STATE OF MICHIGAN

COURT OF APPEALS

GREEN ACRES COLLECTIVE, LLC,

Appellant,

v

CITY OF DETROIT,

Appellee.

UNPUBLISHED
July 27, 2023

No. 359515
Wayne Circuit Court
LC No. 21-000411-AA

Before: GLEICHER, C.J., and JANSEN and HOOD, JJ.

PER CURIAM.

Appellant appeals by leave granted[1] the circuit court order affirming a decision of the Board of Zoning Appeals (BZA). The BZA affirmed the determination of the City of Detroit Buildings, Safety Engineering, and Environmental Department (BSEED) that appellant is located in a drug-free zone, as defined in Detroit Ordinances, § 50-16-172, and thus cannot operate a Medical Marijuana Grower Facility (MMGF). On appeal, appellant argues that the circuit court erred by affirming the BZA's decision because the BZA did not comply with the law and its decision is not supported by competent, material, and substantial evidence. We affirm.

I. BACKGROUND

This case arises from the BSEED's determination that appellant's property, located at 10371 Northlawn in Detroit, is in a drug-free zone. Appellant sought to operate a MMGF at its property and the BSEED determined it could not because the property was located within 1,000 radial feet of the Generators Club of Detroit, located at 4244-4268 Oakman Boulevard, which is a "youth center/school." Appellant appealed the BSEED's determination to the BZA, which affirmed. Appellant then appealed the BZA's decision to the circuit court, which remanded to the BZA for further proceedings and dismissed the appeal. After additional hearings, the BZA again

[1] *Green Acres Collective, LLC v City of Detroit*, unpublished order of the Court of Appeals, entered March 15, 2022 (Docket No. 359515).

upheld the BSEED's determination. Appellant again appealed to the circuit court, which affirmed the BZA's determination.

II. DISCUSSION

Appellant contends that the circuit court erred by affirming the BZA's determination because the BZA did not comply with the law, acted outside the scope of its authority, and failed to make adequate findings or provide reasoning to support its decision. We disagree.

A. STANDARDS OF REVIEW

"This Court reviews a circuit court's appellate review of a decision of a board of zoning appeals de novo to determine whether the circuit court applied the correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [BZA's] factual findings." *Alosachi v Detroit*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 356583); slip op at 2 (quotation marks and citations omitted; alteration in original). This Court gives "great deference to the trial court and zoning board's findings." *Id*. at ___; slip op at 2 (quotation marks and citation omitted). The circuit court, in turn, reviews the decision of the BZA to determine whether it "(a) complied with the Constitution and laws of this state, (b) was based on proper procedure, (c) was supported by competent, material, and substantial evidence, and (d) represented the [BZA]'s reasonable exercise of discretion." *Id*. at ___; slip op at 2 (quotation marks and citation omitted); see also MCL 125.3606(1)(a)-(d). "Substantial evidence is any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence." *Barak v Drain Comm'r for Co of Oakland*, 246 Mich App 591, 597; 633 NW2d 489 (2001). This Court also reviews de novo the proper interpretation of ordinances. *Alosachi*, ___ Mich App at ___; slip op at 2.

B. RELEVANT ORDINANCE PROVISIONS

Detroit Ordinances, § 50-3-535(c) provides that "[a] marijuana grower facility, marijuana processor facility, or marijuana secure transporter facility must not be located in a drug-free zone, as defined in Section 50-16-172 of this Code, or within a Traditional Main Street Overlay Area, as provided in Article XI, Division 14, of this chapter."[2] Under the ordinance, "drug-free zone" is defined as follows:

> An area that is within 1,000 radial feet of a zoning lot of:
>
> • A child care center, as defined in Section 50-16-152 of this Code;
>
> • An educational institution, as defined in Section 50-16-191 of this Code;

[2] The Detroit Ordinances have been amended since the BSEED's determination in this case in 2018, but the relevant language has not changed.

• A library, as defined in Section 50-16-283 of this Code;

• An outdoor recreation facility, as defined in Section 50-16-324 of this Code, other than parkways and parklots;

• A school, as defined in Section 50-16-381 of this Code;

• A youth activity center, as defined in Section 50-16-462 of this Code; or

• Public housing, as defined in 42 USC 1437a(b)(1). [Detroit Ordinances, § 50-16-172.]

A "school" is defined as:

Public or private schools at the primary, elementary, middle, junior high, or high school level that provide state-mandated basic education. Examples include public and private daytime (elementary, junior high and senior high) schools, and military academies.

Charter schools are public schools. Preschools are classified as day care uses, provided, that a preschool "Head Start" program shall be considered as an accessory use where located on the premises of an operating school. (See also Section 50-12-512 of this Code.) Business and trade schools are classified as retail sales and service. Boarding schools are classified as institutional living uses. [Detroit Ordinances, § 50-16-381.]

A youth activity center is defined as follows:

A type of nonprofit neighborhood center whose primary purpose is to provide education, recreational, cultural, and/or leisure activities for minors, but excludes:

(1) an arcade, as defined In Section 50-16-113 of this Code;

(2) a health club;

(3) a medical facility;

(4) a public dance hall, as defined In Section 50-16-171 of this Code;

(5) a rehabilitation facility;

(6) a rental hall, as defined In Section 50-16-362 of this Code;

(7) a residential facility;

(8) a restaurant, as defined in Section 50-16-362 of this Code; and

(9) a school. [Detroit Ordinances, § 50-16-462.]

C. SCHOOL

Appellant first argues that the BSEED consistently maintained that the Generators Club was a school despite the lack of any evidence that the Generators Club provided "state-mandated basic education," no records that it was a school, and the testimony of Gerald Johnson, the president of the Generators Club, that the Generators Club was not a school. Appellant, however, acknowledges that the BZA ultimately did not find that the BZA was a school or educational institution. Appellee did not make an argument regarding the Generators Club being a school in the circuit court and the circuit court did not find that it was a school. Thus, the BSEED's determination that the Generators Club was a school was not upheld.

Appellee, however, argues on appeal that the Generators Club was a drug-free zone on the basis of its legal land use designation as a school and it does not matter that the Generators Club was not operating as a school. Appellee initially raised this argument in the BZA and in its brief on appeal in the circuit court, but appellee then appeared to abandon this argument during the hearing in the circuit court when its attorney stated: "So we do agree that it has, we're not challenging it is an actual school. I'm not going to even go into what the argument is about the school." Appellee's attorney also admitted during the second BZA hearing that, under the ordinance, in order for a variance to be required, the facility has to be currently operating a certain way. Nonetheless, this argument is without merit.

A drug-free zone is defined as "an area within 1,000 radial feet of a zoning lot of" a school. Detroit Ordinances, § 50-16-172. Appellee argues that the use of the term "zoning lot" means that it is necessary to consider how the area is zoned, rather than how it is operating. "Zoning lot" is defined, in relevant part, as "[a] single tract of land located within a single block that at the time of filing for a building permit is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single or unified ownership or control." Detroit Ordinances, § 50-16-284. Thus, "zoning lot" merely refers to the tract of land. For the zoning lot to be a school, however, it must "provide state-mandated basic education." Detroit Ordinances, § 50-16-381. Accordingly, we disagree that a drug-free zone is determined by looking at how the property is zoned or its legal use. Rather, it is necessary to consider how it is operating. The BZA correctly refused to uphold the BSEED's determination that the Generators Club was a school, despite its legal land use designation, and the circuit court did not err.

D. YOUTH ACTIVITY CENTER

Next, appellant argues that the BZA's determination that the Generators Club is a youth activity center was outside the scope of its review, not supported by the evidence, and not supported by sufficient findings and reasoning. These arguments are without merit.

First, appellant argues that the BZA acted as the trier of fact when it sua sponte determined that the Generators Club was a "youth center." Although Jayda Philson, a representative of the BSEED, stated that the legal use of the Generators Club was a "school/church," the BSEED letter sent to appellant said that the Generators Club was a "youth center/school." The parties consistently focused on whether the Generators Club was a school or youth center throughout the proceedings. Thus, the BZA did not make a sua sponte determination. Nor was this determination outside the scope of its review.

Appellant, however, also argues that the Generators Club could not be a youth center because the BSEED said it was a "youth center/school" and the definition of "youth activity center" excludes schools. According to appellant, the Generators Club's secondary use was as a youth activity center. Philson, however, testified that a property could be both a youth center and a school. Moreover, even if the property could not be both, there is nothing to suggest that "youth center" was a secondary use. The BSEED's letter said "youth center/school." The use of the forward slash can mean "or" or "and or." *Merriam-Webster's Collegiate Dictionary* (2003) (defining "slash"). As discussed, the evidence established that the Generators Club was not a school and, thus, the proper focus was on whether it was a youth center.

Similarly, appellant argues that the Generators Club was required to seek approval to operate as a youth activity center, which it did not do. At the December 22, 2020 hearing, Philson noted that a youth activity center would constitute a drug-free zone, but because the BSEED's records said that the Generators Club was a church or school, the legal use would need to be changed to youth activity center. As discussed, the BSEED's letter said that the Generators Club was a "youth center/school." Thus, it is not clear that a change in the legal use is required. Nonetheless, the ordinance does not refer to the legal land use designation in determining the existence of a drug-free zone.

Next, appellant argues that the BZA's determination that the Generators Club was a "youth activity center" was not supported by the evidence because the evidence established that youth activities were not the primary purpose of the Generators Club. Under the definition of "youth activity center," it is necessary to consider whether the Generators Club's "primary purpose is to provide education, recreational, cultural, and/or leisure activities for minors[.]" Detroit Ordinances, § 50-16-462. The term "primary" is not defined in the ordinance, but the parties agree that the dictionary definition of primary is "of first rank, importance, or value." See also *Merriam-Webster's Collegiate Dictionary* (2003) (defining "primary," in relevant part, as "something that stands first in rank, importance, or value").

At the BZA hearings, Johnson initially testified that the Generators Club was a community or recreation center for adults and children and that the Generators Club "take[s] care of everybody from youth to the senior citizens in the community." Upon further questioning, however, Johnson testified that its primary use was "to give youth activities in the community." Johnson testified that the Generators Club leases approximately 45% of the building to a nonprofit religious and scientific research organization, the Institute of Divine Metaphysical Research; 30 to 40% of the building was used for youth activities; and 10 to 15% was used for the office. There was also testimony regarding the specific activities for youth, including summer reading programs, art classes, financial and sex education for teens, backpack giveaways, and a father-son basketball game. Although the Generators Club also provided activities for adults and even expended more funds on such activities, many of those activities also involved children. Appellant presented a list of the Generators Club's activities from Facebook, which appeared to show a majority of activities for adults and only one focused on children. However, there was no indication that this was all, or even a majority, of the Generators Club's events. Given the testimony, there was substantial evidence in the record that the Generators Club's primary purpose was to provide activities for minors and, thus, that it constituted a youth activity center under the ordinance. We must give deference to the decisions of the BZA and circuit court.

Appellant relies on a decision reached in a different Wayne Circuit Court case, where the court found that the Generators Club is not a youth activity center and that its primary purpose was generating income from its lease.[3] There was similar evidence in this case that most of the Generators Club's revenue comes from the lease. The ordinance, however, requires consideration of the Generators Club's primary purpose, not its primary source of revenue. In this case, the evidence established that its primary purpose was providing activities for youth, not generating income from leasing a portion of its building.[4]

Appellee argues that the other Wayne Circuit Court decision is inapplicable and distinguishable because different evidence was presented in this case. Appellant maintains that the only additional evidence was that 5 to 20 youth events are held each year. In this case, Johnson and Deborah Hanna, the treasurer, testified that the Generators Club holds youth activities at the building 10 to 15 times a year. However, there were also activities held outside the building, at other locations. This evidence, along with the other testimony, was substantial evidence that the Generators Club's primary purpose was to provide recreational activities for minors.

Finally, appellant argues that the BZA's findings were not sufficient and it failed to provide any reasoning for its decision. Appellant relies on *Reenders v Parker*, 217 Mich App 373, 378-379; 551 NW2d 474 (1996), in which this Court stated:

> Meaningful judicial review of whether there was competent, material, and substantial evidence on the record to support a zoning board decision requires a knowledge of the facts justifying the board's . . . conclusion. Accordingly, the board of zoning appeals must state the grounds upon which it justifies the granting of a variance. It is insufficient for the zoning board to merely repeat the conclusionary language of the zoning ordinance without specifying the factual findings underlying the determination that the requirements of the ordinance were satisfied in the case at hand. [Quotation marks and citations omitted.]

At the close of the December 22, 2020 hearing, a BZA member moved for the BZA to make a determination that

> the Generators Club is a entity that is involved in youth group activities in a building which it owns, and that as a result of that, that the definitions which have been applied show that it is a Drug Free Zone, and that determination should be utilized to have us make any decision with respect to anyone who wishes to open up a

[3] *Carter v Detroit*, unpublished opinion of the Wayne Circuit Court, issued November 27, 2019 (No. 19-006726-AA).

[4] The Generators Club also does not meet the definition of "rental hall," which is excluded from the definition of "youth activity center." Detroit Ordinances, § 50-16-362 ("Any enclosed hall, building, or portion of any building regularly available for rental, lease or loan for the purpose of public assembly, banquets, luncheons, entertainment or sports events, whether such assemblies are public or private or subject to an admission fee. The term 'rental hall' does not include 'public dance hall.' ")

> business which would not be appropriate in a Drug Free Zone, and that under those circumstances, that the application or the request for the—the licenses for any other people within that thousand feet that are not allowed in a Drug Free Zone should be applied.

This motion, which was seconded and voted in favor of by the BZA, shows that the BZA made the factual determination that the Generators Club is a youth activity center. Although the motion did not use the term "primary," the comments of the BZA members indicate that it understood the definition of "youth activity center" and it can be inferred that it found that providing youth group activities was the Generators Club's primary purpose. This finding justified its decision to affirm the BSEED's determination. Unlike in *Reenders*, 217 Mich App at 381, the BZA's decision is not devoid of factual or logical support. The BZA did not merely repeat language of the ordinance without specifying findings underlying its determination. The record is sufficient to determine that its decision is supported by competent, material, and substantial evidence, and appellant was not denied due process.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kathleen Jansen
/s/ Noah P. Hood