



# City of Binghamton Planning Department

SUMMARY OF MINUTES CITY OF BINGHAMTON PLANNING COMMISSION	
<b>MEETING DATE:</b> November 7, 2023	<b>LOCATION:</b> City Council Chambers, City Hall
<b>CALLED TO ORDER:</b> 5:15PM	<b>RECORDER OF MINUTES:</b> Shalin Patel

ROLL CALL		
COMMISSIONERS PRESENT:	PRESENT:	ABSENT:
Nicholas Corcoran (chair)	X	
Joseph De Angelo		X
Christopher Dziedzic (vice chair)	X	
Mario DiFulvio	X	
Steve Seepersaud	X	
Kelly Weiss	X	
Emmanuel Priest	X	
STAFF MEMBERS PRESENT:	TITLE & DEPARTMENT:	
Tito Martinez	Assistant Director, Planning Department	
Shalin Patel	Planner, Planning Department	
Elisabeth Rossow	Corporation Counsel	

APPROVAL OF MINUTES
<b>No approval of minutes - October's minutes will be approved along with November's at December meeting.</b>

PUBLIC HEARINGS & FINAL DELIBERATIONS	
<b>ADDRESS:</b> 439 Court St	<b>CASE NUMBER:</b> PC-2023-0029
<b>DESCRIPTION FROM AGENDA:</b> Site Plan Review and special use permit for the establishment of a Cannabis Retail business in an existing commercial building in the C-1 Service Commercial District	
<b>APPLICANT:</b> AOW Construction	
<b>REPRESENTATIVE(S):</b> Al Burgazoli (AOW Construction)	
<b>DISCUSSION POINTS:</b>	
<ul style="list-style-type: none"> <li>▪ No new site plan changes from previous meeting in October</li> <li>▪ <b>Vice-chair (Dziedzic) asked</b> the applicant if they could explain how and why the Dormitory Authority of State of New York (DASNY) is involved in this project? (The applicant AOW construction is not actually working for a Cannabis Retailer).               <ul style="list-style-type: none"> <li>- <b>Representative (Burgazoli) replied</b>, this location was selected via DASNY's program for social economic cannabis program. DASNY works in conjunction with OCM and SCSC to locate projects and build them out and ultimately turn them over to licensees (could be from/outside the area).</li> <li>- These designs are already approved by DASNY (Burgazoli) – they have a 3<sup>rd</sup> party reviewer, everything in the design phase has to conform to OCM guidelines, who ultimately licenses the store, they come and do their own inspection. There are two licenses involved, licensing the store, and licensing the licensee who will operate the store.</li> </ul> </li> <li>▪ <b>Vice-chair (Dziedzic) asked</b>, is DASNY going to be a landlord or sell this to the licensee?               <ul style="list-style-type: none"> <li>- <b>Representative (Burgazoli) replied</b>, no, they are not even selling it, they are just managing the program. DASNY are an expert when it comes to construction in the State of New York. There is an equity fund that is backing the project financially.</li> </ul> </li> </ul>	

- The present property owner is still going to be the owner, even if the Cannabis Retail store is approved. The property is leased out by DASNY until construction is completed and then gets turned over to the licensee. (Burgazoli). Current property owner is 439 Court St LLC.
- **Commissioner (Weiss) asked** how is it determined who the new licensee will be? What is the security protocol for this building? Are there cameras in the exterior of the building?
  - **Representative (Burgazoli) replied**, that is determined by OCM and SCSC, who handle the licenses and determine who the licensee in the area will be.
  - **Representative (Burgazoli) replied**, there will be secured lobby check in – a security guard will be checking IDs, making sure customers are over 21 years of age. Then you will be prompted to enter the sales area, it will be an escorted access. (Burgazoli) points to where the POS counters will be for tendering sales on the site map. There are cameras everywhere, on the outside, in the back, on sides, all throughout the interior except for restrooms and lactation room. The location of the camera and angles will all be in the plans for submittal of the building permits.
- **Vice-chair (Dziedzic) asked staff (Martinez)** to address the light pollution question that was raised by the public comment. Furthermore, asked if a new landscaping can be requested, so there is no debris from stones being present at the side hurting the neighbor's property.
  - **Staff (Martinez) replied**, the lighting was shown on the site plan at the time, they cannot point lights at residential properties (can never be grandfathered in). There was an issue with that before, so the Zoning officer went out and got it corrected. If that were to happen again with the new tenant, there would be enforcement action taken again and make the lights be pointed away from the residential properties. The ruffraff on the east side of the property line is not a compliant landscape buffer and it is required around the perimeter. The commission could ask for the removal of the old stones and any material present and replaced with trees, shrubs, and whatever the commission deems necessary.
- **Vice-chair (Dziedzic) commented** about addressing the opposition from the City Council or the Mayor for this project (according to one of the public speakers).
  - **Staff (Martinez) commented**, there have been no communication received from neither the mayor nor the City Council for this project.
- **Commissioner (Weiss) asked** the representative if they could put up any fencing or a high enough barrier to mitigate the trouble the direct nearby neighbors at 5 Riverside St have faced in the past? Will the security guards be on exterior circling around the parking lot on a regular basis?
  - **Representative (Burgazoli) replied**, no idea as to putting up a wall or a different fence would be possible, there is a presence of a cedar fence back there already (it is on a slope), there is no intention of further buffering to the property. The security guards will be maintaining the order, inside the store or on the exterior property. There are certain guidelines within the OCM's licensing program that requires the licensee to maintain the property in an orderly fashion. The rules that would apply to something like a liquor store would apply to Cannabis establishment as well. You cannot just walk into a liquor store and open up a bottle and start consuming alcohol, you can go outside and do it, but at that point it is an open container policy, and it falls under the regulation of police force. It is not the responsibility of the licensee to maintain how everyone handles their legal consumption, outside of the store.
- **Staff (Martinez) reads the 239 Comments received from the County via DOT.** Nothing can be placed in the state right of way including signage, if any work is proposed in the right of way, the applicant will need a highway work permit from DOT. The applicant should provide details on proposed operations, an anticipated traffic generation for the drive-thru portion if they plan on having the drive-thru be active.
- **Commissioner (Seepersaud) commented**, since the distance to the nearest school has been brought up on several occasions, he should make a comment that he is the current school board President, so when it comes to voting, he will be a no. (Other members and staff commented, if he does not have a monetary gain from the present application by his decision on the vote, then he does not have to recuse himself). It is a different site in comparison to the Downtown location of Just Breathe, not analogous completely, but not something the nearby neighborhood kids should be introduced to.

- **Chair (Corcoran) asked** about the intended hours of operation. And because this building is close to a residential area, if the board were to ask to cut down the hours to something more reasonable, is that something the applicant is willing to do?
  - **Representative (Burgazoli) replied**, the hours will be 10am to 12am (Monday to Saturday), 10am – 8pm on Sundays, within the OCM guidelines of acceptable hours.
  - **Vice-chair (Dziedzic) asked the staff (Martinez) to compare approved hours for Downtown cannabis location at 75 Court St.**
  - **Staff (Martinez) commented**, for liquor licenses, establishments that are granted a license, they are entitled to stay until 3am on weekends and 1am on weekdays and the city cannot impose different hours of operation.
    - Looking at the guidance from OCM, it says municipalities are authorized to pass local laws and regulations governing the time, place, and manner, including the hours of operation for adult use retail dispensary. They shall not be allowed to operate from 2am to 8am unless given express written permission by the municipality. The municipality in question shall not restrict hours to less than 70 hours a week.
- **Chair (Corcoran) asked** about the garbage situation on site (referencing to the neighbors saying garbage was going over onto their property).
  - **Representative (Burgazoli) commented**, there will be refuse containers inside and outside, the dumpster and its enclosure are staying as is. There is very little waste with the new business, little packages, it is not similar to A&W restaurant with fast food waste (bags, disposable cups, paper products, etc.).
- **Potential hours of operation could be listed as following:**
  - **M-Th: 10am to 9pm**
  - **Fri-Sat: 10am to 10pm**
  - **Sunday: 10am to 6pm**
- **Commissioner (Weiss) asked** about the placement of signage on the property
  - **Representative (Burgazoli) replied**, the signage will be on the exterior of the building, attached directly to the façade of the building. There is also a single stand sign. There is no advertising, no logos, it will just be a name of the company, that is all. No mentions of marijuana or any pictures. Windows are frosted, so no one will be able to peak inside the building and will not be able to see any product or advertisement or anything from exterior of the building.

**Public meeting opened at 5:29 PM and closed at 5:50 PM**

**PUBLIC COMMENT:**

- **Peter Stewart (resident at 62 Fairview Ave) spoke in opposition of the project.** Mr. Stewart had following to say about the project: “I have 5 kids that go to school, live in the city, pay taxes. We already have 3 Cannabis stores in the area, one in Downtown Binghamton, one Johnson City, and one in Vestal. A drive thru Cannabis Store is not right for the east side of Binghamton. There will be traffic issues, also you can see the Calvin Coolidge Elementary School from the site of the project. It is understandable that this is a money/tax grab, but you (pointing towards the PC members) do not have to approve this project, just because the Dormitory of New York wants to make some money, you do not have to approve it. We should not be known as a city where you could drive up and buy weed, it is a residential area.”
- **Don and Marlene Hodgson (residents at 5 Riverside St) spoke in opposition of the project.** Mr. and Mrs. Hodgson had following to say about the project: the property in question is 50 ft from the residential boundary and approximately 1275ft from the elementary school (about 4 Football fields). Curious on whether there will be any smoking on site using the cannabis. Concerned with the control on supplies and possibility of lacing cannabis. Who is going to be the responsible person that is going to be running the place? They never cleared the snow in the past, usually we and the neighbors had to. Is the camera system going to be installed by a professional or will it be do it yourself? The landscaping (rocks used to cover the

dirt) is pushing into the fence in my backyard and completely destroying it. There was a problem with light pollution, our house looked like white house by illumination. Hours of operation is also a bit of concern. Marlene Hodgson added the following: problem with the old A&W at this location was drugs, when marijuana was not legal. The cops had to be called almost every other day. A&W was only open 4 days, but there were people dealing drugs on the premises. People get out on the street and throw stuff into her yard, smoke drugs out in the open (cites her husband having an open-heart surgery/asthma and her having COP), breathing that stuff is terrible to their health. Calvin Coolidge school is nearby, all the children walk up/down my street, Bigelow St, etc. None of the other marijuana stores are in residential districts with houses behind it, they are all in commercial districts. Cites the mayor and the councilmen not being in favor of the project (heard as a rumor only). Younger people will be acquiring marijuana via older people that can go in and purchase marijuana legally. Said they do not have a formal neighborhood watch on their street, but she acts as the neighborhood watch and has gotten people taken out of the street with drugs along with dealing with other issues.

- **Staff (Martinez) commented** in reply to one of the questions being asked regarding on site consumption being allowed. On site consumption requires a different license, while the applicant is applying for a retail license. If they wanted to provide on site consumption, they would have to comeback in front of the Planning Commission again.
- **Susan Papastrat (resident at 8 Bigelow St) spoke in opposition of the project.** Ms. Papastrat had following to say about the project: A cannabis retail store might be the worst thing that could happen to east side of Binghamton. Is it going to be a drive thru? So, you could get your kid a happy meal and drive thru to get cannabis for yourself. The school is nearby, Fairview Park is not far away where kids play, swim, there is softball/baseball, they constantly used to have tournaments at that park. People coming in from different cities, going down Court St to get food from Taco Bell, Burger King, McDonald's, and now parents can just drive over to a cannabis store. It is probably a money maker for NY, but let's find a different place to put it, but 439 Court St is not the place for it.
- **A letter in favor of the project was received from Manjot Dylan, one of the owners of the parcel at 439 Court St.** It reads as the following: this property has been vacant for more than 6 years and the last business operated there for a year or so could not bear the cost of doing business such as mortgage and property taxes. After the closure of A&W at the location, we were able to get a reduction on property taxes, which are currently at \$31,000. Have not been able to find a tenant for last 6 years that would move into the property with such a high cost of doing business. The current Cannabis retail business has to potential to bear the cost and rejuvenate this parcel of land. We have had about 3 break ins in the last 6 months with about \$7,000 in damages. An active tenant will deter these problems on the property. Without this tenant, I foresee this property just deteriorating for years to come. Have been living in Binghamton for more than 20 years and would like to see a future with flourishing businesses in Binghamton and surrounding areas.

**APPLICANT RESPONSE TO PUBLIC COMMENT:**

- **Representative (Burgazoli) commented,** answering questions relevant to the application, the location is more than 500 feet from an existing school (according to NY State Cannabis Law, Section 409 (2)). This location will not allow on site; however, you are legally allowed to smoke marijuana in NY State wherever you are allowed to smoke a cigarette. Snow removal will performed as how any business gets snow removed. Cameras with a 24/7 feed will be installed by a local professional company, Myers Security, out of Vestal, NY.
- **Burgazoli commented,** the project location is within the cannabis district that is outlined on the City of Binghamton website under cannabis regulation. It meets all of the regulations setup by the city, to limit who can go where would be a disservice to the landlord and the applicant. A lot of time and money has been spent in getting to present point in the project. The city had the opportunity to either opt in or opt out of the program and they chose to opt in and people are coming here to try be a part of what the city has opted into.

**VOTING**

**MOTION** to TABLE the project until December meeting.

**FIRST:** Dziedic

**SECOND:** Priest

**VOTE:** Carried (6-0-1)

<b>AYE(S):</b> Dziejdzic, Priest, Seepersaud, Weiss, DiFulvio, Corcoran	<b>NAY(S):</b>	<b>ABSTENTION(S):</b> De Angelo
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PUBLIC HEARINGS & FINAL DELIBERATIONS		
<b>ADDRESS:</b> 33-41 Whitney Ave	<b>CASE NUMBER:</b> PC-2023-0030	
<b>DESCRIPTION FROM AGENDA:</b> Site Plan Review for the construction of a 5,520ft <sup>2</sup> Social Services building in the C-1 Service Commercial District		
<b>APPLICANT:</b> Mothers & Babies		
<b>REPRESENTATIVE(S):</b> Mike Maciak (Owner of Robinson St Plaza)		
<b>DISCUSSION POINTS:</b>		
<ul style="list-style-type: none"> <li>▪ No changes were made to the site plan as originally presented at the October meeting</li> <li>▪ <b>Staff (Martinez) commented</b>, comments from Broome County 239 Review were received. The county found no significant impact(s), but they made a note that the city should consider the need for screening, buffering, or other mitigating from the surrounding industrial district. This is a preliminary FEMA flood hazard area; the applicant should be aware of the risks. <ul style="list-style-type: none"> <li>- <b>Representative (Maciak) commented</b>, we have never gotten flooded at the project address, neither in 2006 nor in 2011.</li> </ul> </li> </ul>		
<b>PUBLIC COMMENT:</b>		
<ul style="list-style-type: none"> <li>▪ No one spoke in opposition nor in favor of the project</li> <li>▪ No letters received.</li> </ul>		
VOTING		
<b>MOTION</b> to issue a negative declaration under SEQR		
<b>FIRST:</b> Corcoran	<b>SECOND:</b> Dziejdzic	<b>VOTE:</b> Carried (6-0-1)
<b>AYE(S):</b> Corcoran, Dziejdzic, Weiss, DiFulvio, Seepersaud, Priest	<b>NAY(S):</b>	<b>ABSTENTION(S):</b> De Angelo
<b>MOTION</b> that the requirements for the Site Plan Review have been met		
<b>FIRST:</b> Corcoran	<b>SECOND:</b> Seepersaud	<b>VOTE:</b> Carried (6-0-1)
<b>AYE(S):</b> Corcoran, Dziejdzic, Weiss, DiFulvio, Seepersaud, Priest	<b>NAY(S):</b>	<b>ABSTENTION(S):</b> De Angelo

PUBLIC HEARINGS & FINAL DELIBERATIONS		
<b>ADDRESS:</b> 43 Riverside Dr	<b>CASE NUMBER:</b> PC-2023-0027	
<b>DESCRIPTION FROM AGENDA:</b> Site Plan Review and Special Use Permit to allow a Home Bed and Breakfast in the R-1 Residential Single-Unit Dwelling District.		
<b>APPLICANT:</b> Jeanne Van Buren		
<b>REPRESENTATIVE(S):</b> Jeanne Van Buren		
<b>DISCUSSION POINTS:</b>		
<ul style="list-style-type: none"> <li>▪ Site plan was slightly altered to remove the bedroom in the attic (equaling 3 total bedrooms) and the guest rooms were properly labeled into “guest room 1 and 2” respectively, with 3<sup>rd</sup> bedroom being occupied by the homeowner (Van Buren).</li> <li>▪ <b>Commissioner (Priest) asked</b>, if the applicant plans to only confirm one booking at a time and no more <ul style="list-style-type: none"> <li>- <b>Applicant (Van Buren) replied</b>, would only like to book one booking (utilize one bedroom), but there is a family of 3 who would like to come stay for their son’s graduation, so most of the it would just be utilizing one bedroom, but since 2 bedrooms are allowed, it could be utilized at times.</li> </ul> </li> <li>▪ <b>Chair (Corcoran) commented</b>, this approval for Bed and Breakfast would be grandfathered in, so if the property was ever sold, the new owner(s) would be allowed to exercise whatever is approved with this application.</li> </ul>		
<b>PUBLIC COMMENT:</b>		
<ul style="list-style-type: none"> <li>▪ No one spoke in favor nor in opposition at the meeting</li> </ul>		

- **1 letter was received in opposition to the project** – “many neighbors and I have been concerned about parking on Murray and Vincent St. There are several student housing properties located in the vicinity to the project at 43 Riverside Dr. Complicating matters further, there are 5 cars parked in front of 29 Murray St, there are 2 dental offices on Riverside Dr, across from each other where the staff park on Murray St, plus a temple on corner of Murray St and Riverside Dr. 43 Riverside has a very small 1 car parking on Murray St, there is no additional parking for Bed and Breakfast guests. Further complications are crossing Riverside Dr at this intersection. Homeowner asking for this variance, allegedly, does not clear snow in front of their home.
- **1 letter was received in favor of the project** – Homeowner, long time resident at 47 Riverside Dr, is in favor of the project for bed & breakfast at 43 Riverside Dr, 2 doors east of their home. Stated they do have a concern about parking, they hope the plan includes parking for bed & breakfast renters available only on Murray St around the corner. Because parking and traffic on Riverside Dr can be inconvenient at times. 43 Riverside Dr is on the corner of Murray St and Riverside Dr, and the driveway is on Murray St. They hope that the applicant’s bed & breakfast is successful, it is a good idea.

**APPLICANT RESPONSE TO PUBLIC COMMENT:**

- **Most people that will be living at my house will be coming via Plane and will not have their own vehicle most of the time.**
- **Commissioner (Seepersaud) asked** the applicant about having couples stay at her bed & breakfast. Furthermore asked, if this would be considered as discriminatory towards couples who would want to stay at that bed & breakfast.
  - **Applicant (Van Buren) replied**, would rather not have couples, only individuals, but on occasion will accommodate couples.
- **Commissioner (Priest) asked**, for approval and grandfathered in purposes, would the final approval say, only 1 booking per one room at a time or?
  - **Chair (Corcoran) replied**, we cannot say it was only an application for one bedroom. You cannot approve it with two bedrooms listed.
  - **Commissioner (Priest) replied**, so we would just say no more than 2 bedrooms are allowed for bed & breakfast usage.
- **Commissioner (Priest) asked**, could we require the parking variance just be on Murray St? (Asking renters of the bed & breakfast to exclusively park on Murray St).
  - **Staff (Martinez) commented**, what the Planning Commission would be doing in voting on the parking requirements is to either waive it or not, they do not have the authority to limit someone from parking one specific street (Murray St over Riverside Dr for ex), because it is a public street.
- **Commissioner (Weiss) commented**, the applicant could word the listing stating the renters should park on Murray St, instead of Riverside Dr.

**VOTING**

**MOTION** that the requirements for Site Plan Review and Special Use Permit have been met and therefore the application has been met and conditionally approved, subject to the following: Maximum of 2 bedrooms, guest rooms 1 and 2 as shown on the updated Floor Plan dated October 20<sup>th</sup>, 2023, be eligible for renting.

<b>FIRST:</b> Corcoran	<b>SECOND:</b> Weiss	<b>VOTE:</b> Carried (6-0-1)
<b>AYE(S):</b> Corcoran, Weiss, Seepersaud, Priest, Dziedzic, DiFulvio	<b>NAY(S):</b>	<b>ABSTENTION(S):</b> De Angelo

**MOTION** to wave the parking requirement for the project

<b>FIRST:</b> Corcoran	<b>SECOND:</b> Seepersaud	<b>VOTE:</b> Carried (5-1-1)
<b>AYE(S):</b> Corcoran, Weiss, Seepersaud, Priest, DiFulvio	<b>NAY(S):</b> Dziedzic	<b>ABSTENTION(S):</b> De Angelo

**ADJOURNMENT**

<b>MOTION</b> to adjourn	<b>TIME:</b>
<b>FIRST:</b> Priest	<b>SECOND:</b> Dziedzic
<b>VOTE:</b> Carried (6-0-1)	

**AYE(S):** Corcoran, Weiss,  
Seepersaud, Priest, Dzedzic, DiFulvio

**NAY(S):**

**ABSTENTION(S):** De Angelo