

EATON COUNTY BOARD OF APPEALS

NOTICE OF MEETING:

DATE: Tuesday, March 5, 2024

TIME: 6:00 p.m.

PLACE: Eaton County Courthouse, Board of Commissioner's Room,
1045 Independence Blvd., Charlotte, MI 48813

AGENDA:

1. Pledge of Allegiance
2. Roll Call
3. Call to Order
4. Approval of March 5, 2024 agenda
5. **Nominations and elections for Chairperson, Vice-Chair person and Secretary**
6. Approval of December 5, 2023 meeting minutes
7. Communications
8. Public Comments
9. Public Hearing of Appeal Application(s):

BA-3-24-1: Request by Eaton County Planning Commission for an Interpretation regarding where Marihuana Facilities may be operated in Eaton County and under what existing land use within the Zoning Ordinance.

10. Old Business
11. New Business:
12. Upcoming Cases
13. Public Comments
14. Adjournment

The meeting will be available via YouTube for viewing and listening purposes only, by using the following link: <https://www.youtube.com/@EatonCounty1837-mi/live>

EATON COUNTY BOARD OF APPEALS MINUTES
December 5, 2023

Call to Order: Chair Nikki Chmielewski, called the meeting to order at 6:00 p.m. in the Board of Commissioners Room, Eaton County Courthouse, 1045 Independence Blvd., Charlotte, MI.

Pledge of Flag: The Pledge of Allegiance was given by all.

Roll Call: Charamy Cleary, Rob Cook, Donald Chase, Mark Stahl, and Nikki Chmielewski

Absent: Tim Cattron

Staff Present: Brandy Miller, Chris Garrison, and Tammy Alger

Agenda Approval: A motion was made by **Member Cleary** to approve the agenda for the December 5, 2023 meeting. **Member Chase** supported. Motion carried.

Minutes Approval: A motion was made by **Member Cleary** to approve the minutes as written from the May 2, 2023 meeting. **Member Chase** supported. Motion carried.

Communications: Ms. Miller stated there were none.

Public Comment: None

BA-12-23-4: Request by Drew Marks for a review of the Planning Commission's decision regarding Conditional Use Permit CU-10-23-7, Thomas and Tina Cassidy for operation of a park and recreational facility (private camping) which is located at 11066 W. St. Joe Highway, Section 18, Sunfield Township.

Staff Report: Ms. Miller read the staff report and three written responses from the public into record.

Applicant's Statement: Due to the applicant, Mr. Drew Marks, being absent, Ms. Miller read Mr. Marks written statement to the Board of Appeals dated November 30, 2023 into record. **Member Chmielewski** asked Ms. Miller to address any of the concerns in the statement while reading it. While reading Mr. Marks statement into record, Ms. Miller stated in reference to the limitations and conditions written on the Conditional Use Permit, she had informed Mr. Marks staff could not add conditions that were not part of the motion during the Planning Commission meeting; as shown on page three of Mr. Marks statement, several of the proposed conditions are not part of the application or motion for approval. Ms. Miller addressed the maximum density outlined in the Zoning Ordinance for properties located in a Low Density Residential Zoning District. She stated a unit is also known as a dwelling unit as defined in Section 5.3.4 D of the Zoning Ordinance. Ms. Miller read the definition into record. Ms. Miller addressed the concern of the easement for the partial location of the drain field servicing the property located at 11068 W. St. Joe Highway. Ms. Miller stated the language on the Conditional Use Permit Application is taken from Section 8.4.3 of the Zoning Ordinance; she read the section into record. Ms. Miller also read Zoning Ordinance Section 9.3.1 into record. She stated staff did

not require the easement to be located on the site plan as it did not affect the proposed use of Mr. and Mrs. Cassidy's property. She stated the easement area is located on the southwest corner of Mr. and Ms. Cassidy's property.

Member Chmielewski invited any speaker in favor or opposition to the request to make public comment.

Speakers in favor of the application: None

Speakers in opposition to the application: Mr. Mike Trowbridge, 1095 Irish Rd, stated that he felt the county had made the right decision in approving Mr. Cassidy's CUP. Mr. Trowbridge stated that Mr. Marks lives over 2300 feet from the property and does not meet the requirements of an aggrieved party. Mr. Trowbridge stated that he himself does live within 300 ft of the property and that Mr. Cassidy's property is not in violation of any county ordinance. Mr. Trowbridge stated that all of Mr. Cassidy's neighbors within a 300-foot radius do not have any problems with the private camping, and that those outside of the 300-foot radius should either be charged more to file an appeal or just not be allowed to do so, as he believes Mr. Cassidy is just being harassed now. Mr. Trowbridge stated that a large portion of the decision should be based on numbers such as the neighbors within the 300-foot radius of Mr. Cassidy's property, and that those are the neighbors to be heard, not the neighbors outside of the 300-foot radius.

Mr. Tom Cassidy, 11066 W. St. Joe Highway, stated that he feels this case has now turned into a matter of harassment of his property and neighboring properties. Mr. Cassidy stated that he has had prior enforcements on his property, but that he always complied with the enforcements and resolved them. Mr. Cassidy stated that he has seen Mr. Marks taking pictures of his property from a kayak on the lake. Mr. Cassidy stated that Mr. Marks has continually reported him to code enforcement, but half of the time the complaint was false or had already been resolved. Mr. Cassidy stated that he just wants to be able to enjoy his property with family and friends.

Mr. Brian Ross, Chairman of the Planning Commission, 147 S Main St., stated that the regulations and conditions put forth in the CUP were intentional, nothing was omitted that shouldn't have been. Commissioner Ross stated that he felt the conditions in Mr. Cassidy's CUP are adequate without needing further detail.

Public hearing closed at 6:29 p.m.

Board of Appeals Discussion/Comments: **Chair Chmielewski** stated that the question comes down to if Mr. Mark's is an aggrieved party. **Member Cleary** stated that Mr. Marks appeal seems to be more of an effort to prevent a future problem. **Member Cleary** read the definition of aggrieved and stated that Mr. Marks does not fit the definition of someone who is or has been aggrieved. **Ms. Cleary** stated that she felt the Planning Commission's ruling seemed sufficient and unnecessary to call into question. **Chair Chmielewski** and **Member Chase** agreed with **Member Cleary's** statements.

Member Cleary moved to deny BA-12-23-4, Request by Drew Marks for a review of the Planning Commission's decision regarding Conditional Use Permit CU-10-23-7, Thomas and

Tina Cassidy for operation of a park and recreational facility (private camping) which is located at 11066 W. St. Joe Highway, Section 18, Sunfield Township. They find that:

1. The appeal has not been brought forward by a party who qualifies as an aggrieved party.

Member Chase supported. A roll call vote was taken with five (5) voting aye and none (0) voting nay. Motion carried.

Old Business: None

New Business: Ms. Miller reviewed department changes with Eaton County Construction Code and Eaton County Community Development. She stated Planning and Zoning is now part of Construction Codes; The department title is Eaton County Construction Code & Planning and Zoning. Ms. Miller stated Mr. Chris Garrison is the Director of the department, Ms. Tammy Alger is the Planning and Zoning Assistant/Permit Specialist, and she is the Planning and Zoning Administrator/Code Enforcement Officer. She stated Ms. Claudine Williams is still a valued employee with Eaton County and is still the Director of Community Development.

Public Comment: None

A motion was made by **Member Chase** to adjourn the December 5, 2023 Board of Appeals meeting. **Member Stahl** supported.

Meeting adjourned at 6:37 p.m.

**STAFF REPORT
BA-3-24-1**

TO: EATON COUNTY BOARD OF APPEALS

**FROM: EATON COUNTY DEPARTMENT OF CONSTRUCTION CODES & PLANNING AND
ZONING**

RE: BA-3-24-1: Request by Eaton County Planning Commission for an Interpretation regarding where Marihuana Facilities may be operated in Eaton County and under what existing land use within the Zoning Ordinance.

HEARING

DATE: March 5, 2024 – 6:00 p.m.

ACTION

REQUESTED: The Eaton County Planning Commission is requesting an interpretation of the Zoning Ordinance regarding where Marihuana Facilities may operate.

AGENCY RESPONSES:

Vermontville Township: Recommended denial of the application.

STAFF COMMENTS:

Per Zoning Ordinance Section 4.6.2 A., *“Interpretation of the provision of this Ordinance when it is alleged that certain provisions are not clear or that they could have more than one meaning. In deciding upon such requests, the Board of Appeals will insure that its interpretation is consistent with the intent and purpose of the Ordinance and the Article in which the language in question is contained. The Board of Appeals may adopt a Dictionary of Land Development Terms to assist such interpretations.”*

The Zoning Ordinance Committee reviewed and recommend approval of the attached interpretation of the Zoning Ordinance for the operation of Marihuana Facilities within existing land uses allowed by the Zoning Ordinance.

It is important to note, per the state acts, Eaton County is not the governing (reviewing or approving) agency for Marihuana Facility Licenses. The townships are the governing agency; currently all townships within Eaton County’s Zoning Jurisdiction prohibit the operation of Marihuana Facilities. The requested interpretation is to ensure zoning regulations are in place should a township within Eaton County’s Zoning jurisdiction choose to allow for the operation of Marihuana Facilities.

APPLICATION TO THE EATON COUNTY BOARD OF APPEALS

Eaton County Community Development Department
1045 Independence Boulevard, Charlotte, MI 48813
517-543-3689 FAX: 517-543-9924

<u>Applicant/Appellant</u> Name(s):		
Eaton County Planning Commission		
<u>Circle one</u>		
Owner	Lessee	Representative
<u>Mailing Address:</u>		
Street	1045 Independence Blvd.	
City: Charlotte	State: MI	Zip: 48813
<u>Phone(s):</u>	517-543-3689	
<u>Property Code:</u>	- - - -	
Township: All Townships in Eaton County Zoning Jurisdiction		

<u>Office Use Only</u>		
Case No.: BA-3-24-1		
Date Application Received: 2/17/24		
Date Application Complete (if different):		
Application Fee	\$350.00	N/A
_____ Check	_____ Cash	
<u>Township Hearing Date:</u>		
<u>Circle one</u>		
Approved	Denied	Tabled
<u>Board of Appeals Hearing Date:</u> 3/5/23		
<u>Circle one</u>		
Approved	Denied	Tabled

INFORMATION

The Eaton County Board of Appeals hears the following categories of appeals in accordance with standards outlined in the Eaton County Land Development Code (Zoning Ordinance). Copies of the Zoning Ordinance are available from the Community Development Department.

Variance: Permission given to the property owner to depart from the literal requirements of the zoning ordinance. Variances may be granted for exception from setback requirements, from site development requirements, parking, signage, etc.

Interpretation of the Ordinance: Interpretation of the ordinance when its provisions are not clear, for determining precise boundaries between zoning districts or determining a land use classification not specifically mentioned for a district.

Review of Decision: Appeals where it is alleged there was an error in fact, judgment, procedure or interpretation in any order, permit, requirement, or decision made by the Community Development Department (Administrative Decision), its officials (Enforcement Decision), or the Eaton County Planning Commission (Conditional Use Permits). The Board of Appeals has the power to sustain, reverse, or remand for further consideration a Planning Commission decision if it was inconsistent with the ordinance or if there was an error in fact involved in the decision.

1. What type of appeal are you requesting? Please Circle One.

Variance

Interpretation of Ordinance

Review of Decision

PROPERTY INFORMATION

2. Current zoning of the property (Circle one) Information available from Community Development Dept.:

Limited Agriculture (LA) Residential (R1, R2, R3) Commercial (C1, C2) Industrial Resource Conservation

3. Current Use(s) of the Property (Please indicate if used as residence, agricultural, commercial, etc.):

4. Current Use(s) of area properties: (Please indicate if residential, agricultural, commercial, etc.)

5. List of persons and/or firms with equitable interest in this parcel:

6. PLEASE ATTACH A LEGAL DESCRIPTION OF THE PROPERTY (Please label).

A legal description of the parcel can be found in a deed, land contract, or tax information for your property. It must include any deed restrictions, easements, etc.

7. PLEASE ATTACH A SITE PLAN! (Please label all attachments)

A site plan is a scale drawing that shows the boundaries of the property, any structures, buildings on the property, public or private roads, driveways, easements, or other property features, and any natural features including bodies of water, wetlands, etc. The site plan must include measurements to all property lines and between structures.

8. PHOTOS: You may attach photos or drawings to illustrate your request. Please mount them on 8.5x11 inch paper and label clearly.

APPEAL INFORMATION

9. What part of the ordinance are you appealing?

Article _____ Section _____ Subsection _____

10. Please describe your request and what you wish the board to find:

The Eaton County Planning Commission requests the Zoning Board of Appeals review and approve the attached Zoning Ordinance Interpretation as it relates to where Marihuana Facilities may operate within the existing land uses prescribed within the Eaton County Zoning Ordinance.

11. Justification: Please give reasons why the Board should find as indicated above.

The Medical Marihuana Facilities Licensing Act (PA 280 of 2016) and Michigan Regulation and Taxation of Marihuana Act (Initiated Law 1 of 2018) both define municipalities as cities, villages and townships. The laws give each municipality the option to allow or disallow for the facilities regulated under each act. To date, none of the townships under Eaton County's Zoning Jurisdiction allow for the operation of any Marihuana Facilities regulated by either act. If approved, the interpretation would set zoning regulations for each facility without amending the Zoning Ordinance. This would allow for a seamless transition should a township choose to allow for marihuana facilities.

FOR VARIANCE REQUESTS:

The Board of Appeals may grant a variance provided that all of the following requirements are met. Please respond to these requirements. (Attach extra sheets as needed)

- A. That there is a practical difficulty in the way of carrying out the strict letter of this Ordinance.
- B. That the practical difficulty is due to unique circumstances related to the particular property and not general to other property in the district or neighborhood.
- C. That the problem was not created by the applicant.
- D. That granting the variance will not alter the essential character of the neighborhood or district.
- E. Every variance granted shall be in the minimum amount necessary to overcome the inequity inherent in the particular property.

AFFIDAVIT

I acknowledge that if a variance is granted or other decisions favorable to me are rendered upon appeal, that the decision does not relieve me from compliance with all other laws and regulations. I affirm that I am involved in the appeal and that the answers and statements herein contained and the information provided is true, accurate and correct. I understand that if it is not, this application and any approvals are void. I hereby give county officials permission to inspect the property to verify information and to verify compliance with rules and conditions. I also agree that I am able, financially, legally and physically, and I will commence this use, as approved, within six months.

Brandy M Miller
Applicant(s) Signature(s)

1/17/24
Date

Applicant(s) Signature(s)

Date

Before you deliver this to the Eaton County Community Development Department, please make sure you have done the following:

- 1. Complete all of the application. Provide complete and accurate information.
- 2. Describe your request clearly. If requesting a variance, respond to all the requirements A-E. Label them clearly.
- 3. Include a property description and a Site Plan. Label all attachments.
- 4. Include the non-refundable application fee of \$350 in cash, check, or money order.

If you have a question or are unsure of how to complete the application, please contact us for assistance!

The following are potential Zoning Ordinance Interpretations regarding where Marihuana Facilities may be operated in Eaton County and under what existing land use.

- **Grower**, defined as:
 - PA 281 of 2016: *"Grower" means a licensee that is a commercial entity located in this state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor, provisioning center, or another grower.*
 - Initiated Law 1 of 2018: *"Marihuana grower" means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.*

Zoning Ordinance use similar to: Chemical Processing and Metallurgical Manufacturing: Large scale manufacturing or processing facility involving bulk production, manipulation and/or storage of industrial, agricultural, pharmaceutical or defense-related chemicals and/or metal products; or similar facilities. This use is allowed with a Conditional Use Permit in an Industrial Zoning District.

- **Processor**, defined as:
 - PA 281 of 2016: "Processor" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center or another processor.
 - Initiated Law 1 of 2018: "Marihuana processor" means a person licensed to obtain marihuana from marihuana establishments; process and package marihuana; and sell or otherwise transfer marihuana to marihuana establishments.

Zoning Ordinance use similar to: Chemical Processing and Metallurgical Manufacturing: Large scale manufacturing or processing facility involving bulk production, manipulation and/or storage of industrial, agricultural, pharmaceutical or defense-related chemicals and/or metal products; or similar facilities. This use is allowed with a Conditional Use Permit in an Industrial Zoning District.

- **Secure Transporter**, defined as:
 - PA 281 of 2016: "Secure transporter" means a licensee that is a commercial entity located in this state that stores marihuana and transports marihuana between marihuana facilities for a fee.
 - Initiated Law 1 of 2018: "Marihuana secure transporter" means a person licensed to obtain marihuana from marihuana establishments in order to transport marihuana to marihuana establishments.

Zoning Ordinance use similar to: Business Service Establishment: An establishment engaged in rendering services to businesses on a fee or contract basis such as advertising and mailing, building maintenance, employment services, management

consulting, protective services, equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services. This use is allowed by right in a Local (C-1) and General (C-2) Business Zoning District.

- **Provisioning Center**, defined as:

- PA 281 of 2016: "Provisioning center" means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a registered primary caregiver to assist a qualifying patient connected to the caregiver through the department's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center for purposes of this act.
- Initiated Law 1 of 2018: Not defined

Zoning Ordinance use similar to: Convenience Commercial Establishment, A Convenience Commercial Establishment such as retail, office, restaurant, tavern, service business, or other commercial use permitted in *Subsection 7.5A.2* of this Ordinance, which is operated from a single building containing not more than 1,500 square feet in gross floor area and is established solely to meet the needs of the population residing within three (3) mile radius of the convenience commercial establishment. This use is allowed by right in a Local (C-1) and General (C-2) Business Zoning District.

- **Safety Compliance Facility**, defined as:

- PA 281 of 2016: "Safety compliance facility" means a licensee that is a commercial entity that takes marihuana from a marihuana facility or receives marihuana from a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.
- Initiated Law 1 of 2018: "Marihuana safety compliance facility" means a person licensed to test marihuana, including certification for potency and the presence of contaminants.

Zoning Ordinance Use similar to: **Research and Development:** Establishments for carrying out investigations in science and/or business, and may include material, chemical and equipment testing and experimentation, economic and demographic study and/or the use of animal, plant or human subjects under controlled conditions. This use is allowed by right in Industrial (I) Zoning District.

- **Marihuana Microbusiness**, defined as:
 - PA 281 of 2016: Not defined
 - Initiated Law 1 of 2018: "Marihuana microbusiness" means a person licensed to cultivate not more than 150 marihuana plants; process and package marihuana; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a marihuana safety compliance facility, but not to other marihuana establishments.

Zoning Ordinance use similar to: Chemical Processing and Metallurgical Manufacturing: Large scale manufacturing or processing facility involving bulk production, manipulation and/or storage of industrial, agricultural, pharmaceutical or defense-related chemicals and/or metal products; or similar facilities. This use is allowed with a Conditional Use Permit in an Industrial Zoning District. OR Convenience Commercial Establishment, A Convenience Commercial Establishment such as retail, office, restaurant, tavern, service business, or other commercial use permitted in *Subsection 7.5A.2* of this Ordinance, which is operated from a single building containing not more than 1,500 square feet in gross floor area and is established solely to meet the needs of the population residing within three (3) mile radius of the convenience commercial establishment. This use is allowed by right in a Local (C-1) and General (C-2) Business Zoning District.

- **Marihuana Retailer**, defined as:
 - PA 281 of 2016: Not defined
 - Initiated Law 1 of 2018: "Marihuana retailer" means a person licensed to obtain marihuana from marihuana establishments and to sell or otherwise transfer marihuana to marihuana establishments and to individuals who are 21 years of age or older.

Zoning Ordinance use similar to: General Retail Sales Establishment: A business selling new merchandise and using no more than ten percent (10%) of the net floor area for repair facilities. This use is allowed by right in a Local (C-1) and General (C-2) Business Zoning District.