

MINUTES
REGULAR MEETING OF THE BUTLER PLANNING BOARD
JUNE 15, 2023

Chairman Nargiso brought the regular meeting of the Butler Planning Board to order for June 15, 2023. The Chairman stated this meeting is being held in conformance with the Sunshine Law Requirements having been duly advertised and posted at Borough Hall.

ROLL CALL:

Present: Donza, Veneziano, Brown, Vath, Hough, Reger, Nargiso

Absent: Roche (excused), Fox (excused), Finelli, (excused), Martinez (excused)

Also present: Richard Briigliodoro, Covering Board Attorney; Tom Donohue, Covering Board Engineer; Tom Behrens, Board Planner; Gary Dean, Covering Traffic Engineer

CORRESPONDENCE: None

CASES TO BE HEARD:

SP22-85

HillviewMed, Inc.

Conditional Use for Cannabis

1481 Route 23

Carried from the May 18 meeting

Block: 54 Lot: 1.03

Gary Dean of Dolan/Dean of Somerville as the Board's Traffic Engineer.

Motion to accept. Brown Second: Venezia All in favor.

Mr. Dean referenced his June 9 letter to the Board in response to the Applicant's report. He determined that 16-17 parking spaces are required.

Applicant's Chief Strategy Officer Susanna Short testified:

Hours of operation will be 10 am till 9pm Monday thru Saturday, Closed Sunday

There will be a minimum of two employees up to 5. One employee will be security, managerial and sales.

In-store transaction time will be less than 5 minutes. On-line transactions (80%) will be 1 –2 minutes with 15 minute intervals.

Open to the public. With no members of the public coming forward,

Motion to Close: Brown Second: Veneziano All in favor

Greg Peregoy, Applicant's Traffic Expert, commented on Gary Dean's remarks.

Deliveries will be before the 10—9 hours of operation.

Open to the public. With no members of the public coming forward,

Motion to Close: Brown Second: Veneziano All in favor

Break was taken at 8:50. Meeting was resumed at 9:02.

Donna Holmqvist of Preferred Planning Group, Planner was sworn in and motion was made to accept her as an expert witness: Brown Second: Veneziano All in favor

In 2007 the Butler Bowl building was reconfigured into its present layout - 10,000 square feet retail.

Exhibit A-6 1481 Route 23 Land Use Aerial Photo taken 7/1/2022

Church of the Nazarene necessitates the D-3 variance

Exhibit A-7 Zoning Aerial Photo

Chapter 143-173 F Conditional Use distances

Exhibit A-8 Unique Features Aerial

Distances from: Church of the Nazarene—3.6 acres 470 feet
Butler Raceway—14 acres 750 feet
Elevations: Church 540 feet; Intersection 560 feet; Back of Property 580 feet

Exhibit A-9 Existing Conditions photos of elevations taken September 2022

Exhibit A-10 Leaf On-Leaf Off taken 9/19/2022 and 4/12/2023 showing the visibility of the proposed cannabis retailer from the church.

Open to the Public. With no members of the public coming forward a motion to close the public portion:
Brown Second: Veneziano All in favor

Open to the public for the general application:

John Giarusso, owner of the gym. He stated that he had no objections to the granting approval and doesn't believe there will be a parking issue.

Close the public portion: Brown Second: Veneziano All in favor

Mr. Mollica made his closing statement.

There has been 3 months of extensive testimony demonstrating satisfaction of the statute's criteria.

This was the third similar application before the Board.

HillviewMed is asking for similar relief as the other two applicants.

They will maintain a hands-on operation.

It should be known that if the applicant violates or fails to comply with the requirements the CRC can revoke their state license.

Think about the efforts that have been made trying to comply with the borough's ordinance.

Mr. Brigladoro advised the Board that the application was for Preliminary and Final Site Plan Approval with a Conditional D3 variance in addition to the C variances. Five affirmative vote are required.

Mr. Jim Brown made a motion to not approve Application SP22-85. If I get a second, I call for a discussion.

Because the retail sale of Cannabis in New Jersey is a relatively new law, there is limited case law available. I find that I have been receiving information, opinions, regulatory documentation and interpretations of all these from various sources including the applicant. Some blend together and others clash. I feel somewhat like Thomas Aquinas in constructing my support of my motion. I have continued to keep the interests of Butler, as I have for the past 36 years, serving on the Land Use Board, foremost in my mind when arriving at my decision.

The application before this Board is to establish a Cannabis Retail Distribution business. This particular business is permitted to operate in the State of New Jersey under a Cannabis Class 5 Retail License.

The applied for use is allowed as a Conditional Use under the Borough of Butler Code 143-173 in the HC Zone.

The premises in question is zoned as Highway Commercial in the Borough of Butler, New Jersey.

The premises include an existing, occupied, one-story, multiple-use commercial building and vehicle parking areas.

N.J.S.A 24:6I-35

N.J.S.A. 40-48-2

N.J.A.C. 17:30-14.1

Borough of Butler Municipal Code

Submittals provided by the applicant,

Evidence presented by the applicant, and

Testimony given by multiple experts during the hearing of application.

I have found the following:

I have learned that the word shall in legal documentation, is an imperative command, usually indicating that certain procedures are mandatory, and not permissive.

Borough of Butler Municipal Code 143-173 states: “No Cannabis Retail Establishment or medical cannabis dispensary shall be located within 1,000 linear feet in any direction of a school, licensed daycare facility, church, synagogue or religious worship center, public park or licensed substance abuse disorder clinic or facility as measured from the property lines.”

Presently, the general area of the premises in question is essentially fully developed, with a potential for redevelopment. The premises in question property lines are within less than half of the specified condition of the 1,000 foot distance from the property line of the Community Church of the Nazarene at 188 Kiel Avenue, as well as the Butler Community Church at 186 Kiel Avenue. The website for the Church of the Nazarene, in Butler, New Jersey, lists various community support efforts which include meeting facilities for Narcotics Anonymous and Alcoholics Anonymous.

There is no physical or geographic barrier, existing or proposed, to mitigate this situation. Therefore, distance is the only justifying issue to keep the ordinance condition viable. The Church of the Nazarene building is directly viewed from the proposed premises property lines, the front door of the proposed store and vice versa. The proposed distance is easily traversed via vehicle or as a pedestrian. The multi-lane highway, Route 23, had a traffic sign-controlled intersection at Kiel Avenue, with pedestrian cross walks, to allow safe access between the areas separated by the highway intersection.

The Butler Raceway Public Park is also less than the specified condition of 1,000 feet identified in Borough of Butler Municipal Code 143-173.

The on-site proposed traffic control of the customer vehicles is, at best, unreasonable. If the specific spaces for the Cannabis Retail store are occupied, the security guard is expected to leave their post and direct the traffic to an unspecified holding area or direct the patron to drive around the parking lot until the space is available. An alternative is to reserve all the parking in front of the building for the Cannabis Retail Store, which would provide their required reserved parking while

denying the other businesses parking for their patrons. Untenable. At one point it was suggested that the counter person go out and control the traffic so the security guard could remain at their post inside the store. All this in all kinds of weather. Again, untenable.

Currently the premises in question include two retail food stores in the existing building. One, a Dairy Queen Restaurant, which will have a common wall with the proposed cannabis retailer. Two, a burrito restaurant, which has its primary entrance located on the same side of the building as the primary entrance of the proposed cannabis retailer.

It should be noted that the Dairy Queen Restaurant is a well known gathering place to provide a treat for many school age sporting teams in the area.

The proposal has not sufficiently met or mitigated the required conditions nor deficiencies. Thus, I have made a motion to not approve this Application SP22-85. Thank you.

Motion to Deny the application: Brown Second: Donza
Mr. Donza clarified that a "Yes" vote would be a "No" vote for the application.
Ayes: Veneziano, Brown, Vath, Hough, Reger, Nargiso
Nay: Donza

RESOLUTIONS: None

APPROVAL OF MINUTES: May 18, 2023 Regular Meeting
Motion: Brown Second: Veneziano
Ayes: Donza, Veneziano, Brown, Hough, Reger, Vath, Nargiso

APPROVAL OF VOUCHERS - Voucher 23-06
Motion: Donza Second: Veneziano
Ayes: Donza, Veneziano, Brown, Vath, Reger, Hough, Nargiso

ADJOURNMENT: 10:12 pm
Motion: Vath Second: Brown All in Favor

Workshop Meeting July 13, 2023 is CANCELLED

Next Regular Meeting will be July 20, 2023 at 7:30 PM


Chairman