

Growing pains

Written by By Holly J. Wagner Sun Correspondent
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Cannabis retailers raise new zoning challenges

Cannabis retailing is a sticky business, and it's sparking some new debates about where the businesses are allowed and how they fit into Gallup's overall business and community matrix.

The immediate issue is a rule requiring that cannabis retailers be at least 300 feet away from "residential uses." The land standards specify that, "no cannabis sales shall be licensed if located within 300 feet of any residential zoned district or residential use, and uses listed under the civic and institutional use category, with exceptions for public safety facilities, hospitals and medical clinics."

When planners were revising the city's Land Use Standards in 2018, they created the Mixed Use Neighborhood zone, which allows small businesses among homes.

The two rules seem to have been considered in isolation, and now they're colliding.

The MXN zone was applied to existing structures that had a mix of businesses and living spaces, to make sure they stayed in compliance after the list of zones was pared from 30 to 15. Those often have living spaces upstairs that may be owner-occupied or rented out. MXN was also meant to encourage development of new "walkable neighborhoods," which often have living spaces above business storefronts.

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To complicate matters, there are dispensaries that started under different regulations when only medical marijuana was legal that were grandfathered in under the ordinance governing recreational spliff. Some of those are much closer than 300 feet to homes.

Two would-be cannabis retailers appealed their permit denials to the Planning Commission, asking for a firmer definition of “residential use” and how that affects the 300-foot rule. Their public hearings were held Oct. 12.

Joseph Hyde, of Hydroponics Indoor Garden Center, wanted a conditional use permit to allow his garden supply business at 300 W. Hill Ave. to sell hemp seeds; and Rodney Curnutt wants to open his dispensary at 202 S. Third St. Both entrepreneurs were challenging the same rule, but for very different reasons.

Hyde said that although his hemp seeds have the potential to become psychoactive once they’ve grown, he does not have any plans on selling marijuana products such as joints.

City Attorney Curtis Hayes, who was in the audience, didn’t take a side but told the commission, “Seeds are automatically considered cannabis as far as the state is concerned.”

The commission voted unanimously to affirm the permit denial. But the twin challenges made it apparent that the land standards for cannabis need some fine-tuning.

“Having two different businesses come to us and discuss this, I think we need to revisit it as a commission,” Commissioner Keegan Mackenzie-Chavez said. “My issue is that in a mixed-use neighborhood, I see where this can fit. In a strict residential neighborhood, I understand the concern.”

Curnutt is appealing a staff decision to deny a permit for his downtown dispensary, The Green Scene, seeking clarification and a text amendment to the land standards to define “residential use.”

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Normally the city provides a letter saying a prospective cannabis retailer is complying with city codes to go with an application to retail cannabis. Somehow the state approved Curnutt's permit without that letter, Planning Manager Nikki Lee said.

Curnutt rented a storefront, got his McKinley County business license and state cannabis permit and has spent the last three-plus months renovating the space.

Some nearby upstairs apartments are not obvious, and he only learned of the issue after someone came into his business and told him he wasn't allowed there. By that time, his business banner had been hanging outside for months.

"I've done a lot of construction on the business. I put \$15,000 of my own money into that business. I sold my house to start this business. I quit my job. I'm dedicating everything I have into this business so I can be home with my family," he said.

Curnutt said part of the reason he wants to start his business is because he wants to be closer to his kids.

"I've been down the road working for some time. I want to see my family and be home with them. I'm tired of seeing my kids grow up through the phone," Curnutt said.

Commissioners were only able to vote on the permit matter that evening, and voted to table it until after Curnutt has a chance to seek a text amendment, which could take months to get through the city review process. They were clear on the need to tighten up the definitions.

"This one really bothers me because we are saying residential use, but I don't really see a definition for residential use," Commissioner John Cresto said. "We see a structure built on the top of a business behind Coal Avenue, illegally, but it was up there and they were sleeping in it. Is that a residential use?"

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Chairman Kent Wilson seemed to regard the matter as settled.

“Most of the points that were made tonight were discussed when we had our work sessions. The discussion also was about whether the renters living downtown made it a residential area and would preclude sales being made in the downtown area,” he said. “We opened it up for public comment, at which time any or all of these people could have attended and expressed opinions prior to formulation of our standard.”

The issue is ripe for consideration, Hayes said, before more cases arise.

“This is a case that really does illustrate the need for some clarification of the code, because there are two restrictions there. One is within 300 feet of a residentially zoned district, the other is within 300 feet of a residential use,” he said.

Mackenzie-Chavez was adamant about a review. “I think it’s really, really clear that we need to address the 300 foot issue and we also need to consider the purpose of a mixed use neighborhood,” she said.

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