City of Birmingham
A Walkable Community

MEMORANDUM

Community Development

DATE: June 8, 2015

TO: Joseph A. Valentine, City Manager

FROM: Jana L. Ecker, Planning Director

SUBJECT: Medical Marijuana Facilities

Over a year ago, the City Attorney requested that the Planning Board consider amending the Zoning Ordinance to allow and control medical marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments as they were prohibited by Federal law. As a result of recent court rulings, the City Attorney advised that the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan.

Thus, the Planning Board was asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed.

On May 14, 2014, the Planning Board held a public hearing recommending approval to the City Commission to allow medical marijuana facilities in the MX district only. The Planning Board requested the City Commission to hold a public hearing on July 14, 2014. However, the City Commission took no action to set the public hearing and suggested either publicizing the matter further or delaying the matter until there was more interest. (Please see attached meeting minutes from Planning Board and City Commission).

The issue was discussed again by the Planning Board on February 25, 2015 and after much discussion the Board recommended discussing the subject with the City Attorney and Police Department. (Please see attached meeting minutes). Accordingly, staff met with the City Attorney and the Deputy Chief of Police and the City Attorney advised that according to the Michigan Medical Marijuana Act, a primary caregiver is allowed to cultivate marijuana for up to 5 qualifying patients; and is permitted a total of 12 marijuana plants per patient which must be stored in an enclosed, locked facility. The Deputy Chief of Police also noted that such facilities generate a pungent odor so effective ventilation systems that would only allow vertical ventilation, should be required. The City Attorney again stated that the best proposed location for such a facility is within the MX district with the addition of distance buffers from single family residential uses. Mr. Currier further suggested making the use a regulated use and limiting the number of caregivers that may be permitted to grow marijuana in each location.

As per the Board's request, the City Attorney was present for the meeting on April 8, 2015 to answer questions/concerns related to the medical marijuana facilities. At this meeting, the Planning Board discussed draft ordinance language to allow medical marijuana facilities in the MX District as a SLUP and Regulated Use, and considered different sized buffer requirements from such uses. Allowing these facilities as SLUPs and regulated uses would permit the City to control the size of the establishment and the hours of operation. After much discussion, the

Planning Board suggested requiring 200 ft. or 300 ft. buffers from single-family and multi-family residential, so that the allowable area for medical marijuana facilities is clearly identified. The Planning Board also directed staff to consider the specifications for mechanical ventilation systems to address any odor issues by regulating the air quality surrounding such facilities.

On May 13, 2015, the Planning Board again discussed the issue of where to place medical marijuana facilities within the City. The Planning Division reviewed sample requirements used by other communities to regulate medical marijuana facilities. The most common regulation was to limit facilities to certain zone districts, and to establish specific criteria for lighting, ventilation and the placement of the building in relation to surrounding properties. The Planning Board considered two draft ordinance proposals. The first option included limiting medical marijuana facilities to the MX District, but only on those parcels that are 200' or 300' (or more) from existing or planned single family or multi-family residential uses, as well as detailed regulations for lighting, ventilation and the placement of the building on the site in relation to surrounding buildings. The second option included limiting medical marijuana facilities to the MX District, but only on those parcels that are 200' or 300' (or more) from existing or planned single family or multi-family residential uses, with detailed regulations pertaining to mechanical ventilation system requirements only. Board members discussed both options in detail, and continued to struggle with the recommended placement of medical marijuana facilities in the MX District. Several board members indicated that they were opposed to allowing medical marijuana facilities in the MX District as this was a new and exciting district that is currently experiencing rapid redevelopment, and again suggested allowing these facilities in Downtown Birmingham within 200' or 300' from the Police Station. Other board members supported locating facilities within the MX District, but limiting the number of parcels on which they would be permitted to be located. In addition, board members raised the issue of whether any of the proposed parcels in the MX District would even qualify given the Federal law regarding drug free zones around schools, parks and other such facilities.

The Planning Board suggested adding the issue of where to locate and how to regulate medical marijuana facilities on the agenda for the joint City Commission and Planning Board meeting on June 15, 2015 to allow a joint discussion on this difficult topic. Please find attached the draft ordinance language most recently discussed by the Planning Board, as well as the buffer maps prepared for discussion purposes. All relevant meeting minutes are also attached for your review.

ORDINANCE NO._____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 02 DEVELOPMENT STANDARDS, SECTION 2.39, MX (MIXED USE) DISTRICT, TO ADD MEDICAL MARIJUANA, ENCLOSED, LOCKED FACILITIES AS USES REQUIRING A SPECIAL LAND USE PERMIT; AND TO ADD MEDICAL MARIJUANA, ENCLOSED, LOCKED FACILITIES AS A REGULATED USE REQUIRING CITY COMMISSION APPROVAL

Article 02, section 2.39 shall be amended as follows:

Uses Requiring a Special Land Use Permit

- alcoholic beverage sales (on premise consumption)
- bistros operating with a liquor license granted under the authority of Chapter 10, Alcoholic Liquors, Division 4 – Bistro Licenses
- church
- college
- dwelling-first floor with frontage on Eton Road
- **medical marijuana, enclosed, locked facility as defined in MCLA 333.26423 s. 3(d), as amended**
- outdoor storage*
- parking structure (not accessory to principal use)*
- religious institution
- school-private, public
- residential use combined with a permitted nonresidential use with frontage on Eton Road
- any permitted principal use with a total floor area greater than 6,000 sq. ft.

Uses Requiring City Commission Approval

- assisted living
- continued care retirement community
- independent hospice facility
- independent senior living
- regulated uses*
- skilled nursing facility

ORDAINED this _____ day of _____, 2015 to become effective 7 days after publication.

_____
Stuart Lee Sherman, Mayor

_____
Laura Pierce, Clerk

ORDINANCE NO._____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 05, USE SPECIFIC STANDARDS, SECTION 5.13, MX (MIXED USE) DISTRICT, TO ADD MEDICAL MARIJUANA FACILITY STANDARDS.

Article 05, section 5.13 shall be amended as follows:

A. – G. No changes.

H. <u>Medical Marijuana Facilities</u>: An enclosed, locked facility is permitted on parcels identified in Appendix C if the following requirements are met:

1. **Lighting**
   a. **The indoor lighting shall not exceed 3,800 watts; and shall be designed to confine light and glare to the interior of the structure.**
2. **Ventilation**
   a. **An effective ventilation system will be required to filter the odor from a facility so that it cannot be detected at the exterior of the building or on any adjoining property.**
   b. **Exhaust systems must be designed and constructed to capture sources of contaminants and to prevent spreading of contaminants or odors to surrounding structures.**
   c. **Medical Marijuana facilities must have a ventilation rate of 60 cfm/person.**
   d. **Medical Marijuana facilities must have an outside ventilation rate of 15 cfm/person.**
   e. **Carbon dioxide generation systems must be listed and labeled, properly installed and functioning with a concentration level of no more than 1500 ppm.**
   f. **The exhaust outlets must be located a minimum of 10 feet from property lines, operable openings and mechanical air intakes.**
3. **Structure**
   a. **The structure shall not generate any offensive odors, noise, heat or generate any hazard due to processes, storage, or disposal of waste.**

OR

H. <u>Medical Marijuana Facilities</u>: An enclosed, locked facility is permitted on parcels identified in Appendix C with an effective ventilation system that provides exhaust outlets a minimum of 10 feet from all property lines, operable openings and mechanical air intakes.

ORDAINED this _____ day of _____, 2015 to become effective 7 days after publication.

_____
Stuart Lee Sherman, Mayor

_____
Laura Pierce, Clerk

ORDINANCE NO._____

THE CITY OF BIRMINGHAM ORDAINS:

AN ORDINANCE TO AMEND CHAPTER 126, ZONING, OF THE CODE OF THE CITY OF BIRMINGHAM:

TO AMEND ARTICLE 09, DEFINTIONS, TO ADD MEDICAL MARIJUANA FACILITY AS USE, REGULATED:

Certain uses that are declared to be potentially detrimental and to have the possible effect of downgrading and blighting the surrounding neighborhood, particularly when concentrated in one area. All regulated uses also require a Special Land Use Permit. For the purposes of the Zoning Ordinance, the following are declared to be regulated uses:

1. Adult Bookstores
2. Adult motion picture theaters
3. Pawnshops
4. Billiard games
5. Night clubs
6. Motor cycle sales and rental agencies
7. Tractor and garden vehicle sales and rental agencies
8. Massage facilities and massage schools
9. Bathing establishments
10. Mechanical amusement devices
11. Tatto parlors
12. Electronic video games
13. **Medical marijuana, enclosed, locked facility as defined in MCLA 333.26423 s. 3(d), as amended.**

ORDAINED this _____ day of _____, 2015 to become effective 7 days after publication.

_____
Stuart Lee Sherman, Mayor

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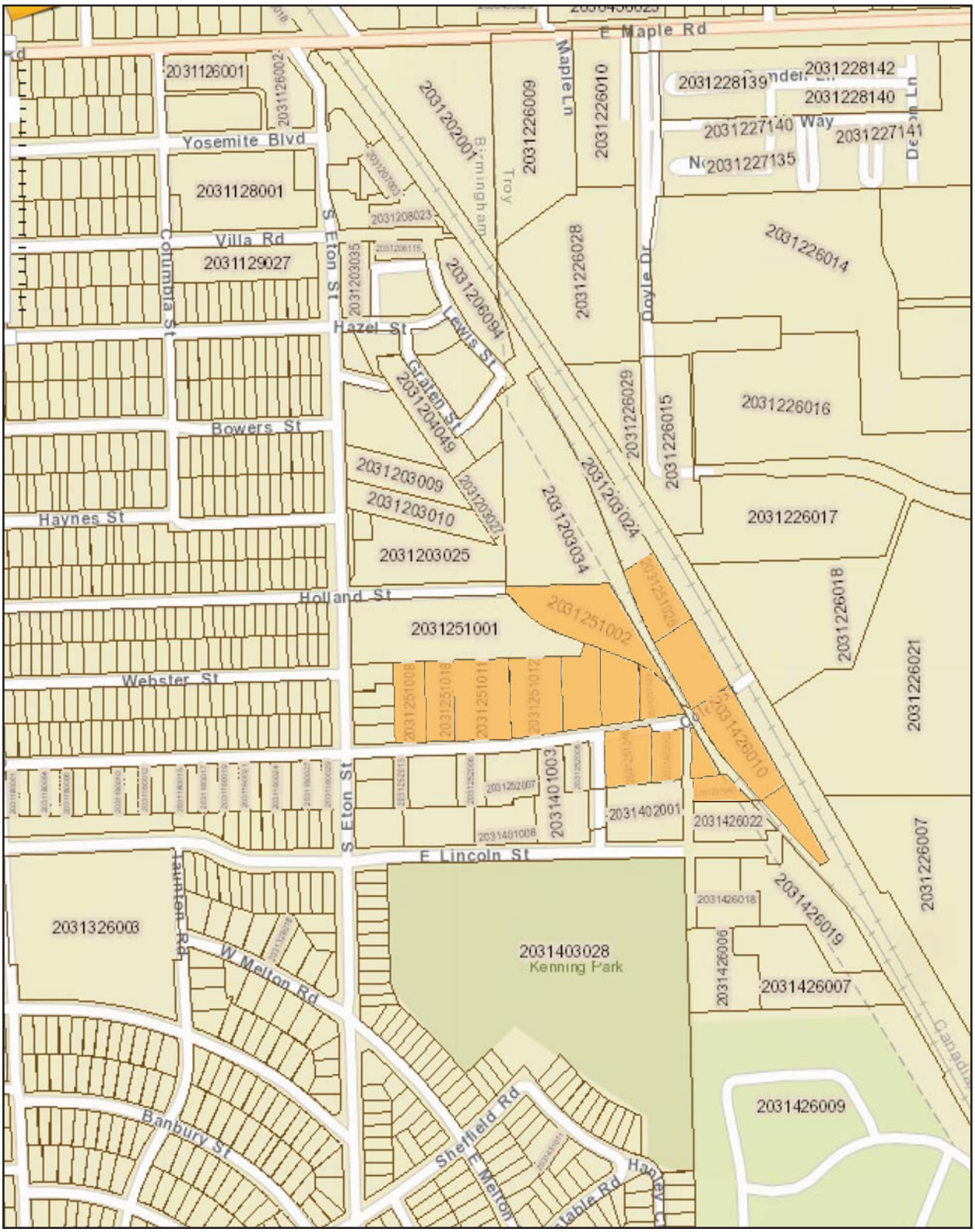
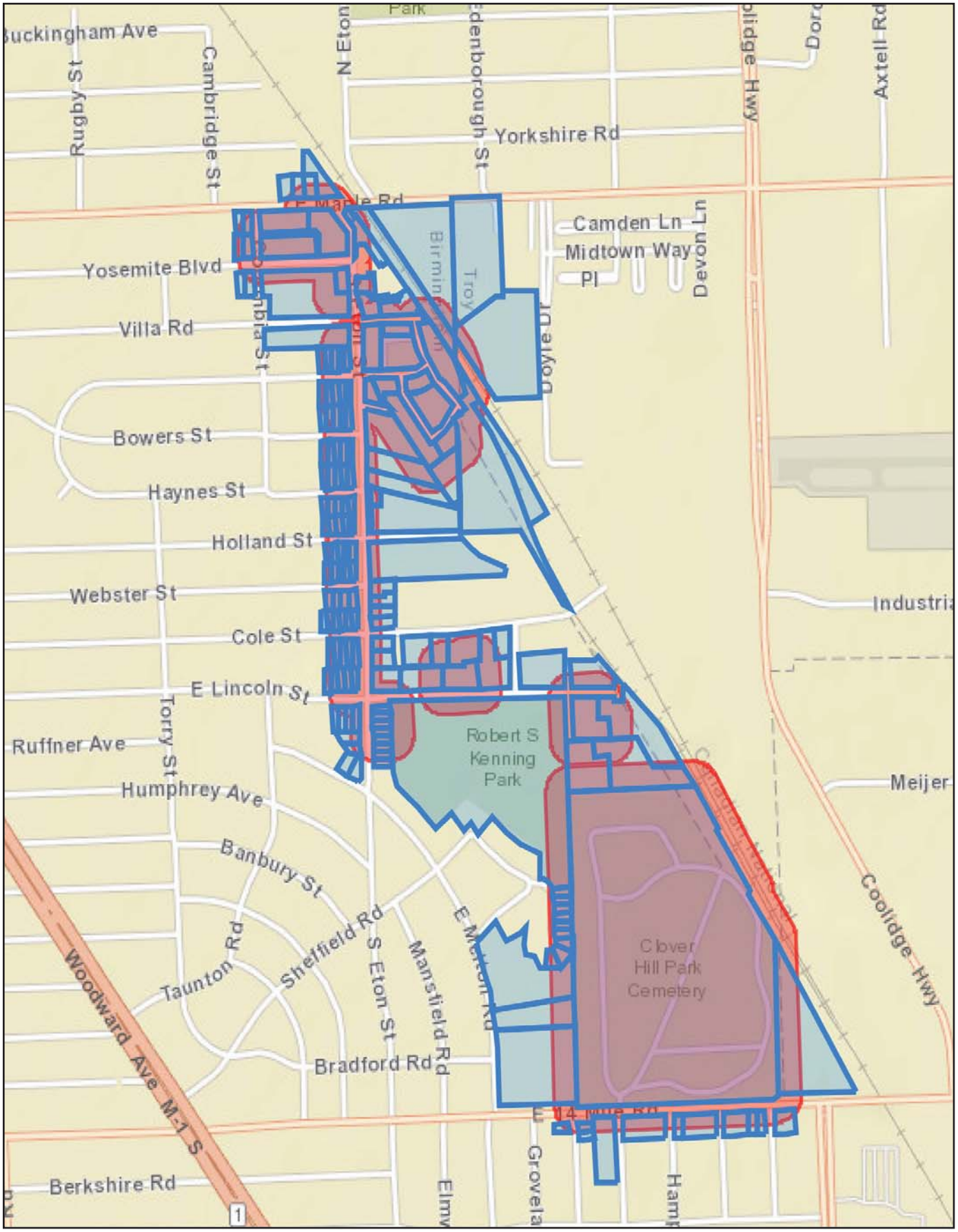
Laura Pierce, Clerk

MEDICAL MARIJUANA FACILITIES



200 Feet Buffer from Single and Multi Family Houses

200 FEET BUFFER FROM SINGLE FAMILY AND MULTI-FAMILY HOUSES



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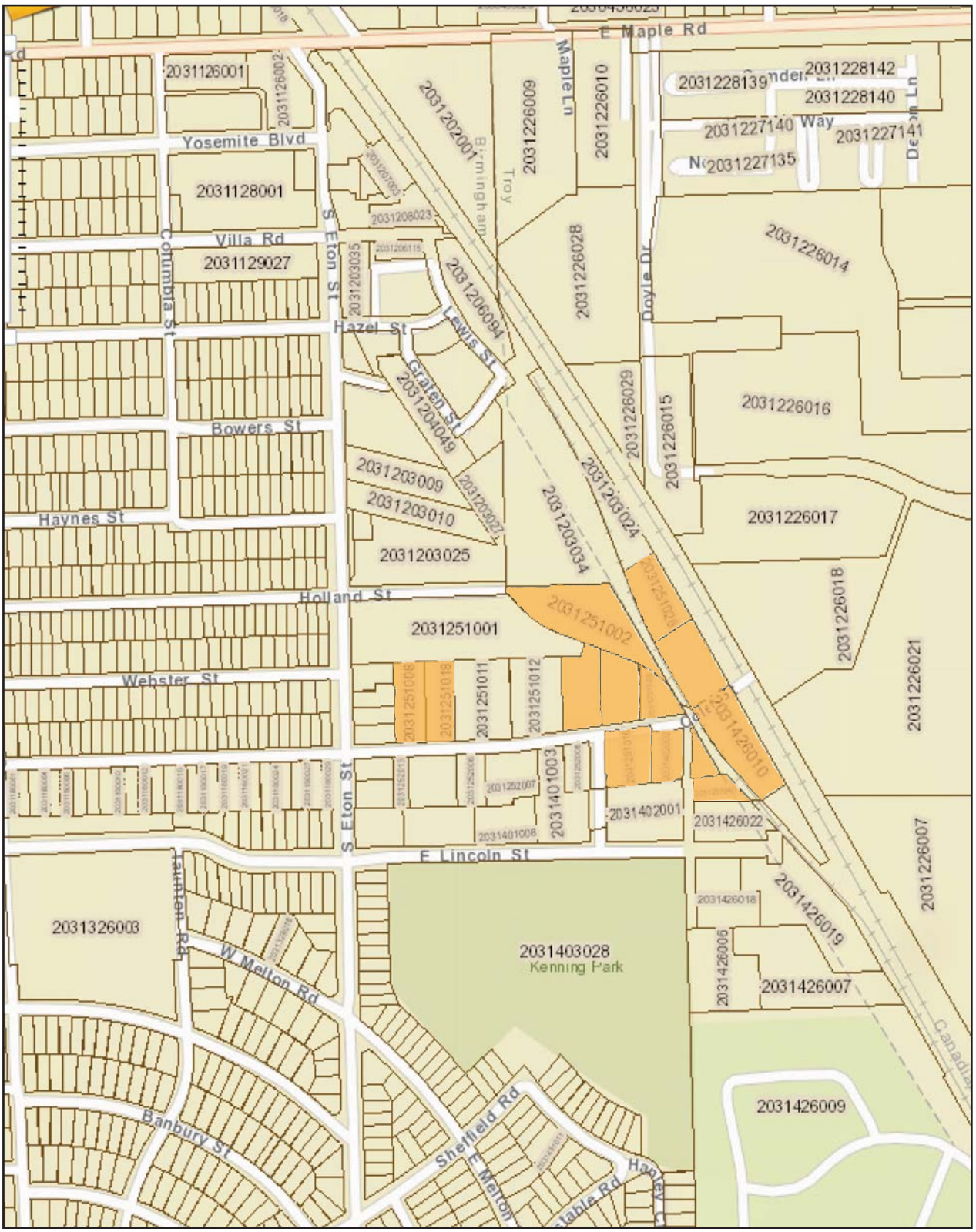
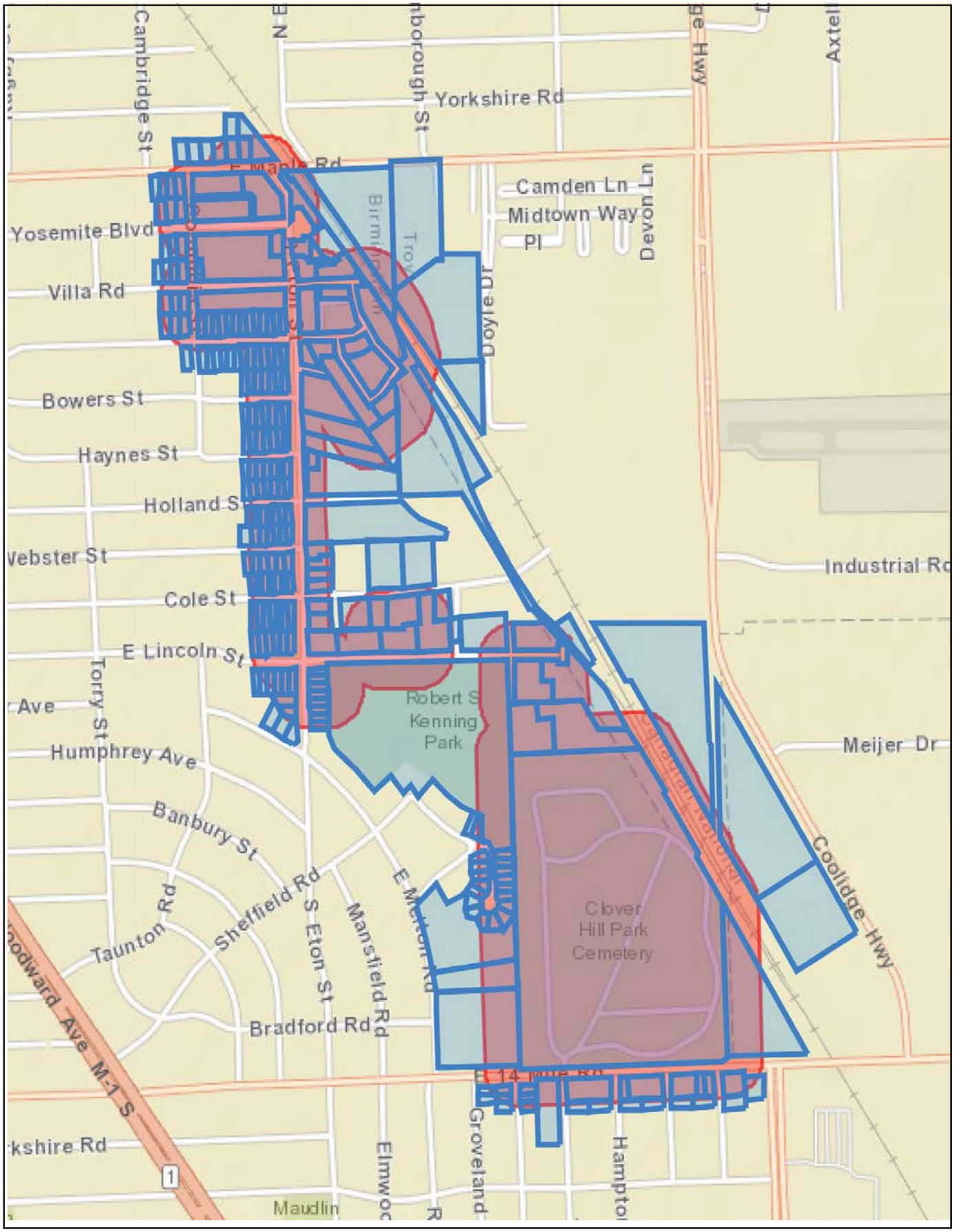


300 Feet Buffer from Single and Multi Family Houses

300 FEET BUFFER FROM SINGLE FAMILY AND MULTI-FAMILY HOUSES



PLANNING BOARD MINUTES
MAY 14, 2014

PUBLIC HEARING
An ordinance to amend Chapter 126 Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana in an enclosed, locked facility, as a permitted use in the MX District with a valid Special Land Use Permit ("SLUP")

Chairman Boyle opened the public hearing at 7:35 p.m.

Ms. Ecker advised that In light of recent case law, the city attorney has requested that the Planning Board consider amending the Zoning Ordinance to allow and control Medical Marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments as they were prohibited by Federal law. As a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan. Thus, the Planning Board has been asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed to control their operation. Tonight the Planning Board will consider allowing medical marijuana establishments in the MX District with a valid SLUP.

The terminology used in the draft ordinance for such establishments of medical marijuana, enclosed, locked facility, is taken from the State statute that regulates such establishments. Allowing these facilities as SLUPs would permit the City to control the size of the establishment and hours of operation.

Ms. Ecker went on to define the boundary of the MX District.

Motion by Mr. DeWeese
Seconded by Mr. Koseck to recommend approval to the City Commission for the following ordinance amendment:
To amend Chapter 126, Zoning, Article 2, Section 2.39, MX (Mixed Use) to allow Medical Marijuana, enclosed, locked facility, as a use permitted with a SLUP in the MX District.

There were no comments on the motion from the public at 7:39 p.m.
It was noted State law requires that the City make a provision to allow a permitted use somewhere within its zoning. If this is not done, the court will assign a location. Ms. Ecker advised such a facility could go into any building and parking requirements would fall under general commercial. The facility would come under a SLUP.

Motion carried, 6-0.
VOICE VOTE
Yeas: DeWeese, Koseck, Boyle, Clein, Whipple-Boyce, Williams
Nays: None
Absent: Lazar

The chairman closed the public hearing at 7:43 p.m.

SET PUBLIC HEARING – ZONING ORDINANCE AMENDMENT REGARDING MEDICAL MARIJUANA

Commissioner Rinschler expressed concern with the public hearing to be held in July as there has not been much publicity on the matter. He suggested either publicizing this item or delay it until there is more interest.

Commissioner McDaniel commented that the definition of the business should be clarified and the proposed district should be further reviewed.

City Attorney Currier explained that this is prohibited in the zoning ordinance, however it is permitted under State law. He explained proposed legislation.

Commissioner Nickita commented that additional information is needed such as whether there is a size requirement of the area and what is the justification to allow this in the rail district.

The Commission agreed to direct administration to return with a new date for the hearing and more specific information.

PLANNING BOARD MINUTES
FEBRUARY 25, 2015

STUDY SESSION
MX Ordinance Amendments

Ms. Puranik noted that since the reformatting of the Zoning Ordinance in 2005, several errors have been identified in the new graphic format of the Zoning Ordinance. These text amendment and land use matrix changes were inadvertently made while switching formats.

In addition, the City Attorney requested that the Planning Board consider amending the Zoning Ordinance to allow and control medical marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments because they were prohibited by Federal law. However, as a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan.

Thus, the Planning Board was asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed. The Planning Board held a public hearing on May 14, 2014 recommending approval to the City Commission to allow medical marijuana facilities in the MX District. Over the last several months there have been several requests to locate medical marijuana facilities within the City. Accordingly, it may be prudent to re-address the issue of where such facilities may be located within the City. Draft ordinance language that the Planning Board may wish to consider allows medical marijuana establishments in the portions of the MX District that are located furthest from single family homes, with a Special Land Use Permit ("SLUP"). Allowing these facilities as SLUPs would permit the City to control the size of the establishment and hours of operation. A distance buffer is now proposed to further refine permitted locations within the MX District where medical marijuana facilities. Given the size of the MX District and the proximity of single-family residences, a buffer of 600 ft. or 900 ft. may be the best option.

Chairman Clein observed if they do not specify where medical marijuana is allowed within the City the court will potentially place it anywhere and the City loses control. Ms. Ecker explained the facilities are secure, enclosed and locked as defined in the Ordinance. Marijuana is grown there and can be sold to people who have a medical card. The issue is not necessarily with the people who use the facility, but is that the facilities are a target for theft.

Board members considered other areas where medical marijuana facilities might be located, such as Downtown where it is close to the Police Dept. or along Woodward Ave. Consensus was that the best course of action would be to bring in the City Attorney and a representative of the Police Dept. to give the Board some idea as to the square footage, number of plants, number of patients, and number of parcels that can be offered.

PLANNING BOARD MINUTES
APRIL 8, 2015

STUDY SESSION
MX Ordinance Amendments and Medical Marijuana

Ms. Puranik advised that since the reformatting of the Zoning Ordinance in 2005, several errors have been identified in the new graphic format of the Zoning Ordinance. These changes were inadvertently made while switching formats.

Text Amendments:
The following text errors need to be corrected in the Zoning Ordinance:
• In section 2.39(MX), add "Residential use combined with permitted nonresidential use in the same building complex" to Residential Permitted Uses.
• In section 2.39 (MX), add "catering" to commercial permitted uses.
• In section 2.39 (MX), add "uses with expanded hours past 7 a.m. to 11 p.m." as a use requiring a Special Land Use Permit.

Land Use Matrix Changes:
The following errors need to be corrected in Appendix A of the Zoning Ordinance:
1. In the MX District column, "photography studio" should be changed to Permitted (P).
2. In the MX District column, "catering" should be changed to Permitted (P).

In addition, the city attorney previously requested that the Planning Board consider amending the Zoning Ordinance to allow and control medical marijuana establishments in the City. Previously, the City prohibited medical marijuana establishments as they were prohibited by Federal law. As a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan.

Thus, the Planning Board was asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed. The Planning Board held a public hearing on May 14, 2014.

The issue was again discussed by the Planning Board on February 25, 2015 and the board recommended discussing the subject with the city attorney and the Police Dept.

Ms. Ecker recalled the last time the board discussed this they thought, medical marijuana uses might be allowed Downtown. However, the deputy police chief and the city attorney have too many concerns with putting these facilities Downtown. They recommend the best place for them is in the MX District as a regulated use and Special Land Use Permit ("SLUP").

Mr. Williams did not see the point in limiting the distance of marijuana uses just from single-family residences rather than from multi-family residences as well. Crosswinds contains a lot of residences and two new residential locations along Lincoln have just been approved by the Planning Board. He recommended locating the establishments on the east side of the railroad tracks south of Maple Rd.

The city attorney said that one of the major issues the deputy police chief has found with the grow operations is that they are targeted for robberies by a criminal element. Secondly, such facilities generate a pungent odor and only effective vertical ventilation must be required. The Police Dept. prefers the MX District on the west side of the railroad tracks because it is more or less enclosed and there is a significant police presence in the area. Police officers gas up at DPS; and further, the police pistol range is nearby.

A primary caregiver is allowed to cultivate marijuana for up to five qualifying patients and is permitted a total of 12 marijuana plants per patient - 60 plants which must be stored in an enclosed, locked facility. A reasonable amount of property that the City must provide for marijuana facilities will be the judgment of some court.

Mr. Williams stated that maybe the answer is 300 ft. from all single-family and multi-family residential which pushes it into the center of the MX District. He would rather impinge on commercial rather than any form of residential. Further discussion determined the map should be re-done to depict 200 ft. and 300 ft. from single-family and multi-family residential so that the allowable area for marijuana facilities is clearly identified.

Ms. Whipple-Boyce was afraid they would end up in a position where they have not given enough area for these operations to exist. She thought the area on the east side of the railroad tracks is the ideal spot for them.

The vice-chairman called for comments from the public at 8:09 p.m.

Mr. William Anderson who lives in Royal Oak asked if personal, in-home use of marijuana is allowed in Birmingham. Mr. Currier replied that currently there is no ordinance that either permits it or prohibits that.

DRAFT PLANNING BOARD MINUTES
MAY 13, 2015

STUDY SESSION
MX Ordinance Amendments and Medical Marijuana

Ms. Puranik noted that since the reformatting of the Zoning Ordinance in 2005, several errors have been identified in the new graphic format of the Zoning Ordinance. These text amendment and land use matrix changes were inadvertently made while switching formats.

In addition, the City Attorney requested that the Planning Board consider amending the Zoning Ordinance to allow and control medical marijuana establishments in the City.
Previously, the City prohibited medical marijuana establishments because they were prohibited by Federal law. However, as a result of recent court rulings, the City can no longer prohibit such establishments as they are expressly permitted in the State of Michigan.

Thus, the Planning Board was asked to consider allowing medical marijuana establishments in certain zone districts, and to consider any controls that may be needed. The Planning Board held a public hearing on May 14, 2014 recommending approval to the City Commission to allow medical marijuana facilities in the MX District. The issue was sent back to the Planning Board by the City Commission on February 25, 2015 and after much discussion the board recommended discussion of the subject with the City Attorney and Police Dept.

At the Planning Board's request, the City Attorney was present for the meeting on April 8, 2015 to answer questions/concerns related to the medical marijuana facilities. After further discussion, the Planning Board suggested changing the buffer maps to show 200 ft. and 300 ft. buffers from single-family and multi-family residential so that the allowable area for medical marijuana facilities is clearly identified. The board also
requested staff to determine the height requirements for vertical ventilation. The Planning Division conducted research on the methods of regulating such establishments; other jurisdictions listing specific criteria for lighting; ventilation and the overall building.

Since the issue is complex, the Planning Division suggests two options for consideration. The first option includes detailed regulations for lighting, ventilation and the building, in addition to the buffer requirements. The second option considers the mechanical ventilation system requirements along with the buffer.

The board had no concerns with the text amendments and went on to consider the buffer maps and the proposed ordinance language.

Using the 300 ft. buffer from single and multi-family homes map, Mr. DeWeese recommended eliminating the two isolated parcels to the west and permitting the parcels defined at the east end.

Ms. Whipple-Boyce received confirmation there has been no consideration for 1,000 ft. drug free school zones, which is Federal law. That would eliminate all of the parcels. Ms. Ecker replied the City Attorney and deputy police chief have both weighed in on the maps and determined this is the best location.

In response to a question by Mr. Share, Ms. Puranik confirmed she got the option standards from the International Mechanical Code. She saw no mention of what height the exhaust stack should be set. Ms. Ecker thought that is covered, without dictating exact height. It would depend on the size of the operation. Odors should not be detected.

Chairman Clein was uncomfortable with seeing what he considers to be very specific performance specs in a land use ordinance. He did not think this topic is ready for a public hearing. Ms. Ecker said it will be sent to the other City Departments, as well as the City Attorney and Police Dept., asking for their comments/objections.

Ms. Whipple-Boyce thought the question of drug-free school zones has to be addressed. Secondly, she can't foresee ever supporting medical marijuana in this district, so she will very likely always be a "no" vote on that. This district is our most exciting area right now and we are seeing some of the best projects coming in. People are excited to do them and it has just exploded. There is so much going on, so many great buildings, so much interest, tons of people and new residential projects. So, as far as she is concerned this location for medical marijuana facilities is not even close to being ready for a public hearing because it is not the right place.

Mr. Koseck noted this use is legal and it has a purpose. The MX is Birmingham's edgiest district. He wonders how these facilities will affect nearby property values. It is about perception. If the use by law has to have a place in the community, then put it right Downtown within 300 ft. of the Police Dept. which may discourage providers because of the price of land.

Mr. Williams said he lives in the MX District and has never seen a Birmingham Police car on Eton. He agreed the facilities should be placed Downtown. Make them pay quadruple what they would otherwise pay; they won't come.

Chairman Clein suggested that staff come back next time with information on where similar communities have allowed these facilities. Ms. Ecker recalled that the Deputy Police Chief and City Attorney did not agree with placing these facilities in Downtown Birmingham. She will take it to them again.

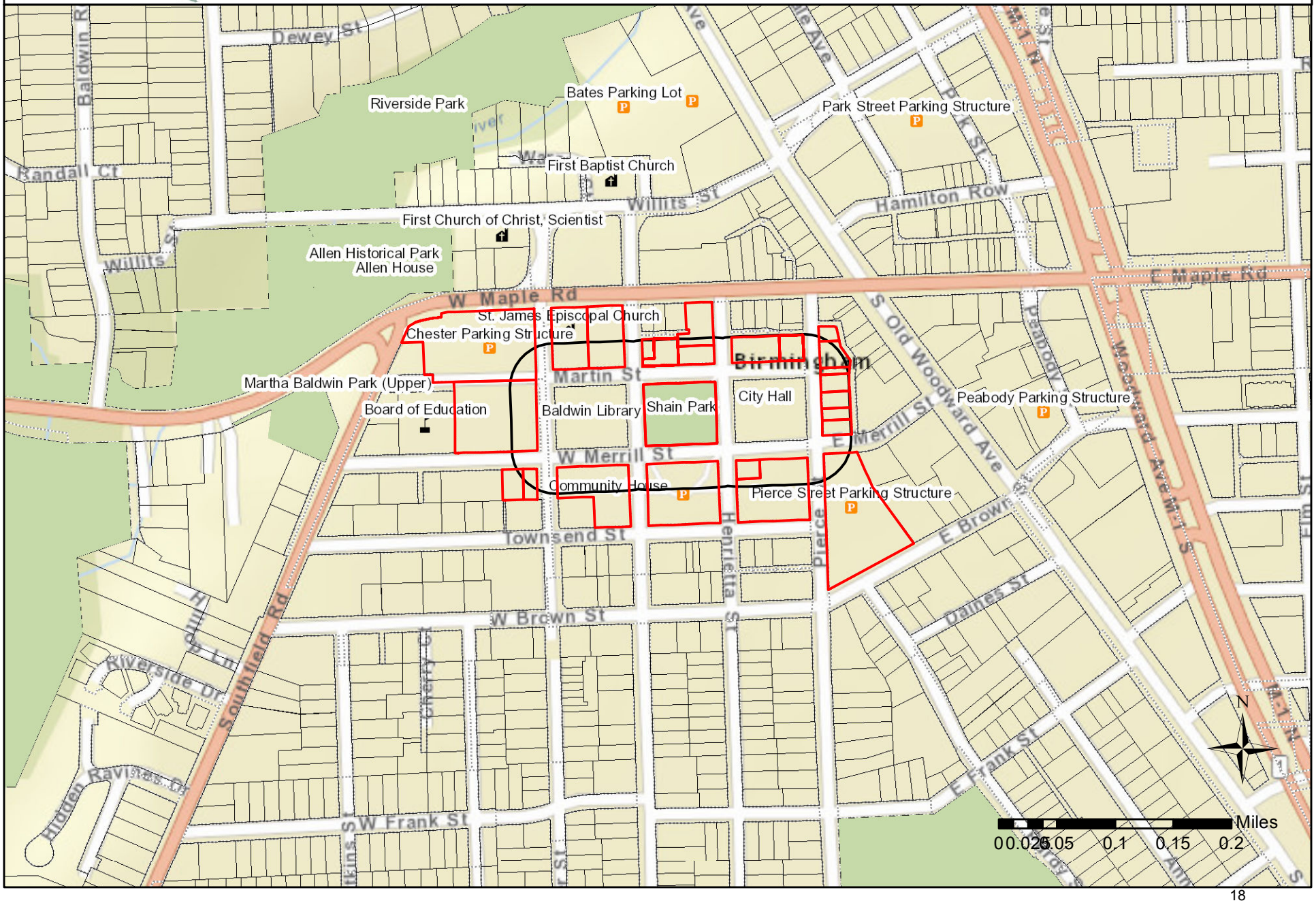
Board members agreed with keeping Option 1 but listing general guidelines without specific technical requirements.

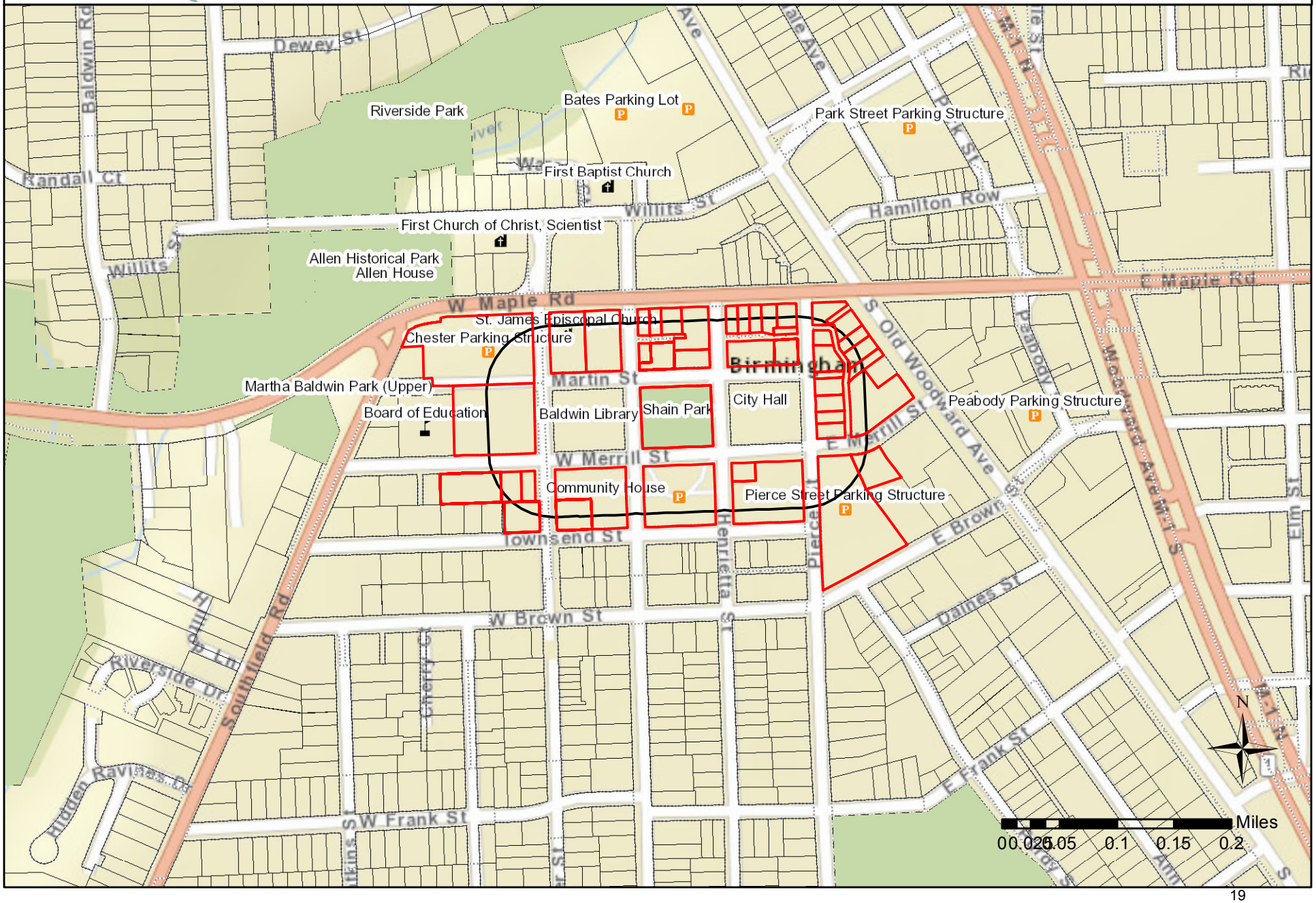
Chairman Clein noted the Planning Board is charged with providing recommendations to the City Commission as to where they think these establishments should go. It was decided to put this matter on the agenda for the joint City Commission/Planning Board meeting on June 15 and see what the commissioners say.

Mr. Koseck thought that maps drawing a circle 200 and 300 ft. from the Police Dept. would be good to have for the joint meeting.

City of Birmingham
A Walkable Community

200' From City Hall



City of Birmingham
A Walkable Community

300' From City Hall