



## ZONING ORDINANCE INTERPRETATION

Date: March 29, 2017

Applicable Zoning  
Ordinance Provisions: Sec. 61-3-354(b)(2)

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This zoning interpretation is provided pursuant to Sec. 61-2-21(8) of Detroit Zoning Ordinance, codified in Chapter 61 of the Detroit City Code, which authorizes the Director of the Detroit Buildings, Safety Engineering, and Environmental Department ("BSEED") to render written interpretations of the text of the Detroit Zoning Ordinance.

### Question Presented for Interpretation:

Following conditional approval by BSEED of a conditional land use application to operate a medical marihuana caregiver center ("MMCC"), in which BSEED requires the MMCC applicant ("MMCC Applicant") to obtain a spacing variance from one or more land uses listed in Sec. 61-3-354(b)(2) of the Zoning Ordinance, can BSEED consider the requirement to be satisfied upon the elimination of those uses?

### Applicable Zoning Ordinance Provisions:

Provisions of the Detroit Zoning Ordinance subject to this interpretation include:

#### Sec. 61-3-354. Conditional Uses; Procedures; Waivers; Public Nuisance.

...

- (b) The Buildings, Safety Engineering, and Environmental Department shall not approve any request under this Chapter for a medical marihuana caregiver center:

...

- (2) where located on a zoning lot in a B2, B4, M1, M2, M3, or M4 zoning district less than:
- (A) One thousand (1,000) radial feet from any zoning lot occupied by any religious institution identified as exempt by the City Assessor; and
  - (B) One thousand (1,000) radial feet from any zoning lot occupied by another medical marihuana caregiver center; except that on land zoned M1, M2, M3, or M4 farther than one hundred-fifty (150) feet from land zoned residential or residential PD, the spacing requirement between medical marihuana caregiver centers shall not apply;
  - (C) One thousand (1,000) radial feet from any zoning lot occupied by a Controlled Use (other than arcade).



### **Interpretation:**

Under Sec. 61-3-354(b)(2) of the Detroit Zoning Ordinance, BSEED shall not approve a conditional land use application for an MMCC that would be located within 1,000 feet of (1) “any zoning lot occupied by any religious institution identified as exempt by the City Assessor,” (2) “any zoning lot occupied by another medical marijuana caregiver center,” subject to certain exceptions in specified industrial districts in which a 150 foot spacing requirement applies, or (3) any zoning lot occupied by a controlled use other than an arcade (collectively “Sensitive Uses”). Controlled uses include certain types of liquor stores or other retail establishments in which alcoholic beverages are sold. See Zoning Ordinance § 61-3-292. However, BSEED may issue a conditional approval of an MMCC that is within 1000 feet of a Sensitive Use, whereby the MMCC Applicant is required to obtain a spacing variance from the Detroit Board of Zoning Appeals (“BZA”) for all applicable Sensitive Uses pursuant to Sec. 61-3-354(e) before full land use approval is effective.

Following BSEED’s issuance of such a conditional approval, it is possible that the Sensitive Uses for which a spacing variance is required may be extinguished. Under such circumstances, BSEED’s requirement to obtain a spacing variance from the BZA may no longer be valid. This interpretation provides guidance on how BSEED will address such circumstances.

If an MMCC Applicant that is required to obtain a spacing variance under the terms of a conditional approval can establish that the Sensitive Uses necessitating the spacing variance no longer exist, then BSEED will consider that requirement of its conditional approval to be satisfied and will not require issuance of the spacing variance by the BZA to accept a building permit application for the MMCC. Otherwise, BSEED would effectively be forcing MMCC Applicants to petition the BZA for spacing variances from Sensitive Uses that no longer exist. Doing so is not required under Sec. 61-3-354(b)(2), would unnecessarily expend limited City resources, and would overly burden MMCCs. Therefore, to achieve compliance with Sec. 61-3-354(b)(2) with as little burden on the City and MMCCs as possible, MMCCs that have been issued a conditional approval requiring a spacing variance can satisfy that requirement by establishing that the Sensitive Uses necessitating the variance no longer exist.

In order to establish that a given Sensitive Use no longer exists, the MMCC Applicant must submit to BSEED the following information:

- For Zoning Lots Occupied by Religious Institutions: The MMCC Applicant must request an official letter from the City Assessor’s Office providing written confirmation to BSEED that the property classification for the tax parcel associated with the zoning lot has ceased to be tax exempt and identifying the current property classification for the parcel.
- For Zoning Lots Occupied by Another MMCC: The MMCC Applicant must provide to BSEED documentation showing that the legal land use of the zoning lot has been changed from MMCC to a different use that does not also impose a spacing requirement on the MMCC.



- For Zoning Lots Occupied by a Non-Arcade Controlled Use: The MMCC Applicant must provide to BSEED documentation showing that the legal land use of the zoning lot has been changed from non-arcade controlled use to a different use that does not also impose a spacing requirement on the MMCC. The MMCC Applicant must also provide documentation confirming that the liquor license issued by the Michigan Department of Licensing and Regulatory Affairs associated with the zoning lot has been placed in escrow or has been removed.

The MMCC Applicant must submit to BSEED sufficient documentation pertaining to each Sensitive Use necessitating the spacing variance required in its conditional approval. Thus, for example, if BSEED issues conditional approval of an MMCC and requires the MMCC Applicant to obtain a spacing variance from two religious institutions and one liquor store, then the MMCC Applicant would need to submit three separate sets of documentation - one for each applicable Sensitive Use.

MMCC Applicants must submit all such documentation to BSEED at least thirty (30) days prior to the date specified in the conditional approval by which a permit must be secured by the MMCC Applicant. This timing will provide BSEED reasonable opportunity to review the documentation and to determine whether the spacing variance requirement has been satisfied prior to the automatic termination of the conditional approval. Upon approval, the MMCC applicant will be issued a revised decision with a decision date consistent with the elimination of the Sensitive Use.

This zoning interpretation does not address, and should not be construed as affecting in any way, an MMCC's rights to petition the BZA, the BZA's jurisdiction over MMCC-related cases, or the BZA's case management procedures. Rather, this zoning interpretation is strictly limited to BSEED's management of its own review of MMCC conditional land use applications in accordance with Sec. 61-3-354(b)(2) of the Zoning Ordinance.

Respectfully,

David Bell  
Director