

RESOLUTION

Township of West Orange

Planning Board

PB 23-02 Dogwood Green, LLC

Block: 10 Lot: 1.01; Zone: I

Decided on April 26, 2023

Memorialized on May 3, 2023

Application for Conditional Use, c (2) Variance and Minor Site Plan Approval

WHEREAS, Dogwood Green, LLC (Hereinafter the “Applicant”) has made an application for conditional use, c (2) variance relief, and minor site plan approval for signage and the proposed interior alteration of existing commercial property for Class 5 Cannabis Retail Dispensary (Licensed Cannabis Retailer) use at property located at 5 Central Avenue , also known as Block: 10; Lot 1.01, in the I Zone; and

WHEREAS, a properly noticed public hearing was conducted on April 12, 2023, and April 26, 2023; and

WHEREAS, the Applicant was represented Richard Schkolnick,, Esq.; and

WHEREAS, the Applicant provided testimony by Ron Elkins, of 2 Point Perspective, Inc., as an Architect; and

WHEREAS, the Applicant provided testimony by Daniele Grado, Operations Manager of Dogwood Green, LLC; and

WHEREAS, the Applicant provided testimony by Kevin Craig, Security Expert; and

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

ITEM	SIGNED BY	DATE/REVISION
Survey of Premises	James T. Sapio, P.L.S.	8/29/2016
Architectural Plans (14 Sheets: General Information Cover, G001, G002, G003, G004, A001, A002, A003, A004, A100, A130, A150, A200, E102)	Ronald TR Elkins, RA	3/27/2023
Revised sign rendering (Exhibit A-2 marked 4/26/2023)	Ronald TR Elkins, RA	4/26/2023

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 (Licensed Cannabis Retailer), with signage, c (2) variance relief and minor site plan approval.
2. The application requires the following variance relief from the Board:

SECTION	REQUIRED	EXISTING	PROPOSED	VARIANCE
25-7.1 Maximum lot coverage	75%	88.21%	89.07%	“c”
25-15.3 d.1 Signage	Wall signs not permitted	Two (2)	Three (3)	“c”

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. N.J.S.A. 40:55D-60 permits a planning board to grant variances from the bulk regulations of a zoning ordinance and other zoning deviations that do not require a “d” variance as part of site plan or subdivision review. The variance proofs are the same as for “c” variances as set forth in N.J.S.A. 40:55D-70. A c (2) variance may be granted when the purposes of zoning are advanced and the benefits of deviating from the ordinance requirements outweigh any detriments. The benefits derived from granting a “c (2)” variance must include benefits to the community as a whole, not just the applicant or property owner. A “c” variance must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.
7. 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.

8. 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.
9. The proposed cannabis entity is in an existing commercial building in the I zone and by virtue of the ordinance is a permitted conditional use in the I zone.
10. The proposed signage dimensions and design were presented which included a revised sign rendering marked as Exhibit A-2 at the hearing which showed the three signs: An oval sign approximately 3' x 8' (Which would replace the existing sign) located on the front of the building, a round sign replacing the existing square blade sign at the right corner of the building, and a rectangle sign mounted on the side of the building that is 14' x 2', which were reviewed by the Board.
11. Two of the three proposed signs are replacing signs previously approved for bank use in a zone that does not permit advertising signs.
12. The Applicant's security expert, Kevin Craig, testified that the Township Chief of Police approved the security plan submitted and confirmed that approval in an email dated March 27, 2023, that was presented to the Board as Exhibit A-3.
13. The Applicant has a contract with ADT to provide round-the-clock security as required by State statute and will also provide on site security personnel that are intended to be hired from retired members of the West Orange Police Department.
14. The security system, and security surveillance cameras are tested every 30 days.
15. As the building was formerly a bank, the vault, bullet proof glass and other security features already in place will be used by the Applicant as the vault will be used for the storage of money and product after hours.

16. A generator will be in place as back-up power and there is a plan in place in case of an emergency due to a power failure.
17. The security cameras mounted outside will monitor the parking lot, driveways and sidewalk abutting the premises and there will be assigned parking attendants to monitor and control traffic and to prevent any improper activity in the parking lot area.
18. Other than for persons with disabilities as set forth in Paragraph 19 below, the only ingress to the building is the front entrance and 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.
19. Persons with disabilities will be able to enter the rear ADA entrance and will also be met by a security check point to give their identification and proof of age.
20. A second security check point takes place inside the building when cannabis product is purchased.
21. Consistent with the Township's current ordinance, the currently proposed hours of operation are 8AM to 7PM, seven days a week .
22. The windows will be opaque and shatter-proof.
23. The CRC (Cannabis Regulatory Commission) mandates that cannabis retailers maintain and update their security plans and conducts periodic inspections to ensure that such security plans are followed and up to date.
24. The surveillance camera video is preserved for thirty days. Sections of the video can be saved in perpetuity.
25. All sales transactions occur inside the facility.

26. A new ramp in the Northwest corner of the building will be installed (As per the recommendation of the Township Engineer.)
27. The parking lot will be re-sealed and painted with a handicap space to meet all ADA requirements.
28. The Applicant will be re-sealing the roof and agrees to the sealing color of white so as to be environmentally conscientious.
29. The existing drive thru windows will not be used for distribution, payment or delivery of any cannabis or other product sold by the Applicant and will be covered or presented in such a way that it will be unmistakable to the public that they are not in use.

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

1. This application meets all the zoning and conditional use standards 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 lot coverage is pre-existing and is a di minimus increase as per what is permitted.
5. The plans conform with the standards governing minor site plan review.

NOW THEREFORE be it **RESOLVED** by the Planning Board of the Township of West Orange that the Applicant has met all conditional use requirements for a Class 5 Cannabis Adult Recreational Retail Dispensary (Licensed Cannabis Retailer), and Minor Site Plan

approval for the application of Dogwood Green, LLC for property located at 5 Central Avenue ,
is determined as follows:

1. The Board grants approval for conditional use approval as a Class 5 Cannabis Adult Recreational Retail Dispensary (Licensed Cannabis Retailer).
2. The Board grants approval of the signage submitted by the Applicant (Both as to design and size submitted on Exhibit A-2)
3. The variance for the signs is granted as two of the three signs are pre-existing and the additional sign on the side of the building provides a needed visual cue for traffic safety.
4. The variance for exceeding maximum permitted lot coverage is granted as the lot coverage is pre-existing and a de minimus increase in the lot coverage allowed in the district will not create any negative impact.
5. Minor 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:

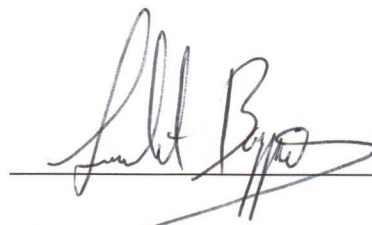
1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals, licenses and/or permits. Without limitation of the foregoing, prior to the signing 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 comply with State and Township requirements.
9. The parking lot pavement will be re-sealed and re-stripped to clearly show ADA parking and individual parking.
10. 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.
11. Lighting plans pertaining to security, including those required by the State, shall be provided on the plans within 30 days.
12. The parking lot shall be off limits parking for all vehicles after-hours and Applicant consents to police patrolling the parking lot to enforce the prohibition of after-hours parking.
13. The building windows will be opaque as per the State requirement.
14. The Applicant agrees to clean up and maintain landscaping on site and will submit a written landscape plan showing use of native vegetation.
15. 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 or if the Zoning Official finds that there is routine or frequent disruption of the trash on the site, the Zoning Official may require that Applicant use a private trash hauler.
16. The roof will be resealed with a white roof.

17. The name of the video coordinator shall be supplied to the Police Department for contact if necessary for any surveillance video that must be preserved.
18. Applicant will install a new ramp in the Northwest corner as per the report of John Hess, Township Engineer dated April 20, 2023.
19. Applicant will comply with the requirements set forth in the review letter prepared by John J. Hess, P.E. dated April 20, 2023, and Paul Grygiel, Township Planner dated March 21, 2023.
20. The exterior signs may be lit during evening operating hours but in no case should they be illuminated between the hours of 10PM and 7AM.
21. Applicant withdraws any plans to use the pick-up windows already existing on the building.
22. The existing pick-up/drive-thru windows must be covered or camouflaged in such a way that it will be unmistakable to the public that they are not in use. Should the Zoning Official determine that a sign of appropriate size and location be necessary to further convey the disuse of the pick-up windows be necessary, such sign(s) may be installed.
23. The exterior signs will be as depicted in Exhibit A-2 both as to size and text.
24. Applicant must make every effort to limit the surveillance camera view to capture just the Applicant's property and not adjacent properties to the rear, especially those residential properties, to protect the privacy of those residents.
25. 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 April 26, 2023, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on May 3, 2023.

A handwritten signature in black ink, appearing to read "Jamilet Baquerizo Vite", is written over a horizontal line.

Jamilet Baquerizo Vite, Planning Board

Secretary

Vote Action Taken by the Board on April 26, 2023:

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

Vote on Memorialization on May 3, 2023:

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