

CITY OF LIGHTHOUSE POINT
PLANNING & ZONING BOARD
MINUTES OF THE REGULAR MEETING
May 2, 2017

Call to Order:

Dennis Smith called the meeting of the Planning and Zoning Board of the City of Lighthouse Point, Florida to order at 7:30 P.M.

ROLL CALL

Present:

Susan Motley
Michael Cohen
Sal Migliore
Frederick MacLean, Jr.
Dennis Smith
David Tolces, Assistant City Attorney
John Lavisky, City Administrator
Sherry Burgan, Building and Permit Specialist

Absent:

Peter McDonough

MINUTES: Approval of the minutes of the April 4, 2017 meeting were unanimously approved.

Case #17-03, Apples Not Bombs LLC, 3110 North Federal Highway, appeal of a zoning determination.

John Lavisky, City Administrator, spoke. He explained the history of the project. He stated that this is an appeal of the zoning determination made by Mariluz Maldonado. Although she is no longer employed with the City, he was aware of the decision that was made at the time. He further stated that on September 6, 2016, Mr. Jeffrey Bowman, Apples Not Bombs LLC, submitted a zoning verification request letter for a property at 3136 North Federal Highway, space consisting of 1,100 square feet and is located in the B3-A zoning district. He stated that the applicant was interested in opening a business and wanted to verify whether it was a permitted use in the City. He further stated that the applicant's request for the verification stated that "the intended use of this space will be to sell hot and cold non-alcoholic beverages, including but not limited to coffee, tea, and prepacked soft drinks and retail convenience dry goods". In a September 14, 2016 letter, Ms. Maldonado stated that the proposed use as described in the letter "would be permitted". Subsequently in March 2017, the applicant's contractor applied for a permit for a coffee bar. The application was accepted for permitting. During the review of the application process, the Zoning Official noticed that the Broward County Environmental Review Approval Certificate and the drawing said "Kava Bar". The permit application just said coffee bar. She was unaware of what a Kava Bar was and so she did some research. She researched on the internet and found that Kava is a mud tasting root that comes from the Pacific Islands. The information reviewed reflected that several studies have found that Kava extract is comparable to antidepressants similar to Xanax and Valium and is given for improving social and general

anxiety disorders. It was also read that it has a calming effect producing brain waves changes that are similar to the changes that occur in calming medicines such as Valium. In January 2015, the City Commission passed ordinance 2014-0919 which modified City Code section 54-13 to prohibit the sale of designer drugs with the intent to protect the health, safety and welfare of the City's residents and the general public. The definition of a designer drug shall mean any non-controlled substance be it a synthetic or natural compound, mixture or derivative of any synthetic or natural substance which if inhaled, ingested, or introduced into the human body in any manner via any system of delivery, physically imitates the effects of any controlled substance or by express or implied representations, is purported to act like or imitate a controlled substance as a stimulant, depressant or hallucinogenic or whose sale or display is indicative of a controlled substance, and which is not confirmed as falling within the statutory definition of "controlled substance analog" as described in the Florida State Statutes. When Ms. Maldonado issued the zoning letter, she was unaware that it was a Kava Bar. After review, the permit application was denied and the reason for denial is because City Code section 54-13 prohibits the sale of a natural substance that is purported to imitate the effects of a controlled substance. The least controlled substance treats anxiety and has a calming effect, which is what Kava does and is similar to Xanax. When asked about coffee, Mr. Lavisky stated that he had not reviewed any information about coffee.

Spencer Siegel, 1600 South Dixie Highway, Boca Raton, attorney for the applicant, testified. He stated that Mr. Bowman did request to open a shop selling hot and cold non-alcoholic beverages, coffee, tea, and prepackaged dry goods. He reviewed his power point presentation. He explained the applicant's current location "The Nak" is located in Boca Raton. He reviewed their business practices and goods located on the premises. He stated that the products in the business are from New Guinea and other Polynesian Islands and are sold in many forms, such as powder, capsules, bags, jelly's, etc. Kava is a social drink that is drank by all economic backgrounds. The plans for the Lighthouse Point location would be the same as the Boca Raton location. The applicant flies to Papa New Guinea, to retrieve the product. The Kava is harvested from the island and shipped to the U.S.

Dr. Steven Dentali, 806 North Hill Avenue, Rondo Beach, CA, testified. He reviewed his credentials. He reviewed his power point presentation. He stated that when Kava is chewed it provides a numbing sensation. He stated that it is interwoven with the culture. There are approximately 120-150 types of Kava plants and come in a variety of color and shapes. He further stated that the root is mixed with water and produces a milk product. It is unknown how the Kava herbs work. He stated that the Safety Review for the New York Research Foundation, written 20 years ago, stated when used in normal doses Kava has safe and effective anti-anxiety muscle relaxing actions without depressing centers of higher thought.

Ginger Wald, Billing, Cochran, Lyles, Mauro & Ramsey, 514 East Las Olas Blvd, Floor 6, Ft. Lauderdale, testified. She asked Dr. Dentali some questions. She confirmed that Dr. Dentali worked for the American Herbal Products Association. The American Herbal Association distributes information about herbal products, and some were related to Kava, and one from the FDA informing consumers about the effects of Kava. Dr. Dentali stated that FDA was concerned because there were cases that were attributed to Kava that resulted in regulations about using it. There were also issues about insurance and items involving Kava. He stated that before using

Kava, consumers need to consult with a health care professional if they have had any liver problems or alcohol use, or are using any medication, and not to be used for anyone under 18 years of age, pregnant, or any female that is breast feeding, alcohol use, etc. Ms. Wald then asked if he was present when Mr. Siegel displayed what types of Kava products would be used. It was explained that Kava can be in root form, powder form, tea bags, paste, etc. It was questioned where the requirements, testing, necessary items to make sure that Kava is actually safe for human consumption. Dr. Dentali stated knowledge of the materials you deal with, not buying from third parties. When asked what products are mixed in to make the tea, Dr. Dentali stated just water. When asked about Kratom, Dr. Dentali stated that he knows a little bit about them and that they are sold in Kava Bars. Dr. Dentali stated the effects of Kava are not the same effects as a controlled substance; it's a cultural experience.

When asked what a normal dose is and what are excess doses, Dr. Dentali stated that normal doses is a shell, or 4 ounces of liquid, but excess is not known. He stated that impairment, where you should not go driving, is made during consumption. Some owners can make a more concentrated dose so the consumer can feel the effect of the product.

When asked about what percentage of the business is Kava, Mr. Siegel stated quite a lot. When asked when the original verification letter was submitted why Kava was not mentioned, Mr. Siegel stated that because the lack of education about Kava has been an issue in other cities.

Diane Lysogorski, 127 Sea Island Terrace, Boca Raton, testified. She stated that a shot is equivalent to a shell, but more concentrated. She stated that it is Kava and water. They are not selling capsules, no acetone extract, or no alcohol extract. There is not an age level to Kava itself, but we ask if they look young to bring back their parents.

When asked what the effects are, Ms. Lysogorski stated that people become very talkative and mellow. Kava helps you relax and be social. When asked if there have there been any instances where someone has to be cut off because someone had too much and are impaired, she stated that it is important to drink responsibly and if someone is impaired, the business owner will get them home safely. She also stated that if someone was impaired, their actions are they become very still and mellow.

Mr. Siegel stated that there are no regulations. He also stated that the applicant has another location in Boca Raton, in a strip center. When asked if staff can consume with customers, Ms. Lysogorski stated that the employees can consume Kava with the customers. When asked if an age restriction on who could be served could be implemented, Jeffrey Bowman, 127 Sea Island Terrace, Boca Raton, stated "no". He stated that he supplies Kava to many of the Kava Bars in South Florida.

When asked if there are any reactions with alcohol or other medications, Dr. Dentali stated that there are not known. When asked about what the restrictions are in Europe, Dr. Dentali stated that it is legal in Germany, but it can also be sold as a drug for anti-anxiety.

Police Chief Ross Licata, City of Lighthouse Point, testified. He explained that he spoke with Drug Enforcement Administration Agents in Washington and the Miami Field Office, Broward

County Drug Task Force, Boca Raton Police Department, National Institute of Drug Abuse, Center for Disease Control, performed internet searches for Kava and Kratom which is a substance sold in many Kava Bars including the one in Boca Raton, inquired with six (6) Kava Bars and lounges, and had a detective visit the Boca Raton location. The information found caused him some great concerns. Some of the products act like or imitate controlled substances, which would prohibit the sale in Lighthouse Point as per City Code section 54-13. He reviewed the Drug Enforcement Administration information on Kava. He explained the effects of using Kava as mild euphoria, muscle relaxation, sedation, and analgesia, which could be shown to imitate a controlled substance. The DEA has concerns of liver toxicity, and Australia, Canada, France, Germany, Malaysia, Singapore, Switzerland, and United Kingdom have placed regulatory controls on Kava. These controls range from warning consumers of the dangers of taking Kava to removing Kava products from the marketplace. He further stated that the greater concern is Kratom, which is sold in Kava Bars. Kratom is traditionally used as a stimulant in Asian countries to overcome the burdens of hard work, also used as a substitute for opium when opium is not available or to manage opioid withdrawal symptoms. In low doses, it produces stimulant effects, with users reporting increased alertness, physical energy, talkativeness, and sociable behavior. In high doses, opiate effects are produced, in addition to sedative and euphoric effects. Kratom effects can lead to addiction. Due to the inconsistency, identity, purity, quality of the substance is uncertain they pose significant adverse health issues to the user. Kratom has been placed on the DEA's Drugs of Concern list. The DEA announced its intent to place the active materials in the Kratom plant into the Schedule 1 of the Controlled Substance Act; however they have delayed the process to perform further testing. As of May 2017, Kratom has been banned in many states. Kratom use is increasing in the United States and that symptoms include agitation, irritability, drowsiness, nausea, and hypertension. He further stated that the applicant presented "The Nak" as a tea house and coffee shop that made cold water tea from the root with water and served in a coconut shell. The City sent an undercover officer to the location to review their business practices. When the officer visited the Boca Raton location, the server provided liquid Kratom, which was not located on the menu, and was produced after the officer asked if they had any other products and it was described as a stronger option. The bottle states that it is not for sale to minors. A photo of the bottle was given. He stated that he has spoken with six (6) Kava Bar locations, which openly sell Kratom and it is listed on their menus.

Mr. Siegel asked Chief Licata if there have been any instances reported with the Boca Police Department. Chief Licata stated that there have been 13 instances reported with Boca Raton Police, but is waiting for those departments to fulfill the records request before any information could be given. He also stated that the Code Enforcement Office is also starting a review of the business and the situations that have occurred. Chief Licata stated that the other Kava locations had Kratom displayed on signs and the menus, but it was not located on any signs or menu at the Boca Raton location.

Public Hearing was opened.

Ashley Lavvid, 2251 NE 4th Way, Boca Raton, spoke. She stated she has been drinking Kava for 15 years, starting at 17 years of age. She stated that it is a social location and would act like your Uber service if they see that you are impaired.

Merrium Pierson Martinez, 725 Periwinkle Street, Boca Raton, spoke. She stated the business is a relaxing environment.

Dr. Ian Shtulman, 8590 Windfall Dr, Boynton Beach, spoke. He stated that the effect of Kava tea is the same as Camille tea.

Christine Tesorieru, 192 SE 1 Circle, Boynton Beach, spoke. She stated that she is a health nut and is a regular customer.

John D Hunt, 1405 W Duval Street, Lantana, spoke. He stated that he has been going to Kava Bars for 15 years and would be a different entertainment for the residents.

Eric Ell, 6342 Longboat Lane #402 C, Boca Raton, spoke. He stated that he is a pilot and would not put his license in jeopardy. People leave a Kava Bar with a smile on their faces.

Joseph Savano, 301 Olive Place #129, Boca Raton, spoke. He stated that there is less drama than a bar serving alcohol.

Michael Holsman, 8176 Scenic Turn, Boca Raton, spoke. He stated that he has not had any adverse effects from drinking the Kava tea.

Robert J Coa, 6699 NW 2nd Avenue PH-O, Boca Raton, spoke. He stated that everyone is quick to open an alcohol bar.

Garrett Judiciano, 8582 Barry Lane, Boca Raton, spoke. He stated that he is a firefighter /paramedic and when he was a lifeguard taught children to swim. He has drunk Kava for years and does not understand why it is considered a bad thing.

The public hearing was closed.

There was discussion about Kratom being voluntarily not sold at the business. The applicant's representative stated they would stay within the limits of the law.

Ms. Wald clarified that the zoning letter should reflect the correct date of 2016, not 2014, and that the response letter was not intended to be a substitute for zoning codes, ordinances, and processes. The Ordinance was amended for a broader definition to protect residents and consumers that are in the City. It was a concern of City staff that these types of substances can be harmful to the health and well-being of consumers. She said that the witnesses stated that it is relaxing, it is sedation, it is to make them calm, and make them feel better, which are the same effects as a Schedule 4 drug.

There was concern between the Board members about the possibilities of impairment and the inconsistencies between the materials given and witnesses' statements, that other products were given that were not on the menu, lack of cooperation with the applicant about having an age limit, and there being a lack of regulations.

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A motion to deny the appeal was made by Michael Cohen, seconded by Susan Motley. Passed unanimously.

Discussion item about artificial turf.

A motion to continue the item to the next meeting was made by Susan Motley, seconded by Michael Cohen. Passed unanimously.

Case #17-04, AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF LIGHTHOUSE POINT, FLORIDA, AMENDING CHAPTER 42, "LAND DEVELOPMENT CODE", ARTICLE IV, "ZONING", DIVISION 4, "DISTRICT REGULATIONS", SECTION 42-341, "RS-3 SINGLE FAMILY RESIDENTIAL DISTRICT", SECTION 42-342, "RS-5 SINGLE FAMILY RESIDENTIAL DISTRICT", SECTION 42-343, "RD-10 TWO FAMILY RESIDENCE DISTRICT", SECTION 42-344, "RM-16, FOUR-FAMILY RESIDENTIAL DISTRICT", AND SECTION 42-345, "RM-25, APARTMENT DISTRICTS", OF THE CITY OF LIGHTHOUSE POINT CODE OF ORDINANCES TO PROVIDE FOR ADJUSTMENT OF THE MAXIMUM HEIGHT OF A STRUCTURE FOR BUILDINGS LOCATED IN THE RS-3, RS-5, RD-10, RM-16, AND RM-25 ZONING DISTRICTS TO ACCOMMODATE FEMA REQUIREMENTS; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

A motion to continue the application until the next meeting was made by Susan Motley, seconded by Sal Migliore. Passed unanimously.

Public Requests from the Floor

No report.

City Planner's Report

No report.

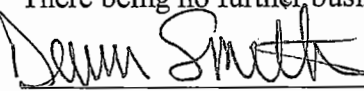
City Attorney's Report

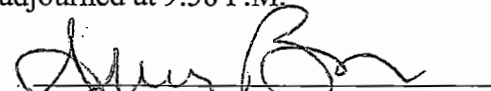
David Tolces had no report.

Board Member Comments

No comments.

There being no further business, the meeting was adjourned at 9:58 P.M.


Dennis Smith
Chairman


Sherry Burgan
Clerk for the Board