

Mount Laurel Township Zoning Board of Adjustment
Regular Meeting Minutes
October 12, 2022

Opening

Chairman Gray called to order the eighth Regular Meeting of the Mount Laurel Zoning Board of Adjustment at 7:00 pm.

Pledge of Allegiance and Moment of Silence were observed

Suzanna O'Hagan, Board Administrator, read the Open Public notice and took roll

Board Members in Attendance

Chairman Gray, Vice Chairman Sharp, Mrs. Andersen, Mr. Francescone, Mr. Holmes, Mrs. Liciaga and Mr. Kramer

Absent: Mr. Bhankharia and Mr. Blum

Board Professionals in Attendance

Joseph Petrongolo, Board Planner; Michael Angelastro, Board Traffic Engineer and Ed Campbell, Board Solicitor

Announcements and Review of Board Procedures

Adopting the Minutes

Chairman Gray asked for a motion to adopt the seventh regular meeting minutes of 9/7/2022, Vice Chair Sharp moved the motion Mrs. Andersen seconded, all eligible members voted affirmatively and the motion was carried.

Memorialized Resolutions

1. **R-2022-ZB20**, Wawa Inc. ZB#22-C-23 – Vice Chair Sharp made a motion to approve R-2022-ZB20, Mr. Holmes seconded, all eligible members voted affirmatively and the motion was carried.
2. **R-2022-ZB21**, Trustee's of the University of Pennsylvania ZB#22-C-22, Vice Chair Sharp made a motion to approve R-2022-ZB21, Mrs. Andersen seconded, all eligible members voted affirmatively and the motion was carried.

Professionals were sworn

All those who testified were sworn prior to testimony and all professional witnesses were accepted as experts prior to their testimony

Petitions before the board

- 1.) **KPG Meadowlands**, ZB22-D-06, 515 Fellowship Road, Block 1202 Lot 3.01, I zone. This applicant is seeking a Use variance to allow an existing hotel to be used as a Continuing Care Facility.

Witnesses Sworn

Peter Lazaropoulos, Notis Architects/Engineers; Richard St. Maur Coordinate Private Solutions; Nathan Mosley, Shropshire Engineering; Leah Furey-Bruder, Licensed Planner and Rev. Donald Dennis, Resident

Exhibits Entered

A-1, Color rendering of existing conditions; A-2, Existing building elevations; A-3, Proposed building elevations; A-4, Existing survey

Damian DelDuca Esq., Archer & Greiner, P.C. represented the applicant and summarized the application. The application is to convert the existing Double Tree hotel into a continuing care facility for seniors of at least 62 years of age. The facility will consist of 214 independent living beds, 55 assisted living beds and 35 memory care beds. The building will remain and an addition will be added. Mr. DelDuca explained the different levels of care associated with each type of unit allowing residents to age in place. The applicant is requesting Use variance approval only at this time and if approved will return to the board for Site Plan approval.

Chairman Gray noted that the board has taken the position that the proposed use is inherently beneficial and asked Mr. DelDuca to focus on the negative criteria.

Mr. Lazaropoulos's Testimony

Mr. Lazaropoulos described the existing site conditions as shown on Exhibit A-4 and the proposed building and plans as shown on Exhibit A-1 noting that the project will meet all bulk requirements. The plan proposes a 4 story addition and will eliminate approximately 110 parking spaces to create less impervious coverage and a reduction of stormwater flow. With exhibit, A-3 Mr. Lazaropoulos described the elevation and façade changes. He noted that the changes are an effort to make the building look more residential and match the character of the neighborhood. He stated that the applicant does not anticipate any negative impact on the facilities or stormwater drainage. There will be two courtyards with amenities for residents. The applicant will work with Mr. Petrongolo's office regarding the landscaping. Mr. Lazaropoulos stated that the facility is a destination and therefore does not require much signage, there will likely be less signage than existing. He believes the proposed plan will be an upgrade of the site.

Mr. St. Maur's Testimony

Mr. St. Maur testified that he has been a consultant in the senior housing community business since 2008 and has acted as an owner's representative and property manager in communities like the proposed. Mr. St. Maur testified that the applicant will hire an operator to run the site if the approvals are granted. He stated that most of the communities have residents between 75 and 85 years of age. On average 20% of independent living residents will have cars. The independent living units will have social events. The assisted living residents will have a registered nurse on staff and on duty 24 hours a day along with support nurses and trained personnel. Memory care will be the highest level of care and is in a secure section of the building. An estimate of 70 employees will be on staff any given time. Assisted living and memory units will include a 20% set aside for Medicaid patients. There is a benefit for residents to be able to age in place. Medical waste will be handled by a specialized vendor. Two studies were done to evaluate a need for this use in this location. The studies showed there is a need.

Mr. Mosley's Testimony

Mr. Mosley testified that he evaluated the project from a traffic perspective. He focused on the trip generation of the potential use compared to the existing use and uses allowed in the zone. This proposed use is generally a very low traffic generator. Compared to the hotel the proposed use would generate approximately 30 less trips

during the am peak hour and approximately 40 less trips during the pm peak hour. He noted some of the approved uses for the zone and stated they would generate more traffic than the proposed continuing care facility. In his opinion, from a traffic perspective, the proposed use would not have a significant impact or impair the intent of the zoning ordinance or master plan. He noted the available road and site access has the capacity to accommodate the facility. He believes the proposed plan provides for safe and efficient access throughout the site.

Ms. Fury-Bruder's Testimony

Ms. Fury-Bruder testified that she believes the plan will complement the area. The surrounding uses are generally not uses allowed in the zone. They are offices, 4 story multi residential buildings and shopping areas. Because residential use is strictly prohibited, a D-1 use variance is required. She stated that the proposed use allows the site to be redeveloped with uses compatible with the area and allow adaptive reuse of the existing building. Adapting the site provides for a growing need in the community and the State. The propose use will be an asset to the township. Adapting the existing building is environmentally friendly, as a different approved use would essentially require the building to be demolished. The proposed use is less disruptive to the surrounding uses than approved uses would be. She stated that this use is inherently beneficial because it meets a societal need for housing for the elderly. She noted the rise in the elderly population in Burlington County. The Administration on Community Living indicates that someone turning 65 today has a 70% chance of needing some type of long-term care and support. The proposed use allows residents to live in the community for as long as possible. The proximity of the site to highways and medical care is ideal. The proposal promotes purposes a, d, i and l of the Municipal Land Use Law. She stated that the 2017 Master Plan re-exam noted a concern of an overabundance of hotels.

In terms of negative criteria, Ms. Fury-Bruder stated there will be no substantial detriment to the public good or on the surrounding properties and will not impair the intent and purpose of the Zone Plan or Master plan.

Mr. Angelaastro reviewed his report dated 2-17-2022. He concurs there is no adverse traffic impact expected.

Mr. Petrongolo reviewed his report dated 3-16-2022. He stated that the applicant has addressed the criteria. He believes that the use is inherently beneficial and it addresses a concern of an overabundance of hotels in the area.

Ms. Liciaga asked if the memory care area will be gated.

Mr. DelDuca stated the memory care area will be secure and the issue will be addressed further at Site Plan.

Mr. Kramer asked if mature trees will be replaced if removed.

Mr. Petrongolo stated they would be replaced.

Chairman Gray opened the meeting to the public for questions or comments.

Reverend Donald Dennis, 166 Ramblewood Terrace asked what is meant by minimal traffic, what the breakdown of care units is and what the impact will be on emergency services.

Mr. Mosley responded that the traffic generated will be less than that of the current hotel.

Mr. DelDuca restated the breakdown.

Mr. St. Maur responded that the people who will live in the facility are the same people who would be living in the community so if they needed an ambulance they would need it no matter where they were in the township.

Chairman Gray closed the public portion.

Mr. Campbell stated that if the board were to approve the application the conditions would be as follows

- 1.) Applicant will return for Site Plan Approval
- 2.) Applicant will comply with recommendations in professional review letters

Chairman Gray asked for a motion. Vice Chairman Sharp made a motion to approve ZB22-D-06, Mrs. Andersen seconded. Roll Call Vote, all voted affirmatively and the motion was carried.

Chairman Gray called for a break at 8:00. The meeting was called back into session at 8:09.

- 2.) **Daylite Cannabis, LLC.**, ZB22-D-21, 1155 Rt. 73 Block 1103.02 Lot 2 B-zone. This applicant is seeking a Conditional Use variance from Mount Laurel Ordinance section 154-43.D(4) to permit a cannabis retail facility within 500 feet of a residential zone and uses.

Witnesses Sworn

Steve Cassidy, Owner of Daylite Cannabis; Monica Walsh, Vantage Realty; Lance Landgraf Jr., Landgraf & Associates, LLC.; Arlene Leone, Resident; Aimee Gribbon, Resident; Lisette Nance, Resident and Sullivan Leiby, Resident

Exhibits Entered

A-1, Color overhead noting distances; A-2, Archer & Greiner response report; A-3, existing conditions site plan and L-1, survey of 101 Fairway Terrace

Richard Wells Esq. represented the applicant and summarized the application. Mr. Wells explained to the board the meaning of Conditional Use and that the board need only decide on the condition that is not met. He explained the process and requirements for state approval noting that they need a resolution of support from the governing body which they cannot get without approval from this board because the location is not compliant. Mr. Wells stated that the applicant already has a conditional micro-business license from the State. This allows applicant to submit an application and if approved then go find a location. The micro business designation means there is a lower barrier to entry. There are associated restrictions such as size, volume and location. The applicant must find a location within 4 municipalities and the facility is limited to 2500 sf. Additionally, they must find a landlord that will allow the use. He stated that, per the rules of his license, the applicant must live in the town where the dispensary will be or one of the abutting municipalities. Mr. Cassidy resides in Medford. Medford does not allow cannabis distributors and 3 of the abutting 7 towns are not available for several reasons. Mr. Wells noted that because Cannabis is still federally illegal, landlords of properties with federally backed loans are not allowed to host cannabis tenants. He stated that this proposed location is the only location in the remaining 4 towns that is viable.

Mr. Cassidy's Testimony

Mr. Cassidy testified that he and Ms. Walsh have looked for a compliant location. He must have final paperwork submitted to CRC (Cannabis Regulatory Commission) by December 4, 2022 showing a location. He testified that his background is in the alcohol beverage industry and he is the owner of Daylite Cannabis, started earlier this year. He stated that there are elements of his business that makes his company unique. One being that they are family owned, he and his wife are the owners. They are by definition a social equity business. Additionally, they are a micro-business which means they are doing things on a really small scale with only 10 employees. The proposed hours are initially Sunday – Thursday 9am to 9pm and Friday and Saturday 9am to

10pm. Mr. Cassidy stated that he submitted a security plan to the Police Department and will comply with the PD requirements. He stated that every area will be monitored 24/7 and the CRC requires access to the monitoring system. Most of the product will be stored in an vault. All products are tracked by their point of sale tracking system and also by the state. No products are visible from outside of the store. There is a waiting area immediately inside the door where customers will be greeted by security and wait to be ID'ed before being buzzed into the business. Additionally, all products are prepackaged and sealed. Mr. Cassidy said he will have an odor mitigation system although he does not anticipate any odor. Deliveries will be once a week from 2-5 vendors during normal business hours and in regular vans through the rear door of the building. Deliveries will take 15-30 minutes. Any product that need to be disposed of will be returned to suppliers for disposal. No consumption is allowed on site. The signage will be consistent with the existing sign as shown on page 11 of exhibit A-2. He continued, customers are able to pre-order via the website and pick up their order. With respect to parking, Mr. Cassidy believes their use is consistent with the available parking and that their peak hours of business will be different than the other businesses onsite. He stated that at the moment there are 19 licensed adult use dispensaries in the state. As the number of dispensaries goes up the demand and therefore the parking demand will go down. Mr. Cassidy has no objection to working with the PD regarding high traffic volumes. He stated that there are no exterior changes planned.

Mr. Sharp asked how many dispensaries are operating in Burlington County and if this location will be also be for medical marijuana.

Mr. Cassidy replied he believes just one other dispensary is operating in Burlington County and his license does not allow the sale of medical marijuana at this time.

Mr. Holmes asked about traffic control and expressed concerns about the traffic impact.

Mr. Cassidy replied that he sees traffic as a short-term concern. This site will be a small store with fewer options than the larger sites.

Chairman Gray asked if customers will be permitted to go next door to the hookah lounge and use the product.

Mr. Wells replied that that is not allowed and would require the hookah lounge owner to get a dispensary license.

Chairman Gray noted that council reduced the buffer from 1,000 feet to 500 feet and that 10 other locations have been found and resolutions of support have been granted.

Mr. Petrongolo concurred that the board asked the council to reevaluate required buffers and the council did so reducing the buffer requirement from 1,000 feet to 500 feet to a residential zone or use.

Mrs. Andersen asked what is the reason for the 500 foot buffer and if there are other businesses with a similar required buffer.

Mr. Petrongolo replied that it is a question of compatibility with other uses, the council believes that a cannabis retail facility is not appropriate that close to single family homes, behavior health facilities, schools etc. Sexually oriented businesses have a similar buffer.

Vice Chair Sharp asked if the application would sell edibles.

Mr. Cassidy replied they are not allowed to sell edibles, in response to Mr. Francescone, he stated that if he were allowed to he would.

Ms. Walsh's Testimony

Ms. Walsh testified that she is a commercial realtor and has helped other cannabis tenants. She stated that she has looked at the market for both listed and unlisted properties and has not found a viable property.

Mr. LandGraf's Testimony

Mr. Landgraf testified that he reviewed the Townships Master Plan and is familiar with the area. He explained a Conditional Use. Mr. Landgraf noted the existing conditions and stated that they do not meet the setback

requirement from a residential use or zone. Using Exhibit A-1 he described the area and stated that Fairview Terrace is all businesses.

Mr. Petrongolo clarified that Lot 1103.02 Lot 9 is a residential use.

Mr. Landgraf continued that in that case the distance from property line to property line is 50 feet to the nearest residential use. He stated that because the proposed store location is on the Rt. 73 side of the property the shopping center itself provides a buffer to the residential use.

Mr. Wells noted that a 4-lane highway negates the required buffer.

Chairman Gray stated that Fairway Terrace is not a 4-lane highway

Mr. Landgraf stated that there are structures, landscaping and a parking lot between the proposed business and the residential use.

Mr. Petrongolo stated that the burden of the applicant is to show that the site is appropriate for the proposed use despite the deviation.

Mr. Wells stated that they are showing that they can meet the intent of the ordinance by demonstrating the distance between uses.

Mr. Petrongolo stated that there is the condition of the setback and also the condition that the applicant meet the parking requirements.

Mr. Landgraf noted the Coventry Square case and stated that the focus must be on the deviation from the standard. He stated that the applicant is showing how they are offsetting the deviation. The building itself and businesses are creating a buffer. He stated that he believes their use will not be a more intense impact than the existing uses. He stated that he does not agree that the applicant does not comply with the parking requirement. Mr. Landgraf stated that the other uses in the shopping center will have different peak hours than the cannabis dispensary.

Mr. Wells asked Mr. Landgraf if the parking requirement for the cannabis dispensary is the same as the parking requirement for the previous use, so the parking demand is consistent with the prior approval.

Mr. Landgraf replied that is correct. He continued that he does not believe there is a substantial detriment to the public good because the cannabis business is a substantial distance from the residential use and because of the structures and the municipal street between the uses. He believes that the parking is adequate and that there are benefits to the community including taxation. He believes the variance can be granted without substantial detriment to the zoning ordinance or character of the neighborhood.

Mr. Petrongolo reviewed his review letter dated 07-29-2022. Mr. Petrongolo explained the criteria for a D-3 Conditional Use variance. He noted that the applicant does not meet the criteria of a required 500 foot setback from a residential use or zone or the minimum parking requirement. He explained to the board that the buffer is measured from property line to property line not front door to front door. The applicant's property line is 50' from the residential use. He reminded the board that council has reduced the buffer requirement from 1,000 feet to 500 feet. In response to a question from Chairman Gray, Mr. Petrongolo opined that approving a 50 foot buffer where council required 500 feet does undermine the zone plan and goes to negative criteria as a significant negative impact on the zone plan and the public good. He does not agree that a four-lane highway is comparable to this site. Mr. Petrongolo stated that a parking variance was previously granted for the site based on the conditions at that time and he does not believe it can be applied to the proposed facility. Different uses have different intensity, the parking demand for a cannabis use is more intense

than a boutique type use. One condition of the use is that the cannabis use must meet the parking requirement of 1 space per 200 feet, this site does not meet that requirement.

Mr. Angelastro stated that 1 space per 200 feet is 5 spaces per 1,000 feet. The Institute of Traffic Engineers (ITE) calculates the parking demand for marijuana dispensaries to be 21 spaces per 1,000 sf. The ITE parking demand for retail shopping centers is 3.6 spaces per 1,000 sf.

Mr. Wells asked the board if the applicant could show dedicated parking spaces during peak hours would that satisfy their concerns.

Mr. Petrongolo replied that would be a Site Plan issue and the applicant has not requested a Site Plan approval with this application.

Mr. Wells stated that the applicant would use exhibit A-3, the existing conditions plan to show the parking.

Mr. Petrongolo stated that there is a process for that but the use would need to be decided first.

Mr. Francescone asked why the variance was granted for parking with the Dunkin Donuts application, which went to the Planning Board.

Mr. Angelastro replied it was looked at as shared parking with alternating peak demands as shown with a traffic study.

Mr. Campbell asked Mr. Petrongolo, with exhibit A-1, to confirm the Zone boundary.
Mr. Petrongolo did so.

Chairman Gray called for a break at 9:31. The meeting was called back into order at 9:38.

Chairman Gray asked Mr. Petrongolo is 50' vs 165' makes a difference.

Mr. Petrongolo replied that he would have the same concerns.

Chairman Gray opened the meeting to the public for questions or comments.

Arlene Leone, 101 Fairway Terrace, Block 1103.02 Lot 9, submitted Exhibit L-1, a survey of her property and stated that this is a residential property. She stated that the lot of the proposed use is only 40 feet from her property. (Later corrected to 50 feet) Mrs. Leone noted that Fairway Terrace is a no parking zone so it cannot be used for overflow parking. She stated she is opposed to the application.

Aimee Gribbon, 543 S. Brentwood Drive asked how far the proposed use is from Parkway School and if it is a drug free school zone. She expressed concerns regarding logistics, traffic, safety and parking and is opposed to the application.

Mr. Wells replied that cannabis has been declassified so not apply to the drug free school zone.

Lisette Nance 504 S. Brentwood Drive expressed concerns about traffic and parking. She stated that she moved to Mt. Laurel from Pennsauken, has a daughter in elementary school and does not believe this is a good location for the proposed use. She asked the board to deny this application and noted the school bus stop on the corner of South Brentwood and Ramblewood Parkway.

Sullivan Leiby, 24 Stratford Lane expressed concerns regarding parking. She asked if customers will have specified times to pick up orders, if there will be a virtual check in and if pre-orders are more common than in store shopping.

Mr. Cassidy replied that pre-order customers will be notified that the order is ready for pick up and given a time, curbside pick-up is allowed and designated parking spots are a possibility although it would require additional approval. There will be a virtual check in process and he believes pre-orders are more common than in store shopping in similar micro businesses.

Reverend Donald Dennis, 166 Ramblewood Terrace asked for clarification on distances and expressed concerns regarding standard of living, parking and safety of the children based on the clientele he believes will be brought to the community. He stated the applicant should look for property in Medford. He noted concerns regarding police activity due to increase in traffic. He does not think the use is good for the community.

Chairman Gray asked if there was anyone else from the public who wished to speak. Seeing no one Chairman Gray closed the public portion.

Mr. Wells asked the board to allow the applicant to use the tools provided by the MLUL. He stated that he heard and sympathizes with the concerns of the residents. He reiterated that the applicant is willing to come back to the board with a plan showing dedicated parking and will coordinate with the police and emergency services to control traffic during the initial opening. He noted that high parking and traffic demand was related to only 19 dispensaries throughout the entire state during the first week of adult use sales and is no longer the case. This business model is designed to be small in footprint and volume and will incorporate targeted appointments to minimize time people are onsite. He opined that any other retail business would generate the same traffic concerns. He asked the board to “level the playing field” stating that there are large well capitalized entities that can afford to purchase or lease and hold properties. He stated that this is a mom and pop business with a license in hand. He noted that the ordinance is new and that the buffer was reduced because it was not practicably enforceable. He stated that this property meets the requirements of the MLUL to justify the deviations the applicant is requesting.

Mr. Kramer asked if there is a CRC procedure for delivery of product.

Mr. Wells replied there are requirements that 2 people must be in the delivery van, one has to remain in the van and they must be met by someone from inside. Everything is tracked by the CRC.

Mr. Kramer asked if the delivery must be in a gated area.

Mr. Wells replied that it does not.

Chairman Gray asked if there is a motion to approve the application, a motion was made by Vice Chair Sharp, no second.

Chairman Gray asked for a motion to deny. Mr. Francescone moved the motion Mrs. Andersen seconded.

Mr. Wells stated that typically a motion is in the affirmative and if the motion does not receive 5 affirmative votes the motion will fail. For purposes of a clean record, he requested the board vote on a motion to approve.

Chairman Gray and Mr. Francescone withdrew their motions to deny.

Chairman Gray made a motion to go into closed session to seek advice from council, Vice Chair Sharp seconded the motion, all member voted in favor. The recording was stopped. The audience vacated the courtroom.

Chairman Gray calls the meeting back into order. The audience returned to the courtroom.

Chairman Gray asked for a motion to approve ZB 22-D-21. Vice Chairman Sharp moved the motion, Mr. Francescone seconded. Roll Call Vote as follows

Vice Chair Sharp voted against approval noting that our zoning ordinance does not leave room for a micro business.

Mr. Francescone voted against approval noting that the township was proactive in zoning for cannabis and did reduce the required buffer from 1,000 feet to 500 feet. Further, he stated that 50 feet is too close to the residential use and goes against our zone plan.

Mr. Kramer voted against approval noting that he concurs with Mr. Francescone's statements and he believes it is too close to residential use and the parking will be a problem

Mrs. Liciaga voted against approval noting the applicant does not meet the buffer requirement, parking issues and the short distance to the residential use.

Mr. Holmes voted against approval noting he does not believe there is a benefit to the municipality nor does he believe the proposal promotes the general welfare. Additionally, he believes it is too close to the residential use.

Mrs. Andersen voted against approval noting she believes the request is too large of a variance from the buffer requirement and does not believe the board has the authority to overrule council's requirement.

Chairman Gray voted against approval noting concerns for traffic and parking. He stated that council already reduced the buffer to 500 feet and 50 feet is too close. He believes the business would be an impairment of the zone plan and zoning ordinance.

The motion failed, the application is denied.

Adjournment:

Mrs. Andersen made a motion to adjourn, Mr. Francescone seconded all present voted affirmatively and the motion was carried.

Adopted on: November 2, 2022

Suzanna O'Hagan, Secretary
Zoning Board of Adjustment