

RESOLUTION

Township of West Orange

Planning Board

PB 23-07 Pure Natural Vibes, LLC/ 470 Prospect Avenue (Suite 100)

Block: 84.01 Lot: 60; Zone: B-2

Decided on June 28, 2023

Memorialized on July 5, 2023

Application for Conditional Use and Minor Site Plan Approval

WHEREAS, Pure Natural Vibes, LLC (Hereinafter the “Applicant”) has made an application for conditional use and minor site plan approvals for the proposed interior alteration of approximately 2,065 square feet (gross floor area) of existing commercial space for Class 5 Cannabis Retail Dispensary (Micro) use at property located at 470 Prospect Avenue, Suite 100, also known as Block: 84.01; Lot 60 (the “Property”), in the B-2 commercial zone; and

WHEREAS, a properly noticed special public hearing was conducted on June 28, 2023; and

WHEREAS, the Applicant was represented by Kenneth D. McPherson III, Esq. of the firm Gibbons P.C.; and

WHEREAS, the Applicant provided testimony by Peter M. Milano, Jr., of Novacom Telephone Company, Inc., as a Security Consultant; David M. Lawrence, R.A., as a professional architect; Chirag Thakkar, P.E., as a professional engineer; Nordia N. Gibbs as a representative of the Applicant; Darnelle Gibbs as an additional representative of the Applicant and a law enforcement professional; and, Daniel Garcia-Pedrosa, owner of the building/landlord (the “Witnesses”); 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 Property	Andrew A. Schmidt, PLS	7/21/21
Architectural Plans (10 sheets)	David M. Lawrence, R.A.	3/28/23
Site Plan (1 sheet)	Chirag V. Thakkar, P.E.	4/4/23

WHEREAS, representatives of the public were provided with an opportunity to pose questions of the Witnesses and also had an opportunity to offer statements in regard to the Application; and

WHEREAS, the Board reviewed and considered the Application and the documents submitted therewith, the testimony of the Witnesses and members of the public; and

WHEREAS, the Board also considered the testimony and filed review letters of its professionals at the hearing.

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 conditional use, that being a Class 5 Cannabis Adult Recreational Retail Dispensary (Micro), as well minor site plan approval.
2. The Property is 31,221 square feet (0.716 acres) in area and is located on the east side of Prospect Avenue across from Rooney Circle. It is roughly trapezoidal, with 73 feet of frontage on Prospect Avenue and depth of approximately 260 feet.
3. The Applicant is proposing to locate a Class 5 Recreational Cannabis Retailer (Micro) in the "Suite 100" space of an existing three-story commercial building, containing approximately 2,065 square feet of gross floor area.

4. Physical changes proposed as part of the application include interior building renovations to the Suite 100 commercial tenant space and modifications to the building's exterior, including provision of new signage.
5. Changes proposed to the site layout are limited to the restriping of a portion of the parking area, specifically the ADA/Handicap parking spaces and signage for those parking spaces.
6. The Property is developed with a three-story commercial building with a building footprint of approximately 7,995 square feet and a rear parking lot.
7. The owner of the Property has entered into a shared parking arrangement with the adjacent property owner to the north (466 Prospect Avenue), providing for the availability of thirty-five (35) additional parking spaces for use by the commercial tenants at the Property.
8. The Application does not require any variance relief from the Board.
9. 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. 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.
10. 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).

11. N.J.S.A. 40:55D-46.1 is the starting point for consideration of a minor site plan application and provides that “minor site plan approval shall be deemed to be final approval of the site plan.” N.J.S.A. 40:55D-50a is the focal point for consideration of the minor site plan as it 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 application complies with all ordinance requirements, the Board must grant approval.
12. 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.

13. The testimony provided by Applicant at the hearing and the certified list of properties within 200 feet of the Property establish 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.

14. The proposed cannabis entity is in an existing commercial building in the B-2 zone and by virtue of the ordinance is a permitted conditional use in the B-2 zone.
15. The proposed signage dimensions and design were presented on Sheet A-213 of the submitted Architectural Plan. The signage complies with the Township Code.
16. The Applicant's security expert, Peter M. Milano, Jr. testified that the security plan for the proposed entity exceeds the requirements of the Cannabis Regulatory Commission (CRC).
17. Mr. Milano testified that the Township Chief of Police has reviewed and approved of the security plan submitted and confirmed that approval via email.
18. Applicant's representative, Nordia N. Gibbs, testified that the industry standard of processing online orders take on average 6 to 12 minutes from arrival to departure. The procedure employed is to stagger pick up of the orders to avoid parking or queuing issues.
19. Ms. Gibbs also testified that all sales transactions occur inside the facility.
20. There will be no on-site consumption of cannabis products, as per state regulations.
21. All facets of the business are recorded by video surveillance, including a 360-degree view of all interior locations and said video feed, which can be saved in perpetuity, is live streamed to State regulatory offices where they can be electronically monitored.
22. 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.
23. Deliveries are made in unmarked vans and deliveries are made at random times from third party vendors.

24. In accordance with Township Code, Applicant's proposed hours of operation are 8AM to 7PM, seven days a week. If the allowed hours should be changed via ordinance, Applicant will comply.
25. Any overflow parking or queuing of vehicles or persons will be managed by Applicant's on-site staff.
26. Applicant's plans provided all information required by the ordinance.
27. Ms. Gibbs testified that the proposed use does not generate much garbage and on no occasion is any cannabis product placed into the trash of the facility. All cannabis refuse is picked up via secured carrier.
28. The interior windows will be opaque and equipped with window guards to prevent unlawful entry into the facility, as per state regulatory requirements.
29. There will be no detectible odor emanating from the retail establishment and no use of the product on site (inside or outside) is permitted at any time.
30. Patrons are held in the entrance vestibule where age verification is confirmed through a transaction window, prior to gaining access to the retail floor of the establishment.
31. 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.
32. No cannabis product is ever delivered to a patron outside of the building.

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 therefore entitled to approval as an otherwise permitted use, having satisfied all conditions of the conditional use standards.
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 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 zoning conditions for a Class 5 Cannabis Adult Recreational Retail Dispensary, and Conditional Use and Minor Site Plan approval for the application of Pure Natural Vibes, LLC for property located at 470 Prospect Avenue (Suite 100), is hereby granted with all waivers requested; and

IT IS FURTHER RESOLVED that the approval granted to Pure Natural Vibes, LLC is subject to the following terms and conditions:

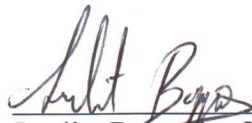
1. The Applicant shall comply with all applicable Township, County, State and Federal laws, ordinances, regulations and directives, including without limitation, obtaining all applicable local, state and federal approvals, or permits. Without limitation of the foregoing, prior to the signing of the approved 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 land use approvals. Recognizing the unique regulatory scheme for cannabis, the Board expressly recognizes that a final license from the CRC and the Township is a condition precedent to operation of the facility, but is not a zoning condition precedent to the signing of plans and associated construction.

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 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. A portion of the parking lot pavement will be re-striped consistent with the submitted plans to clearly show the required ADA parking spaces with signage to meet the current standards.
8. Lighting plans pertaining to security, including any required by the State, shall be provided on the plans.
9. The Suite 100 windows will be opaque and equipped with window guards, as per the State requirement.
10. Throughout the operation of the Class V Cannabis Retailer use, the parking agreement must remain in effect between the owners of 470 Prospect Avenue and 466 Prospect Avenue.
11. The survey will be amended to show all the striped parking spaces as exist on site.
12. Applicant shall install an odor mitigation system such as carbon filter to be approved by the Code Official.
13. Applicant shall confirm with the Township Engineer that the proposed space will meet the retro fire code requirements.
14. In the event of a power failure the Applicant will close the facility and station security personnel at the site.
15. Applicant will install and maintain their own security cameras covering the entire the hallway leading to the facility and inside the site.

16. Applicant will make every effort to hire off-duty West Orange police officers to provide for the security needs.
17. Applicant will comply with items #10 (Revised architectural plans to include a written and graphic scale on each sheet), #11 (Adding the North arrow to clarify discrepancies noted), #14 (Parking calculation), and #16 (Site plan revision to show existing parking spaces at 466 Prospect Avenue) listed in the report by John J. Hess, PE, PP, CME dated June 26, 2023.
18. Architectural plans showing the entire footprint of the first floor area utilized by patrons, delivery persons or any other persons gaining access to the site shall be provided (The first floor layout including hallways accessible to the site.)
19. 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 June 28, 2023 and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on June 28, 2023.



Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on June 28, 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			
W. Wilkes						---
T. Williams		X	X			
S. Jensen						----
J. Cardoza			X			
R. Bagoff	X		X			

Vote on Memorialization on July 5, 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			
W. Wilkes						---
T. Williams		X	X			
S. Jensen						----
J. Cardoza			X			
R. Bagoff	X		X			