

RESOLUTION

Township of West Orange

Planning Board

PB 22-12 West Orange Wellness, LLC/ 26 South Valley Road

Block: 4 Lot: 12; Zone: B-1

Decided on November 2, 2022

Memorialized on December 7, 2022

Application for Conditional Use and Preliminary and Final Major Site Plan Approval

WHEREAS, West Orange Wellness, LLC (Hereinafter the “Applicant”) has made an application for conditional use and preliminary and final major site plan approval for signage and the proposed interior alteration of existing first floor space for Class 5 Cannabis Retail Dispensary use at property located at 26 South Valley Road, also known as Block: 4; Lot 12, in the B-1 Zone; and

WHEREAS, a properly noticed public hearing was conducted on November 2, 2022; and

WHEREAS, the Applicant was represented Cameron W. McLeod, Esq. of the firm Gibbons P.C.; and

WHEREAS, the Applicant provided testimony by James Sherrard, of James Sherrard Enterprises, as a Security Consultant and Cannabis Business Consultant;

WHEREAS, the Applicant submitted the following documents to the Board in the form of the application package:

ITEM	SIGNED BY	DATE/REVISION
ALTA/NSPS Land Title Survey	Matthew W. Webb, PLS	6/15/2022
Architectural Plans (A1)	Jason C. Christiansen, AIA	Received by W.O. Planning Department on 9/26/2022

Interior Rendering	Jason C. Christiansen, AIA	9/12/2022
Signage Plans (1 Sheet)	TAP Design Group	9/20/2022

WHEREAS, representatives of the public asked questions of the witnesses and had an opportunity to offer statements in regard to the application; and

WHEREAS, the Board reviewed and considered the application, testimony and documents submitted therewith; and

WHEREAS, the Board also considered the input of its professionals at the hearing; and

NOW THEREFORE, the Board makes the following findings of fact, based upon the evidence presented at its public hearing, at which a record was made:

1. The Applicant is requesting approval for a condition use, that being a Class 5 Cannabis Adult Recreational Retail Dispensary, with signage and preliminary and major site plan approval.
2. The application does not require any variance relief from the Board.
3. N.J.S.A. 40:55D-67 governs the Board's review of the application for Conditional Use. N.J.S.A. 40:55D-67a. provides that a zoning ordinance may provide for conditional uses to be granted by the planning board according to definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness to enable the developer to know their limit and extent. The planning board shall grant or deny an application for conditional use within 95 days of submission of a complete application by a developer to the administrative officer, or within such further time as may be consented to by the Applicant. N.J.S.A. 40:55D-67b. provides that the review by the planning board

of a conditional use shall include any required site plan review pursuant to N.J.S.A. 40:55D-37 to 40:55D-59. The time period for action by the planning board on conditional uses pursuant to subsection a. of this section shall apply to such site plan review.

4. A conditional use is defined under the MLUL (N.J.S.A. 40:55-D-3) as a use permitted in a particular zoning district only upon a showing that such a use in a specified location will comply with the conditions and standards for the location or operation of such use as contained in the zoning ordinance, and upon the issuance of an authorization therefor by the planning board. If a planning board finds compliance with the specified standards of the ordinance for the specific proposed conditional use, it will be required to approve the application. Exxon Co. U.S.A. v. Livingston Tp. In Essex Cty, 199 N.J. Super. 470, 477 (App. Div. 1985).
5. N.J.S.A. 40:55D-46a. and b. and N.J.S.A. 40:55D-50a. govern the Board's review of the preliminary and final site plan application. N.J.S.A. 40:55D-46a provides that an "ordinance requiring site plan review and approval shall require the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met." N.J.S.A. 40:55D-46a further provides that "The site plan and any engineering documents to be submitted shall be required in tentative form for discussion purposes for preliminary approval. If any architectural plans are required to be submitted for site plan approval, the preliminary plans and elevations shall be sufficient." N.J.S.A. 50:55D-46b provides that "if the planning board required any substantial amendment in the layout of improvements proposed by the developer that have been the subject of a hearing, an amended application for development shall be

submitted and proceeded upon, as in the case of the original application for development” and “the planning board shall, if the proposed development complies with the ordinance and this act, grant preliminary site plan approval.” N.J.S.A. 40:55D-50a. provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such if the applicant meets the standards set forth in the ordinances, the planning board lacks the authority to deny approval of the site plan and subdivision. N.J.S.A. 40:55D-50a; PRB Enters., Inc. v. S. Brunswick Planning Bd., 105 N.J. 1, 7 (1987); Dunkin' Donuts of N.J., Inc. v. Twp. of N. Brunswick Planning Bd., 193 N.J. Super. 513, 515 (App. Div. 1984).

Conversely, if the application does not comply with all ordinance requirements, the Board must deny approval. Cortesini v. Hamilton Planning Board, 417 N.J. Super. 201, 215 (App. Div. 2010). However, there are two exceptions: (1) The first exception is where an application does not comply with all ordinance requirements but the Board grants relief in terms of variances or exceptions. In that case, the Board then must review the application against all remaining ordinance requirements and grant approval if the application complies with all such remaining requirements.

6. Chapter 25, Section 14.2(b)(2)(o) of the Township of West Orange Municipal Code, sets forth the conditions that are required for a cannabis business as follows:

Licensed Cannabis Entities. Licensed Cannabis Retailers and Licensed Medical Cannabis Dispensaries shall be permitted as a conditional use in the B-1, B-2, and I Districts. All other Licensed Cannabis Entities shall be

permitted as a conditional use in the I Districts. These conditional uses shall be subject to the following conditions:

- (1) The Licensed Cannabis Entity shall be required to have a Local License pursuant to Chapter 5, §5-34 of the Township of West Orange Municipal Code.
- (2) No Licensed Cannabis Entity shall be located within one hundred feet (100') from the property line of any property with a school building owned and operated by the West Orange Board of Education.
- (3) No Licensed Cannabis Entity shall be housed in a vehicle or any movable or mobile structure.
- (4) No Licensed Cannabis Entity shall be allowed to operate as a Home Occupation.
- (5) Any signage for a Licensed Cannabis Entity shall be subject to the approval from either the Planning Board or the Zoning Board of Adjustment.
- (6) A Licensed Cannabis Entity shall meet the required security measures as set forth in Chapter 5, §5-34 of the Township of West Orange Municipal Code.
- (7) Cannabis Consumption Areas, as defined in the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:61-31, et. seq., shall be prohibited from all Licensed Cannabis Entities.

7. Testimony established that the location of the proposed cannabis entity is not within 100' of the property line of a building owned or operated by the West Orange Board of Education.
8. The proposed cannabis entity is in an existing commercial building in the B-1 zone and by virtue of the ordinance is a permitted conditional use in the B-1 zone.
9. The proposed signage dimensions and design were presented in an Exhibit that was prepared by TAP Design Group and which was reviewed by the Board.
10. The signage plan submitted complies with the size of signs allowable in the district.
11. The Applicant's security expert, James Sherrard testified that he has seven years of experience in cannabis operations security compliance and oversees 78 facilities in multiple states and the security plan for the proposed entity exceeds the requirements of the Cannabis Regulatory Commission (CRC).
12. Mr. Sherrard also testified that the industry standard of processing online orders (Which make of 50% of the business) take on average 6 to 12 minutes from arrival to departure.
13. All facets of the business are recorded by video surveillance, including a 360-degree view of the exterior and all interior locations and said video feed is live streamed to State regulatory offices where they can be electronically monitored.
14. The intrusion alarm system has a backup and entry into the facility, the vault and other areas within the facility will be subject to dual authentication with an access card and pin number.
15. The exterior of the building and roof will be painted and replaced as an aesthetic improvement to the existing commercial building.

16. The parking pavement will be upgraded and re-striped to include ADA parking spaces and individual parking spaces.
17. The rear North-East corner door will be removed, and the remaining rear door will be the employee and delivery access door.
18. Deliveries are made in unmarked vans and deliveries are made at random times from third party vendors.
19. The Applicant has made arrangements with the adjacent restaurant to utilize cross parking as the restaurant operates mostly in the evening after the cannabis retail facility is closed.
20. The hours of the proposed cannabis entity are 8AM to 7PM, seven days a week (As per the State Code.)
21. Upgrades and repairs will be made to the sidewalk and driveway apron.
22. Any overflow parking or queuing of vehicles or persons will be managed by on-site security that patrol the facility.
23. Applicant's plans provided all information required by the ordinance.
24. Mr. Sheppard testified that as most orders are made online, the procedure employed is to stagger pick up of the orders to avoid parking or queuing issues.
25. Mr. Sheppard testified that the entity does not have much garbage produced and on no occasion is any cannabis product placed into the trash of the facility. The amount of garbage and/or recycling produced from the establishment is not anticipated to require more than a garbage can or two for any regular Township refuse pick-up.
26. The windows will be opaque and shatter-proof.

27. The Applicant will utilize both armed and unarmed security and the Board recommended that the Applicant utilize the services of off-duty West Orange police officers when possible.
28. There is no detectible odor emanating from the retail establishment and no use of the product on site is permitted at any time (Either inside or in the parking lot.)
29. Patrons are met at the door by security personnel who confirm that an individual is 21 years of age or older. No person under the age of 21 (Even with a parent or guardian) will be permitted into the establishment.
30. The CRC (Cannabis Regulatory Commission) mandates that cannabis retailers maintain and update their security plans and the CRC does periodic inspections to ensure that such security plans are followed and up to date.
31. The surveillance camera video is preserved for thirty days. Sections of the video can be saved in perpetuity.
32. No cannabis product is ever delivered to a patron outside of the building. All sales transactions occur inside the facility.

NOW, THEREFORE, based upon the foregoing findings of fact, the Board reaches the following conclusions of law:

1. This application meets all the zoning conditions for a Licensed Cannabis Retailer as set forth in the Township of West Orange Land Use Regulations Ordinance, §25-24.2b.(o).
2. Applicant is entitled to approval as of right.
3. The signage proposed by the Applicant is appropriate in its design and size and is approved by the Board as shown in the submission as represented.

4. The plans conform with the standards governing preliminary and final site review.

NOW THEREFORE be it **RESOLVED** by the Planning Board of the Township of West Orange that the Applicant has met all zoning conditions for a Class 5 Cannabis Adult Recreational Retail Dispensary, and Preliminary and Final Major Site Plan approval for the application of West Orange Wellness, LLC for property located at 26 South Valley Road, is determined as follows:

1. The Board grants approval for the use as a Class 5 Cannabis Adult Recreational Retail Dispensary.
2. The Board grants approval of the signage submitted by the Applicant (Both as to design and size submitted)
3. Preliminary and Major Final Site plan approval is granted with all waivers requested.

AND IT IS FURTHER RESOLVED that the above approval is subject to the following terms and conditions:

1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals, licenses and/or permits. Without limitation of the foregoing, prior to the signing of the approved site plans, and prior to the commencement of any land disturbance or construction but excluding interior renovations, the Applicant shall submit to this Board, with a copy to the Board Engineer, proof that it has obtained all required governmental approvals.

2. If another governmental entity or agency grants a waiver or a variance affecting the plans and/or exhibits submitted by the Applicant, this approval or the conditions attached to it, then the Applicant shall re-apply to this Board respecting the same and this Board shall have the right to view that issue as it relates to this approval and these conditions and modify and amend same, if appropriate.
3. In the event that any other required regulatory approval conflicts with the terms and conditions hereof, or materially alters the same, or the terms and conditions hereof are materially altered by any change in applicable law or regulation other than those municipal regulations for which change is prohibited by the Municipal Land Use Law (MLUL), or in the event Applicant or its successor or assigns construct or attempt to construct any improvement in conflict with or in violation of the terms of this approval, the Board hereby reserves the right to withdraw, amend or supplant the instant approval.
4. All construction, use and development of the property shall be in conformance with the plans approved herein, all representations of the Applicant and its witnesses during the public hearing, all exhibits introduced by the Applicant, and all terms and conditions of this resolution.
5. The Applicant shall pay all outstanding taxes, tax liens, application fees and technical review fees, as well as any inspection fees that may be required hereunder. The Applicant shall pay any additional fees or escrow deposits which may be due and owing within thirty (30) days of the notification or this approval shall be deemed withdrawn.
6. All notes included in the approved plans, including notes required by this Resolution, shall be deemed conditions of approval having the same force and effect as conditions expressly set forth in this Resolution.

7. The Applicant shall submit a certification or other written confirmation that the Chief of Police or his designee has approved the proffered security system and that the plan is available to the Chief or his designee upon demand.
8. Exterior lighting shall match State and Township requirements.
9. The parking lot pavement will be re-striped to clearly show ADA parking and individual parking.
10. The condition of the parking lot pavement and the need for repair or complete repaving is subject to the satisfaction of the Township Engineer.
11. The handicapped/ADA required parking spaces (One of which must be van accessible) must have signage providing identification of the ADA parking spaces and limiting their use to those demonstrating the appropriate license for use of such parking.
12. A copy of the written agreement for shared or overflow parking with the restaurant/tavern adjacent to the property shall be submitted to the Zoning Official within 30 days.
13. Lighting plans pertaining to security, including those required by the State, shall be provided on the plans within 30 days.
14. The parking lot shall be off limits to all commercial vehicles after-hours and Applicant consents to police patrolling the parking lot to enforce the prohibition of after-hours parking.
15. The Applicant must remove all other signs posted currently on the site.
16. The building windows will be opaque as per the State requirement.
17. The Applicant agrees to clean up and maintain landscaping on site and will submit a written landscape plan showing use of native vegetation.

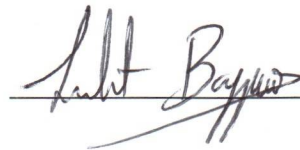
18. Should the Zoning Official determine that refuse and recycling produced on the site is excessive then the Zoning Official shall mandate that the Applicant retain and use a private refuse and/or recycling carter.

19. The roof will be replaced with a light color roof.

20. Employees will be instructed to park at the rear of the building.

21. The Applicant shall list all conditions of approval onto a final site plan submission.

The undersigned secretary certifies the decision set forth herein was made by this Board on November 2, 2022 and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on December 7, 2022.



Jamilet Baquerizo Vite

Planning Board Secretary

Vote Action Taken by the Board on November 2, 2022:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino		X	X			
L. Klein			---			
S. McCartney			X			
J. McNair			X			
C. Morgan			X			
P. Smeraldo			X			
W. Wilkes			---			
S. Jensen			X			
J. Cardoza			X			
R. Bagoff	X		X			

Vote on Memorialization on December 7, 2022:

Board Member	Motion	Second	Aye	Nay	Abstain	Absent
K. Alper			X			
J. Guarino			X			
L. Klein			---			
S. McCartney			---			
J. McNair			X			
C. Morgan			---			
P. Smeraldo		X	X			
W. Wilkes			---			
S. Jensen			X			
J. Cardoza			X			
R. Bagoff	X		X			