City of New Bedford
Department of Planning, Housing & Community Development
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PATRICK J. SULLIVAN
DIRECTOR

STAFF REPORT

REPORT DATE	PLANNING BOARD MEETING
May 23, 2019	June 12, 2019

Case # 19-13 A & B: Ordinance Text Amendment – Marijuana Establishment Zoning

Petitioners: City Councilors: Brian K. Gomes, At Large and Joseph P. Lopes, Ward 6
133 William Street, Rm 215 New Bedford, MA

Proposal: Request by City Councilors Brian K. Gomes and 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 amendments are both 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 A:

Proposes Removing the following paragraph:

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.

And inserting instead:

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

Case 19-13 B:

Proposes changing this paragraph from this:

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

To 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 **unless the Marijuana Establishment or Medical Marijuana Treatment Center is separated from said property in question by a roadway layout of 50 feet or more that contains at least 4 designated lanes of traffic**; or

Combined, the proposed would read as follows:

4131B. **Location Requirements and Restrictions**.

(iii) 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:

(b) 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 **unless the Marijuana Establishment or Medical Marijuana Treatment Center is separated from said property in question by a roadway layout of 50 feet or more that contains at least 4 designated lanes of traffic**; or

(b) 200 feet of any dwelling or dwelling unit.

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

(iv) 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.

Background:

How does the City verify Zoning Conformance for Marijuana Establishments?

Currently, an applicant makes a request for a zoning conformance determination letter from the Department of Inspectional Services. The request identifies the property or properties the applicant wishes to verify. The Commissioner of Inspectional Services receives the request and forwards it to various city departments for comments regarding conformance.

The Planning Division Staff create a map using existing data in a mapping software (ArcMap) to create a buffer map. Inspectional Services staff then use the generated map on a site visit for an in the field assessment.

The maps use parcel level data to create two buffers: one at 200' and one at 500' based on the property boundaries. Any of the uses identified for the 500' buffer are highlighted on the map. Residential properties are not currently highlighted as there is too many residential properties throughout the city resulting in a large data set that slows the program down and would make the maps overly complex.

During the field review, Inspectional Services staff note whether or not residential properties are located within the 200' buffer as shown. Further, due to data being potentially out of date, staff verifies in the field if any 500' buffer properties identified on the map are still active and also check the area for ones that may have been missed in the map data.

Arc Map is a good estimate for measurement, though it not to be considered exact at a small-scale measurement. In cases where the measurement is very close the city has required a surveyed measurement via a stamped statement supplied from a professional land surveyor measuring the distance between the identified properties.

To date the City has had eighteen (18) requests for zoning conformance, to seek conformance on fifty eight (58) property sites. **Fifteen properties have been found in conformance.**

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:

19-13 A: Changing the measurement: from property line to primary door

Merits: The proposed change to how the city measures the buffer requirement would likely reduce the distance between the points of measurement; therefore, potentially increasing the number of locations that would conform with the zoning requirements.

Concerns: The measuring metric for the original ordinance language was taken directly from the language of the State law. Such a reduction in measurement could potentially violate such statute. Additionally, the new way of measuring would be much more difficult and potentially more costly. The City does not currently have a reliable geographic database that includes buildings. All measurements for the newly proposed measurement would require an in field measurement either by city staff or at the applicant's expense by a professional land surveyor.

State law:
935 CMR Section 500.110 Security Requirements for Marijuana Establishments (3) Buffer Zones:

"(3) Buffer Zone. The property where the proposed Marijuana Establishment is to be located, at the time the license application is received by the Commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement. The distance under 935 CMR 500.110(3) **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 is or will be located**."

The distance to a primary entrance may be located away from any of the conflicting uses; however, in the case of large sites other portions of the site may be near an incompatible use identified. Since, site activities are not limited to the primary door this may be problematic. For example, delivery areas with truck traffic are typically located in the rear of a site.

The primary entrance may change later, which could create a difficult enforcement issue. It would also be infeasible to issue a conformance decree for a vacant lot or a property where a new building is proposed. Further, as the Special Permit process involves site plan review, it is possible that the Planning Board would propose a different area for a "primary entrance". This raises the question, would the applicant then be denied based upon the fact that the Planning

Board does not approve of the entrance they picked as their primary one? Additionally, there is the question of what is the definition of "primary entrance".

19-13 B: Adding the exception for when there is a separation provided by a roadway layout measuring 50' or more wide with 4 designated lanes of traffic

Merits: This proposed change would allow for the roadway to serve as the buffer between uses. Roadways such as the Interstate-195, Route 140, portions of Route 6, Route 18 (JFK Memorial Boulevard) and others could presumably qualify in this instance. In the instances of I-195 or Route 140 the limited highway access status prevents individuals from crossing along the roadway. In these instances, the limited access highways do provide a physical barrier between uses.

Concerns:
There are several questions regarding the definition of a "lane of traffic" (does a turn lane qualify, for example) and the definition of "roadway layout".

For example, depending on the definition of the "lane of traffic", the New Bedford Business Park with paired roadway separated by a grass median, could possibly have two marijuana establishments across the street from one another.

The phrase "roadway layout" in engineering is often understood to include the entire right of way (ROW); meaning including the sidewalks, curbs, and travel lanes for vehicles. In some cases, a roadway layout on a recorded plan may be larger than what has been built. This is for instances where roadway widening may be needed in the future or places where sidewalks weren't previously required.

Another concern is that roadway widths vary and may not be a consistent width throughout. An in field measurement would need to be taken for each site and there is no definition as to where this measurement should be taken; Would one point along the property frontage have to meet the width requirement, or would it have to be consistently wider than required along the entire site frontage/property line?

There are many city roadways that measure wider than 50'. Not all currently have 4 vehicular travel lanes. For a comparative analysis, planning staff determined the following:

- **Using the engineering definitions of "roadway layout" there are over 900 segments of roadway in the city that are 50' or wider.**
- **Measuring only the roadway width (edge of pavement to edge of pavement; not including sidewalks or curbs), there are approximately fourteen (14) streets with roadway widths 50' or wider**. These include, but may not be limited to, segments of: Brock Avenue, Cove Street, W. Rodney French Boulevard, Cove Road, Rockdale Avenue, Page Street, Acushnet Avenue, Kempton Street, Mt. Pleasant Street, Belleville Avenue, and Theodore Rice Boulevard.

Attachments:

1. Written Motion by City Councilors: Brian K. Gomes (At Large) and Joseph P. Lopes (Ward 6).

2. ATTACHMENT # 1: WRITTEN MOTION FOR CITY COUNCIL

CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting that the Committee on Ordinances amend Chapter 9, Section 4131B of the Code of Ordinances, Relative to Marijuana Establishment Zoning. (To be Referred to the Committee on Ordinances and the Planning Board.)

Brian K. Gomes, Councillor at Large
Joseph P. Lopes, Councillor Ward Six

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019
Referred to the Committee on Ordinances and the Planning Board.
Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk

CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by striking the last paragraph of said Subsection and inserting, in place thereof, the following paragraph:-

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

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019
Referred to the Committee on Ordinances and the Planning Board.
Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk

CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Paragraph (a) of Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by inserting, after the words "Medical Marijuana Treatment Center", the following words:

> unless the Marijuana Establishment or Medical Marijuana Treatment Center is separated from said property in question by a roadway layout of 50 feet or more that contains at least 4 designated lanes of traffic.

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, April 11, 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