



Board of Adjustment Meeting

February 05, 2025 - 5:30 PM

Kenai City Hall - Council Chambers

210 Fidalgo Avenue, Kenai, AK 99611

Telephonic/Virtual Information Below

Agenda

- A. CALL TO ORDER
- B. ROLL CALL
- C. APPROVAL OF MINUTES
 - 1. October 15, 2024 Millhouse Appeals
- D. PUBLIC COMMENTS (3 minutes per speaker)
- E. ADJOURNMENT

The agenda and supporting documents are posted on the City's website at www.kenai.city. Copies of resolutions and ordinances are available at the City Clerk's Office or outside the Council Chamber prior to the meeting. For additional information, please contact the City Clerk's Office at 907-283-8231.

Registration is required to join the meeting remotely through Zoom. Please use the following link to register:

<https://us02web.zoom.us/meeting/register/Chz3lw5ATqSCnihFBt0XAg>



MINUTES
BOARD OF ADJUSTMENT HEARING
OCTOBER 15, 2024 - 5:00 P.M.
KENAI CITY COUNCIL CHAMBERS
210 FIDALGO AVENUE, KENAI, ALASKA

Appeal of the Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Appeal of a Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

A. CALL TO ORDER

The City of Kenai Board of Adjustment convened on October 15, 2024 in the City Hall Council Chambers, Kenai, AK. Board Chair Knackstedt called the meeting to order at approximately 5:00 p.m.

B. ROLL CALL

There were present:

Henry Knackstedt, Chair
Alex Douthit
Deborah Sounart

Phil Daniel
Victoria Askin

Absent:

Brian Gabriel

Also in attendance:

Joseph N. Levesque, Board Attorney
Shellie Saner, City Clerk

C. APPROVAL OF MINUTES

1. June 20, 2022 Hanson Appeal

MOTION:

Board Member Douthit **MOVED** to approve the June 20, 2022 Hanson Appeal Minutes. Board Member Daniel **SECONDED** the motion.

VOTE: Motion **APPROVED**; without objection.

2. June 20, 2022 Molloy-Schmidt Appeal

MOTION:

Board Member Sounart **MOVED** to approve the June 20, 2022 Molloy-Schmidt Appeal Minutes. Board Member Askin **SECONDED** the motion.

VOTE: Motion **APPROVED**; without objection.

3. August 21, 2024 Carlyle Appeal

MOTION:

Board Member Daniel **MOVED** to approve the August 21, 2024 Carlyle Appeal Minutes. Board Member Sounart **SECONDED** the motion.

VOTE: Motion **APPROVED**; without objection.

D. OPENING STATEMENT

Board Chair Knackstedt provided an opening statement and read the Board of Adjustment procedures.

[Clerk's Note: Both the Appellant and Appellee agreed that the two issues on appeal could be consolidated into one presentation, with rebuttal and closing argument, allowing time for two separate staff reports.]

Board of Adjustment Members confirmed that they had no direct conflict of interest regarding the matters on appeal or any ex parte contact with any parties involved.

It was reported that notices for both matters on appeal were mailed to all property owners within 500 feet of the proposed commercial retail marijuana location, as well as to all persons who participate in the hearing before the Planning and Zoning Commission.

E. SWEARING IN OF ALL PERSONS PROVIDING TESTIMONY

City Clerk Saner administered the oath to all persons present who would be providing evidence and testimony.

F. PUBLIC COMMENTS (5 minutes per speaker)

Board Chair Knackstedt open the floor for public comments.

Teea Winger addressed the Board of Adjustment in support of the Planning and Zoning Commission's denial of the Variance and denial of the Conditional Use Permit, noting concerns about the proposed development near a neighborhood; the proximity to the Little League field and the Boys and Girls Club; safety impacts from increased ATV activity during the Dipnet fishery; and the presence of homeless individuals. She summarized that the Planning and Zoning Commission denied the proposals after careful consideration and asked the Board of Adjustment to uphold that decision.

There being no one else wishing to be heard, the public comment period was closed.

G. STAFF REPORT (15 minutes)

Appeal of the Planning and Zoning Commission Action Denying an Application of a Variance Permit for a Marijuana Retail Store to be Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Interim Planning Director McElrea summarized the staff report as provided within the certified record (page 39), identifying that the variance permit application was requesting a reduction of the buffer distance within a conditional use permit to allow a Commercial Marijuana Establishment (CME) at 11888 Kenai Spur Highway.

Mr. McElrea reported that the applicant was seeking relief from Kenai Municipal Code (KMC) 14.20.330(f)(1), which establishes, in part that no Commercial Marijuana Establishment (CME) shall be permitted within 500 feet of a recreation or youth center. The distance is measured from the closest interior wall to the outer boundaries of the recreation or youth center. KMC defines a "recreation or youth center" as a building, structure, athletic playing field, or playground, run or created by a local government or the State to provide athletic, recreational, or leisure activities for minors, or operated by a public or

private organization licensed to provide shelter, training, or guidance for persons under twenty-one years of age.

Mr. McElrea outlined the variance review criteria as established in KMC 14.20.180, restated the Staff findings as shown in the certified records for PZ2024-18 Variance, concluded that the variance permit application requesting buffer zone adjustments does not meet the criteria for issuance of a variance permit as outlined in KMC 14.20.180(c), and recommended the Board of Adjustment uphold the Planning and Zoning Commission's denial.

Appeal of the Planning and Zoning Commission Action Denying an Application for a Conditional Use Permit to Troy and Sandra Millhouse to Operate a Retail Marijuana Store Located at 11888 Kenai Spur Hwy., #3, Kenai, Alaska.

Interim Planning Director McElrea summarized the staff report as provided within the certified record (page 124), identifying that the conditional use permit (CUP) application was for the operation of a retail marijuana store at 11888 Kenai Spur Highway.

Mr. McElrea reported that the intent of a CUP is to allow certain uses that may be compatible with principal uses in specific zoning districts, provided certain conditions are met. He noted that given the denial of the variance application, the proposed marijuana retail store did not meet the intent of KMC 14.20.330(f)(2); outlined the CUP criteria as established in KMC 14.20.150(e); restated the staff findings as shown in the certified record for PZ2024-19 Conditional Use Permit; concluded that the proposed marijuana store does not meet the criteria for issuance of a CUP as established in KMC 14.20.150(e) and KMC 14.20.330; and recommended that the Board of Adjustment uphold the Planning and Zoning Commission's denial.

H. APPELLANT - Appellant Troy Millhouse represented by Attorney Richard Moses. (30 minutes)

Attorney Richard Moses called Sandra Millhouse to testify.

Ms. Millhouse stated she wanted to clear up misconceptions from the previous hearing, clarifying that she is a fourth-generation Alaskan, has no ties to drug activity, supports law enforcement through her business security measures, and also addressed concerns about traffic and noise, noting the area is already commercial and industrial.

Ms. Millhouse explained her commitment to the community, supported local sports teams; described her plans to revitalize the commercial property for her dispensary and other businesses; and stated her other marijuana stores in Wasilla and Anchorage have contributed positively to their areas with facility improvements, lighting and murals.

Ms. Millhouse argued that denying her application would be discriminatory as other dispensaries in Kenai were allowed to operate despite zoning miscalculations; and expressed her commitment to follow the law and support business growth in the community.

In response to questions from the Board of Adjustment:

Ms. Millhouse explained she did not go through the full CUP process prior to purchasing the property because she and her husband were diagnosed with cancer when they originally purchased or started the process of purchasing; they filed the AMCO paperwork and were approved after their health had stabilized. After approval from AMCO she contacted Planning Director Linda Mitchell, and Ms. Mitchell said she was approving it; however, halted the process after being contacted by an individual who had previously been denied at the same location.

Ms. Millhouse clarified that yes, she knew the matter would still have to go before the Planning Commission for approval.

Ms. Millhouse confirmed that while opening some of her other locations, she had to go through the CUP process, except for the K-Beach and Anchorage locations where she purchased businesses that were already established.

Attorney Richard Moses called James W. Browning to testify.

Mr. Browning introduced himself, noting that he is Ms. Millhouse's business partner and clarifying he did not attend the previous hearing because they were unaware of the strong opposition to opening a CME in Kenai. He stated that he would be the operating manager of the proposed establishment and that he is the sole operator and owner of High Bush Buds, which is in good standing; he also opened 5150 Audio, which is across the street from the proposed CME.

Mr. Browning stated his commitment to the community and explained that both he and the Millhouses were responsible business owners who give back to their communities. He encouraged the Board of Adjustment to reconsider regulations and amend the code to allow their business and he highlighted the positive economic impact it would have on Kenai.

In response to questions from the Board of Adjustment:

Mr. Browning clarified that he did not have any involvement in preparing the applications; that he is familiar with the City's rules; and that he thought the proposed location was a good location for a CME

I. APPELLEE - City of Kenai Planning & Zoning Commission, represented by City Attorney Scott Bloom. (30 minutes)

Kenai City Attorney Scott Bloom stated that the City was not under the impression that Ms. Millhouse's business would bring anything negative to the community and hoped that if this location did not work out, another could be found in the City, and that any negativity from the prior hearing was not from the City Administration.

Mr. Bloom clarified that the Council Members were sitting as the Board of Adjustment and as such, had the same powers as the Planning & Zoning Commission as established in KMC, which was to make adjudicatory decisions within the standards established in City Code. The Millhouses requested consideration be given to changing the City Code to allow their CME, which is not within the power of the Board of Adjustment; however, it is something the City Council may take up at a later date as a legislative decision.

Mr. Bloom referenced KMC 14.20.180, which establishes that the body must find that all conditions, the prerequisites for the issuance of a variance are met before a variance can be issued; that granting a variance shall not authorize a use that is not a permitted principal use within the zoning district; and that a CME is not a principally permitted use in any zone. Therefore, a variance cannot be granted to allow a CME anywhere within the City, as it is not a principally permitted use.

Mr. Bloom addressed the CUP aspect, noting this property has been reviewed for a CUP in the past. To obtain a CUP for a CME buffer requirements must be met. When the Board of Adjustment took this matter up in 2016 for a different applicant, they found that the intent of the City Council was that the outer boundary was intended to mean the outer edge or boundary of the parcel; which leads to the conclusion that the proposed CME location is within the 500 feet outer boundary of the two parcels containing the ball fields and does not meet the buffer requirements. The proposed location of the CME is 322 feet from the Little League fields and 390 feet from the City's softball fields.

Mr. Bloom stated that Ms. Millhouse is arguing that City Planner Mitchell said the CME could be located at the proposed location, so she purchased the property, which was not a reasonable reliance on her part. Ms. Mitchell, who is no longer employed with the City, submitted a letter (page 82) indicating she informed Ms. Millhouse that a CME is subject to a CUP and other requirements outlined in KMC.

Mr. Bloom concluded that the City advises anyone wanting to purchase property for a use that would require a CUP to go through the CUP process first. Ms. Millhouse owns several CMEs; she is a sophisticated buyer, knows to do her due diligence prior to purchasing the property, and yet she got nothing in writing. The seller of the property had prior knowledge that a CUP for a CME could not be located there. Ms. Millhouse took the risk on herself to purchase the property prior to receiving a CUP, which does not force the City to violate its code and grant a CUP or variance. The Board of Adjustment previously denied a CME for this location, if this Board were to violate code, it would result in an arbitrary and potentially discriminatory decision.

The following were in response to questions from the Board of Adjustment:

Ms. Millhouse stated that she specifically asked the seller and real estate agent if other people had tried to purchase the property for the same purpose and was told no.

Ms. Millhouse stated that due to the seller being vague, she had to hire a realtor, and she moved forward without that realtor based on Ms. Mitchell saying the facility would work.

Ms. Millhouse stated it was a cash purchase with no implied warranties or conditions; she was aware of the property's conditions; and there was no contract guaranteeing the use of the property.

Ms. Millhouse stated that Ms. Mitchell provided measurements and said based on those, it would work, and that in Ms. Mitchell confirmed a CUP for the location was possible.

J. APPELLANT REBUTTAL - Appellant Troy Millhouse represented by Attorney Richard Moses. (10 minutes)

The following were responses to questions from Mr. Moses:

Mr. McElrea clarified that he was employed by the City when the applications for the variance and CUP were before the Planning and Zoning Commission and he worked on the staff report.

Mr. McElrea confirmed that the red area on the map shown on page 49 was the 500-foot buffer zone; it did not touch any of the ball fields; however, it did touch a piece of the parcel.

K. APPELLEE REBUTTAL - City of Kenai Planning & Zoning Commission, represented by City Attorney Scott Bloom. (10 minutes)

The following were responses to questions from Mr. Bloom:

Mr. McElrea further confirmed that the buffer zone did not touch the physical ball fields; the kids do leave the ball fields when they are in the parking lots or with their parents; kids on school grounds are not always confined within the building; and kids who use the ball fields are not confined to just the physical fields.

L. APPELLANT CLOSING ARGUMENTS - Appellant Troy Millhouse represented by Attorney Richard Moses. (5 minutes)

Mr. Moses stated that the main argument is that the 500-foot buffer zone around the recreation or youth center has been incorrectly interpreted; alternative relief through a variance is not the focus, it's about applying the language of KMC correctly; and there is no dispute that the ball fields are considered a youth center. The question is how the buffer is being measure. The Board of Adjustment is not being asked to alter City Code but to apply it correctly; the interpretation that the entire parcel is part of the recreation boundary is flawed and could lead to absurd outcomes.

Mr. Moses referenced the City Planning and Zoning Commission's acknowledgment that previous marijuana facilities were allowed within buffer zones based on what was thought to be correct measurements at the time; the inconsistency further supports the need to reevaluate the current

interpretation; and he believed that if Ms. Mitchell remained in her role, the property in question would likely have been deemed outside of the 500-foot buffer zone.

Mr. Moses concluded his arguing statement by requesting that the permit be granted or remanded back to the Planning and Zoning Commission to provide additional findings.

M. APPELLEE CLOSING ARGUMENTS - City of Kenai Planning & Zoning Commission, represented by City Attorney Scott Bloom. (5 minutes)

Mr. Bloom stated his disagreement with points raised by the Appellant, noting that the 500 foot buffer zone was not arbitrary; it was based on legislative history and discussion by the Council, who chose not to make changes to the rules in 2016; the City Council established that the outer boundary of the property should be the parcel line; many recreation or youth facilities are not fenced and determining where the facility begins or ends can be complex; using the parcel boundary offers a clear and straightforward method for enforcement.

Mr. Bloom acknowledged the property in question was unusual; however, the rule was applied as intended, and he disputed that a different conclusion would have been reached if Ms. Mitchell were still an employee of the City.

Mr. Bloom concluded that CUPs were always discretionary and the applicant, as an experienced buyer, should have known this; the decision of whether to grant the permit lies with the Planning and Zoning Commission, not the individual staff member; the City is not at fault; and there is no remedy that the Board of Adjustment can grant.

N. DELIBERATIONS (*Deliberations may be held in public or adjudicative session*)

Board Chair Knackstedt advised that the Board had 30 days to provide a decision.

MOTION:

Board Member Askin **MOVED** to adjourn into adjudicative session for deliberations with the Board Attorney Present. Board Member Sounart **SECONDED** the motion.

UNANIMOUS CONSENT was requested.

VOTE: Motion **APPROVED**, without objection.

[Clerk's Note: The Board adjourned into Adjudicative Session at 6:43 p.m.]