

Mount Laurel Township Zoning Board of Adjustment
Regular Meeting Minutes
September 6, 2023

Opening

The meeting was called to order by Chairman Gray at 7:00 p.m.

The Pledge of Allegiance and Moment of Silence let by Chairman Gray

The Open Public Notice was read by the Board Secretary

Roll call was taken by the Board Secretary

Attendance

Members: Chairman Gray, Vice Chair Andersen, Mr. Blum, Mr. Francescone, Mr. Holmes, Mr. Kramer, Mr. Sharp, Mr. Bhankharia and Mr. Desai Professionals: Ashton Jones, Board Planner; Drew Pavlick, Board Engineer; Michael Angelastro, Board Traffic Engineer and Ed Campbell Esq., Board Solicitor Staff: Suzanna Baskay, Board Secretary

Absent

none

Review of Board Procedures by Chairman

Announcements

Chairman Gray announced that the applications for Outdoor Advertising, ZB23-D-10, and ZB23-D-13, will not be heard and the applicant will re-notice when a hearing date is determined.

Minutes

6/7/2023 motion to approve by Mrs. Andersen, second by Mr. Holmes. All voted affirmatively.

Resolutions

None

Board Professionals were sworn

- All those who testified during the hearing were sworn in prior to their testimony.
- Those who offered expert testimony were accepted as experts by the board.

Petitions before the board

1. **Naavi Realty**, ZB23-D-15, 1132 and 1134 Rt. 73, 1306.01/ 7.01 & 7.02, B- zone - Use and Bulk variances from sections 154-84 and 154-92.6 to allow prohibited billboards exceeding the allowed number of signs on a lot.

CherylLynn Walters Esq. represented the applicant and summarized the application. Ms. Walters described the Subdivision approved by the Planning Board as well as the Conditional Use Variance granted by the Zoning Board. She explained that the signs are existing and will be refaced to advertise Nirvana Cannabis where a restaurant was previously advertised. The signs are pre-existing but due to the subdivision are now off-site and therefore, by definition, they are prohibited billboards. The existing signs are non-conforming for height, size and type, however, those states are not proposed to change. The only change will be that the advertisement will now be offsite as a result of the subdivision. The subject signs consist of 2 pole signs and one façade sign. She stated there are no other changes proposed.

Discussion took place regarding the distinction between pre-existing, non-conforming signs and signs allowed by variance. The discussion made clear, that it is because the existing signs used to be all on one lot then after the subdivision, the signs remained but the lot line was created resulting in off-site advertising of both the Rodeway Inn and Nirvana Cannabis. Sign #3 advertising The Rodeway Inn, is on the newly created lot 7.01 on Rt.73. Sign #2 advertising both Nirvana Cannabis and the Rodeway Inn, is on Lot 7.02 on Church Rd. Sign #1, advertising only Nirvana Cannabis, is on Lot 7.01 on Rt. 73 and is compliant for location.

Witnesses Sworn

James Miller PP, AICP and Dhruvi Patel

Exhibits Entered

A1- Sign Variance Plan, A2 – 4 page sign rendering packet

Mr. Miller's Testimony

Mr. Miller described the location and surrounding zones and uses. The previous use of the cannabis retail building was a restaurant. He stated that 2 signs require a d1 variance as a result of the subdivision and 3 signs require c2 variances. Mr. Miller believes the signs will advance purposes a, g, and i of the MLUL. He began with sign #2. Sign #2 is the offsite sign located on lot 7.02, Church Rd., the sign is preexisting. The previous restaurant and the Rodeway Inn are both advertised on this sign. It will now advertise Nirvana Cannabis and the Rodeway Inn. Mr. Miller stated that the benefit of the sign is to identify both uses on the "tract". He stated that the cannabis use is not visible from Church Rd. so the sign is necessary. He stated that there is no detriment to the surrounding area and it is particularly suited for the site because the identification of the cannabis retailer is necessary. Mr. Miller then addressed sign #3, the sign will not change in any way. It advertises the Rodeway Inn. Because of the recent subdivision, the sign is offsite on lot 7.01. He stated that the sign is particularly suited for its proposed use because it is the sign for the main access to the Rodeway Inn and necessary for wayfinding. Mr. Miller then addressed sign #1, the freestanding sign on Rt. 73, lot 7.01. He stated that the sign requires bulk variances because it is preexisting and nonconforming. He said it is particularly suited for the use because of the location it contributes to traffic safety and wayfinding. He stated it has no detriment. Mr. Miller addressed the façade sign. He stated that the signs on the canopy and facing Rt. 73 East will be removed. The only façade sign will be the proposed sign which is smaller than the existing façade sign. He stated the benefits outweigh the detriments and the sign satisfies the criteria of a c2 variance. Mr. Miller stated that the signs meet the intent and purpose of the zone plan and support the otherwise permitted uses.

Mr. Campbell summarized stating that signs number 2 and 3 are preexisting and nonconforming in terms of location, size, and other physical features but require a use variance because they will contain advertising of a use on a different lot.

Mr. Miller agreed.

Mr. Campbell further noted that signs #1 and #3 both on Rt. 73 have preexisting nonconforming changeable copy for the Rodeway Inn room rates.

Mr. Jones reviewed his letter dated 8/28/23, he stated that the applicant has agreed to all his comments. He stated that if not for the subdivision all signs could be refaced without variances.

Chairman Gray opened the meeting to the public for questions or comments. Seeing none he closed the public portion.

Chairman Gray made a motion to approve the use variances for signs #2 and #3, and Mrs. Andersen seconded.

Mr. Campbell suggested a condition that use variances are limited to the uses on lots 7.01 and 7.02. This means that the existing sign #2, Church Rd. on lot 7.02 may advertise the use on lot 7.01 and the existing sign #3, Rt. 73 lot 7.01 may only advertise the use on lot 7.02.

Mrs. Walters agreed to the condition as suggested.

Roll Call Vote, all members voted affirmatively. The Motion was carried.

Chairman Gray made a motion to approve the façade sign, Mr. Blum seconded. Roll call vote, all present voted affirmatively. The motion was carried.

Chairman Gray made a motion that the board find the requested bulk variances for signs #1, #2, and #3 to be unnecessary because they are preexisting and nonconforming, Mrs. Andersen seconded. Roll call vote, all present voted affirmatively. The motion was carried.

Chairman Gray called for a break at 7:46, the meeting was called to order at 7:55.

2. Capuano Realty, ZB23-D-14, 876 Centerton Rd. Block 100.01 Lot 5, R-3 zone. This applicant is seeking a (d)2 expansion of use variance and Site Plan approval to allow a temporary tent to remain permanently as well as Site Plan approval for a Pergola.

Witnesses Sworn

Michael Citerone, P.E.; Creigh Rahenkamp, P.E.; Carlo Capuano, applicant, owner and General Manager of Carlucci's and Rosalia Baglio, representative for Lux Outdoor.

Exhibits

A1, 5 page site plan and A2, Carlucci's Occupancy and Parking Evaluation

Jeffrey Hall Esq., Szaferman, Lakind, Blumstein & Blader, P.C., represented the applicant and summarized the application. He stated that the patio was approved in 2008 as well as approvals for temporary tents over the years. He stated that the applicant is requesting to keep the temporary tent approved by the Zoning Board earlier this year until a permanent pergola can be constructed. He stated that the tent is phase 1 of the project and the pergola is phase 2. Mr. Hall stated that the permanent pergola will be constructed in the tent's footprint on the patio. He stated that the pergola will hold less seats than the 100 seats approved for the patio in 2008. Mr. Hall said the pergola will be for year-round use. He described the location and surrounding conditions of the property.

Chairman Gray asked Mr. Hall how the board could grant Site Plan approval for a project that will not begin for three years at which time the approval will have expired.

Mr. Hall stated that at the time of the application, it was unclear how long the pergola construction would take. At this time Mr. Hall stated he is happy to amend the application to request only 2 years. He said Mr. Capuano has assured him the pergola could be ordered and erected within 6 months.

Mr. Campbell stated that board approvals are governed by the Municipal Land Use Law. If the board were inclined to approve an application it would expire as stipulated in the MLUL.

Discussion took place between the board and Mr. Hall regarding the length of time the temporary tent could be approved for given that the tent has already exceeded the 3-year limit.

Mr. Francescone asked why the pergola cannot be installed now, why wait 2 to 3 years.

Mr. Hall responded that the process will take roughly 6 months from the time he orders the structure. He took a moment to confer with his client. When he returned he stated that Mr. Capuano is prepared to order the Pergola immediately and that the representative from the pergola company said it takes 9-14 weeks to manufacture, 4 weeks for delivery and 2 weeks for installation. Building permits will have to be applied for and obtained. The tent would need to remain until the pergola is installed. Mr. Hall stated that he is willing as a condition of approval, to order the pergola within 2 weeks of the adoption of the resolution of approval. He said he would agree to approval for up to one year.

Mr. Campbell stated there are 2 issues. The first is the relief needed to install the permanent structure. The second is the tent remaining until the time of the installation of the permanent structure. He stated that the board has a lack of confidence that that will happen quickly, based upon the fact that there has been a tent in that location for a decade.

Mr. Hall stated that he is amending the application to request a use variance and Site Plan approval to complete the pergola within one year and a use variance to allow the tent to remain until the pergola is complete.

Mr. Rahenkamp's Testimony

Mr. Rahenkamp summarized the history of the property noting that a restaurant has existed there for approximately 70 years as a pre-existing non-conforming use and has received several approvals including expansion of non-conforming use variances and use variances. The current ownership took over in 2001. A patio was approved in 2008, that resolution grants "a use variance for the expansion of the existing restaurant", mixing the language of use and legal nonconforming use. He stated that the applicant is not seeking to amend anything from the 2008 approval. He stated that in 2013 a temporary approval was granted for an 80' long tent and the tent remained until 2019. In 2020 a larger tent on 120' long was installed and has remained. Side panels have been installed on the tent and it is used year-round. The tent was approved for 6 months in February 2023 expiring in August 2023. He stated that due to ordinance 154-73 a temporary structure can only be approved for an aggregate of 3 years so this tent must be approved as a permanent structure. He testified that the tent would remain until the permanent pergola is installed. He stated that the permanent structure would function the same as the temporary tent so we don't have to speculate how the permanent structure will function. The pergola will be 6" narrower and 2' shorter than the tent and within the footprint of the tent. Mr. Rahenkamp, using exhibit A1 explained the layout and site plan. He noted the trailers, stating that one trailer is for storage and is to be removed and the other is a construction trailer for internal renovations.

Chairman Gray noted that the trailers are permitted temporarily and the approval will expire as noted in the resolution for the temporary trailers.

Mr. Rahenkamp described the roof extending from the existing building to the pergola which will allow food handlers to pass through. He stated that the restaurant offers valet parking, he spoke with the president of Open Door Valet, who reported to him that the parking lot is never full.

Chairman Gray pointed out that this testimony is hearsay, Mr. Rahenkamp responded that it is the kind of research that planners do all the time.

Mr. Rahenkamp entered exhibit A2, parking calculations. He explained that the restaurant uses a software system called Open Table, he used the data from that software to track reservations and count tables and customers. He testified that the restaurant has 274 seats including the patio, with the pergola the restaurant will have 256 seats. With events, the max capacity would be 340 seats including 100 in the pergola. He stated that the restaurant will not operate at full capacity, they are capped by the 2008 resolution which stated no more than 25 staff at any time as well as kitchen capability. The restaurant uses the open table software to limit their occupancy to 260 meals in a 90-minute window. Thereby limiting the number of tables available in the dining room if an event is happening in the pergola. He stated the existing parking lot has 184 spaces including 26 banked spaces which are grass. Four of the spaces are restricted for the DEP trail parking. He stated that at maximum capacity there is a -15 parking spaces. He testified that the data gathered from Open Table showed that on Mother's Day 2023, the maximum number of patrons at a time was 150. Mr. Rahenkamp used exhibit A1 page 5 to describe the pergola. He stated that it is not rated for snow load on the moveable roof panels, if snow is predicted, they have to open the panels so snow will fall inside. There are glass panels on the sides that can be opened or removed. He reiterated that the storage trailer, on the left-hand side, will be removed immediately. The trailer on the right will remain through construction. He stated that Ordinance 154-16A, lot suitability, refers to the initial building permit for the principal building and therefore does not apply as this is not the initial building permit. He reiterated that adding the pergola does not increase the number of tables or operations permitted. Mr. Rahenkamp stated that there is no change or impact to the intent of the zone plan and the pergola is an aesthetic improvement to the site and is an efficient use of land. He stated that it improves the viability of the restaurant satisfying purposes m and g of the MLUL. Mr. Rahenkamp stated that the intent of the tent is to be a stopgap until the pergola is installed.

Mr. Citerone's Testimony

Mr. Citerone used exhibit A1 to explain the existing conditions as being in good condition and in compliance with the 2008 resolution. He testified that the stormwater runoff will not change. The pergola has a built in structure with downspouts and will drain into the existing system. There will be no change to the ADA, traffic pattern or site access. The only change would be the installation of the 19.7' x 118.1' pergola.

Mr. Capuano's Testimony

Mr. Capuano testified that the parking lot is never full. He stated that the tent from 2013 to 2019 was a seasonal tent that was put up and taken down by season. They installed the year-round tent due to COVID. They are trying to improve the restaurant and optimize the view. The pergola allows patrons to dine under the stars at night. He stated that he assures the board that the tent will be removed when the pergola is installed. He agreed to the timeline discussed earlier, he will have the pergola installed within one year. He stated that if approved he would have the pergola ordered the following week. He said he does not need the 3 years requested. Mr. Capuano testified that he has lost reservations for fall events because he did not know if they would have the tent or not.

Mr. Angelastro stated that he does not believe there is a parking issue on the property and a parking variance is not required. The 2008 resolution limits capacity to 180 seats allowed in the restaurant and 100 outside which would require 219 spaces and was addressed in that resolution.

Mr. Jones agreed, stating that the applicant has stated they are in compliance with the 2008 resolution.

Fire Marshall McVey reviewed his report dated 8/31/23. He stated that if the tent is going to remain past December 1, 2023 approval from the Construction Department is required per UCC. From then on the tent will have to meet all UCC requirements. He stated that the pergola will have to meet all UCC requirements. He stated there is to be no combustible material within 3' of the walls of the tent or pergola. He asked if the glass roof area will be enclosed.

Ms. Baglio responded that the roof is actually fixed aluminum not glass. It is constructed of foam "sandwiched" in aluminum and will be enclosed with openable glass. The pergola will have a 5-rail sliding system of windows all around.

Mr. McVey asked if the pergola would be heated.

Ms. Baglio replied that they recommend either Bromic heaters or mini split heaters.

Mr. McVey asked about the material of the pergola cover.

Ms. Baglio replied that it is a PVC fabric system which is flame retardant.

Mr. McVey asked if the pergola is a 4 season room.

Ms. Baglio replied that it is a 4 season structure except that if there is snow the room must be left open to let the snow in.

Mr. McVey expressed concern regarding who will regulate the opening of the roof in snow. What if there is an event booked in the pergola? Would the event be canceled?

Ms. Baglio stated that they could provide wind and rain sensors so if there is rain the roof would automatically close.

Mr. McVey expressed concern regarding hazards of ice if there is an event in the pergola and it is snowing and the structure is heated.

Ms. Baglio replied that the panels and fabric are insulated and they can provide wind calculations.

Mr. Pavlic asked if the gutter system is on the far side when the roof panels are closed.

Ms. Baglio used the rendering to show that the gutters are in each post. The water is drained through the post and out the bottom.

Chairman Gray asked where the water from the aluminum roof would go.

Ms. Baglio said it is collected on the sloped roof and drained at the sides of the structure.

Mr. Francescone asked where the water goes after that.

Mr. Citerone responded that the water would go into the existing drainage system under the patio or over land, over the patio as it does now.

Mr. Pavlick noted that one rendering shows a server area on phase 1 but does not show that area on phase 2.

Mr. Capuano replied that the server station will not be in the pergola.

Mr. Campbell asked what will be under the fixed glass roof.

Mr. Capuano replied it is an access way for the food to come out and for staff.

Mr. Pavlick stated that it appears there is pervious area that will be covered by the roof.

Mr. Hall reiterated earlier testimony that they are raised flower beds on the existing patio and not actually impervious.

Ms. Andersen asked if there would continue to be tables in the easement.

Mr. Capuano replied that the high-top tables are for guests to take pictures or stop while walking their dog, they are not seated tables. He stated they will remove the tables in the easement.

Mr. Jones stated that he does not believe the wetland restriction line applies however, the 50' setback line does apply, therefore a variance is required for that and he believes the applicant's planner addressed it appropriately. Mr. Jones made the applicant aware that they are responsible for any affordable housing fee for any increased assessed value. Mr. Jones asked about the sound generated by rain on the fixed aluminum roof.

Ms. Baglio responded that there is no sound

Mr. Jones stated that if a trailer is being relocated the board should revisit the location approval.

Mr. Campbell stated that he wants to clarify that trailers are not permitted, when they are allowed due to construction that is done by variance.

Mr. Citerone explained that when his firm went to the property, the storage trailer was temporarily relocated due to a wedding. That is why it is placed where it is on the site plan. It has since been moved back to the approved location.

Mr. Francescone clarified for the record that there is no additional approval be given for the trailers. Whatever time limit was imposed by the board on the temporary permit remains in effect.

Mr. Jones continued, stating that he believes sufficient testimony has been provided regarding the use variance.

Chairman Gray polled the board to continue past the 1 & 1/2 hour point. The board unanimously decided to continue.

Chairman Gray called for a break at 9:29 and called the meeting back into order at 9:41.

Mr. Rahenkamp's continued testimony

Mr. Rahenkamp stated that all of the reasons he gave that the pergola advances the purposes of public policy apply to the tent. Additionally, he stated that removing the tent would be a hardship to the applicant because he would effectively lose the fall season. They are currently not scheduling events in the tent but are able to use it for table seating. He said he believes it is appropriate for the board to grant the interim use variance for the tent until the pergola is constructed.

Chairman Gray stated that the applicant has been aware since March that they had 6 months until the tent had to be removed. He asked Mr. Rahenkamp to reiterate the public policies he believes the tent serves.

Mr. Rahenkamp responded with purposes m and g of the Municipal Land Use Law purposes of zoning.

Mrs. Andersen stated that the pergola is a reasonable normal use variance, the tent, however, would require permission beyond our authority.

Mr. Jones stated that that is why they need a use variance.

Mr. Francescone stated that he is concerned that if the board approves the tent to remain until the pergola is constructed, the applicant will take a long time to construct the pergola.

Mr. Rahenkamp responded that the applicant has put a one-year limit on the pergola installation

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

Sherri Baker, 875 Centerton Rd., Ms. Baker was sworn. She spoke in favor of the application. She stated that she lives across the street from the restaurant and never sees the parking lot full. The property is kept neat and clean.

Seeing no one else, Chairman Gray closed the public portion at 9:50.

Mr. Jones reminded the board that they have the authority to impose timeline conditions on any approval they grant or to deny the tent entirely.

Chairman Gray made a motion to approve the use and site plan for the pergola with the conditions discussed during testimony.

Mr. Campbell noted the conditions as follows:

1. Applicant will comply with the recommendations in the professional's review letters
2. NJDEP approval is required, if NJDEP does not require approval a Letter of No Interest must be submitted
3. Trailer will be removed according to the previous temporary approval

Mr. Francescone seconded the motion. Roll Call Vote. All members voted affirmatively.

The board discussed the possible approval of the requested use variance to allow the tent to remain and how to structure an approval so there is a time limit.

Mr. Francescone asked if the tent would be in use during the winter.

Mr. Capuano replied, yes, but it will have to come down prior to the construction of the pergola.

Mr. Blum noted that the time the board allows for the completion of the pergola should include the time it takes for permit approvals.

Mr. Kramer asked why tents are not permitted as permanent structures.

Chairman Gray responded that there are no construction, electrical, or building permits for the tent. The applicant is currently using extension cords for electricity.

Fire Marshall McVey stated that the fire department inspects and permits only seasonal tents. Once the tent is in place after December 21st it requires UCC approval for all building subcodes. These permits are required every year.

Mr. Francescone confirmed that the applicant understands that if the board approves a use variance for the tent other township and UCC rules still apply. They still need to comply with all the township rules. If they cannot the tent must be removed immediately.

Mr. Capuano replied that he understood.

Mr. Francescone made a motion to approve a use variance to allow the tent to remain for an additional 6 months. Vice Chair Anderson seconded the motion. Roll Call Vote. Those who voted affirmatively: Mr. Francescone, Vice Chair Andersen, Mr. Sharp, Mr. Kramer, Mr. Holes and Mr. Blum. Those opposed: Chairman Gray, opined that the applicant was given specific instructions in February to complete the permanent structure and it was not done. He believes the extension is beyond the board's authority.

Adjournment:

Mr. Blum made a motion to adjourn at 10:08, Mr. Holmes seconded, all voted in favor.

Adopted on: October 4, 2023

Suzanna Baskay
Suzanna Baskay, Secretary
Zoning Board of Adjustment