO Irregular Tract located in the SE ¼ of Section 27, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota. The said real property is zoned HB, Highway Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with one response for and one against.

Jenniges explained there is approximately 1,525' from MTC property line to property line of FSST Pharms LLC location, only 16' of that 1,525' is not in the ROW. The ordinance calls for 300' from an educational facility not including ROW. FSST Farms LLC is approximately 1,016' from an approved medical cannabis dispensary to the property line of FSST Pharms LLC location, 950' of that is not in the ROW. The ordinance calls for 1,000' from an existing medical cannabis dispensary. The applicant did not know about the other dispensary at the time of the application and the other dispensary was approved first than in turn creates a trickle down effect to this location for being too close.

Genzlinger believes there is a difference between the letter of the ordinance and the spirit of the ordinance. He thinks this is meeting the spirit of the ordinance from an educational facility because the ROW is Interstate 90 and so wide is far enough away. Osterloo agreed but was concerned about setting precedence.

Jirsa believes medical cannabis dispensaries are destination businesses and location is very important to them. Larson agreed and thinks there are plenty of other locations for them.

Tre Gillaspie representing FSST Pharms LLC believes the spirit of the ordinance is to not be over restrictive.

Nick Moser representing DLJ LLC, an applicant later on the agenda, believes that if a new map were drawn with the restrictions and the existing dispensaries there will be no

room for the five approved licenses within the City of Mitchell. Variances will have to be granted for all of them.

Allen questioned why the ROW was not included in distances. J Johnson responded that when the ordinance was created they took parts from the state and parts from other City of Mitchell zoning ordinances and combined them and ROW are not included in other ordinances so it was done to keep consistent.

Schoeder also noted that most ROW's within the city are 66', there are some wider ones around the highways or old highway ROW's and I90.

Motion by Genzlinger, seconded by Osterloo, to approve the Variance. Roll call vote: Larson – nay, Molumby – aye, Jirsa – nay, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion carried.

10. Plan Approval: FSST Pharms LLC d/b/a Native Nations Cannabis is proposing to open a Medical Cannabis Dispensary Facility located at 1620 S Burr St, Suite #5. This is currently zoned HB Highway Business District. The applicant was present to answer questions.

Jenniges explained GIS and site-layout. They are not changing any ingress or egress to the parking lots or changing the overall footprint of the existing building. There are currently 65 parking spaces plus an addition 4 handicap spaces for the entire building. The overall parking, ingress/egress and drainage would have been approved when the original building was approved. All interior modifications and regulations will be addressed with the building permit, Suite #5 has never had any tenants in it so no construction in there has ever been completed and therefore a change of use to that suite which facilitates needing a plan approval.

Motion by Genzlinger, seconded by Osterloo, to approve the Plan. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

11. Variance: DLJ LLC has applied for a variance of approximately 448 feet vs 1,000 feet as required to be from another medical cannabis dispensary, located at 501 E Juniper Ave, legally described as Lot S-3A Ex E 63' in the Replat of Lot S in the NW ¼ of Section 27, T 103 N, R 60 W of the 5th P.M., City of Mitchell, Davison County, South Dakota. The said real property is zoned HB, Highway Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with one response in favor and two opposed.

Jenniges explained there is approximately 867' from an approved medical cannabis dispensary to the property line of DLJ LLC's location, 448' of that is not in the ROW. The ordinance calls for 1,000' from an existing medical cannabis dispensary. The applicant did not know about the other dispensary at the time of the application and the other dispensary was approved first than in turn creates a trickle down effect to this

location for being too close.

Larson questioned the distance to the church to the north, which is over the 300' required.

Nick Moser representing DLJ LLC stated they will be closed on Sundays and have heard no objections from the church at the time.

Doug Daily representing Lori Kummer (owner of land to the west) and Phillip Lee (owner of the business on Kummer's land, formally TK Electric) stated the ordinance is to prevent concentration of dispensaries. This proposed location isn't even 1,000' from the other dispensary including the ROW. They have concerns about safety and criminal activity in the area with this dispensary. The approach is split down the middle but they still have concerns about parking and they plan to put up a fence if the variance and license is approved. They do not believe a hardship has been established, the applicant missed the original deadline for submitting an application and by doing so became next in line instead of ahead of the approved dispensary they are requesting a variance from.

Nick Moser representing DLJ LLC stated the City of Mitchell's intent is to have five medical cannabis dispensaries and this is where the zoning allows it to be. Cannot see the other dispensary from this location. This is a new industry and people will have concerns about safety but this will be a secure site. The Department of Health will be able to look at the cameras at all times.

Osterloo has concerns that it's under 1,000' even with the ROW included.

Motion by Osterloo, seconded by Jirsa, to deny the Variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

12. Plan Approval: DLJ LLC is proposing to open a Medical Cannabis Dispensary Facility located at 501 E Juniper Ave. This is currently zoned HB. The applicant was present to answer questions.

Jenniges explained GIS and site layout. Neighbors to the west have concerns with the amount of parking or lack thereof and ingress/egress. The applicant would rent approximately 2,160 square feet so 4 to 5 parking spaces are required, plus 1 per two employees working. All interior modifications and regulations will be addressed with the building permit.

Motion by Genzlinger, seconded by Osterloo, to Table the Plan Approval until after BOA hears the variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

13. Conditional Use Permit: Genesis Farms LLC has applied for a Conditional Use Permit for a medical cannabis dispensary at 106 W 5th Ave, legally described as Lots 11 and 12,

Block 12, Rowley's 1st Addition, City of Mitchell, South Dakota. The said real property is zoned CB Central Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with the two responses against.

Jenniges explained GIS and site layout. Per ordinance medical cannabis dispensaries are a Conditional Use Permit in Central Business.

J Johnson reminded the board to keep discussion separate from the Conditional Use Permit and the Variance Permit.

Brenda Wiesser, a neighbor to the west, stated there are other empty buildings in town this can be located at. Big Friend/Little Friend is in the same building and she doesn't think they should be located that close.

Emmett Reistoffer is part of Genesis Farms LLC and is already established in Box Elder, SD. They plan to have 15 sites across SD and be a seed to sale. He went door to door downtown and most were in favor with a few disagreeing with it. He picked 5th and Main because it is centrally located in town walkable to the Corn Palace or the post office and other business downtown. This is the only dispensary north of Havens, all other locations are by Burr and I90. He is not for pitting neighbors against each other. He stated studies have shown no increase or actually reduction in crime when dispensaries are established.

Osterloo questioned if this was the only location he had looked at. Reistoffer stated he had looked at some other locations but other beat him to leasing. Not every land lord wants them as a tenant. He has known the land lord for 10 years at this location.

Bill Parks is the pastor at 5th and Main and they have been open for over 25 years and doesn't believe a dispensary should be located that close.

Genzlinger questioned if the city wanted medical cannabis downtown.

J Johnson reiterated to the board to keep the CUP and Variance separate but a church can still have an opinion on a business even without the variance.

Motion by Larson, seconded by Jirsa, to deny the Conditional Use Permit. Roll call vote: Larson – aye, Molumby – nay, Jirsa – aye, Osterloo – nay, Genzlinger – nay, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion denied.

Motion by Genzlinger, seconded by Penney, to approve the Conditional Use Permit. Roll call vote: Larson – nay, Molumby – aye, Jirsa – nay, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 4 aye, 2 nay, 1 absent, motion carried.

14. Variance: Genesis Farms LLC has applied for a variance of 0 feet vs 300 feet as required to be from religious institution, located at 106 W 5th Ave, legally described as Lots 11 and 12, Block 12, Rowley's 1st Addition, City of Mitchell, South Dakota. The said real property is zoned CB, Central Business District. The applicant was present to answer questions. Notices were sent out to the neighbors and it was published in the official newspaper with two responses received against.

Jenniges explained there is approximately 101' from Word of Life Christian property line to property line of Genesis Farms LLC, 0' of that 101' is not in the ROW. The ordinance calls for 300' from a religious facility not including ROW.

Genzlinger stated the spirit of the ordinance doesn't fit since the church has been there for 25 years. Penney agreed.

Emmett Reistoffer is part of Genesis Farms LLC and stated they will be closed on Sundays and by 8 P.M. on other nights of the week. For the first 6 months they might be open by appointment only. He would be up to having a trial run of 6 to 12 months. There will be no marketing on the exterior of the building and no one will even know they are there.

Nathan Weber stated he is not opposed to the applicant but to the location, the ordinance was put in place for a reason. There are teens at Word of Life Church and Big Friend/Little Friend is right next door.

Terra Volesky owner of the building stated you can go to the grocery store with kids to get prescriptions and liquor. You will need a prescription to even be able to enter the building and the Department of Health will be able to see the cameras at all times. It will be the best security in town. She has received calls from veterans hoping it passes.

John Weisser has no problem with Genesis Farms LLC just believes it does not belong on Main St. Mitchell is a family town with the Corn Palace on Main St.

Motion by Genzlinger, seconded by Larson, to deny the Variance. Roll call vote: Larson – aye, Molumby – aye, Jirsa – aye, Osterloo – aye, Genzlinger – aye, Sonne – absent, Penney – aye. 6 aye, 0 nay, 1 absent, motion carried.

15. Other Business-None.

16. Public Comment-None.

17. Vice-Chairman Molumby adjourned the meeting at 1:09 P.M.

Doug Molumby
Planning Commission Vice-Chairperson
