

RESOLUTION

Township of West Orange

Planning Board

PB 23-08 The Library of New Jersey, Inc./ 1 and 5 Washington Street

Block: 120.01 Lots: 24 & 26; Zone: B-1

Decided on August 9, 2023

Memorialized on September 6, 2023

Application for Conditional Use and Minor Site Plan Approval

WHEREAS, The Library of New Jersey, Inc. (Hereinafter the “Applicant”) has made an application for conditional use and minor site plan approvals for the proposed Licensed Cannabis Retailer in an existing one-story commercial building for Class 5 Cannabis Retail Dispensary (Micro) use at property located at 1 and 5 Washington Street, also known as Block: 120.01; Lots 24 and 26 (the “Property”), in the B-1 commercial zone; and

WHEREAS, a properly noticed special public hearing was conducted on August 9, 2023; and

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

WHEREAS, the Applicant provided testimony Jim Sherrard, as a Security Consultant; Michael J. Tormey, R.A., as a professional architect; Corey Dishmen, as a representative of the Applicant; and Ari Sorkin of Tap Design Group as a signage design professional (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	James Plica, PLS	8/23/1999
Architectural Plans (5 sheets)	Michael J. Tormey, R.A.	6/28/23
Signage plans (2 sheets)	Ari Sorkin	7/1/2023
CS-1 (Cover Sheet- Site Plan)	Michael J. Tormey, R.A.	8/7/2023

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 14,057 square feet in area and is located on the northeast side of Washington Street at its intersection with Meade Street. The property has 104 feet of frontage on Washington Street and 153 feet of frontage on Meade Street.
3. The site is developed with a one-story commercial building and with a building footprint of approximately 5,880 square feet (Though, Applicant will use only 2,500 sq. ft of the available space) and front and rear parking lots.

4. There are three curb cuts for the parking area along Washington Street and one curb cut is provided on Meade Street for the rear parking lot.
5. The area surrounding the subject property is developed with a mix of land uses with commercial uses generally located along Washington Street, along with residential and mixed-use buildings, and primarily residential uses are located elsewhere in the vicinity with the municipal boundary with the City of Orange located to the east.
6. The Applicant is proposing to locate a Class 5 Recreational Cannabis Retailer (Micro) at the property of an existing commercial building, with the Applicant occupying 2,500 square feet of the existing building for the cannabis retail business entity (The remaining 3,380 square feet would remain as open and largely, unused warehouse space).
7. Physical changes proposed as part of the application include interior building renovations to the interior to create waiting area with security/identification check point, sales floor and vault area and modifications to the building's exterior, including painting, resurfacing, and restriping of the parking lot (Front and back), solar panels and signage.
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-1 zone and by virtue of the ordinance is a permitted conditional use in the B-1 zone.
15. The proposed signage dimensions and design were presented at the hearing. The signage complies with the Township Code.
16. The Applicant's security expert, James Sherrard testified that the security plan for the proposed entity exceeds the requirements of the Cannabis Regulatory Commission (CRC).
17. Mr. Sherrard testified that the Township Chief of Police has reviewed and approved of the security plan submitted and confirmed that approval via letter dated July 26, 2023.
18. There will be no on-site consumption of cannabis products, as per state regulations.
19. 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.
20. Applicant will install a generator to back up the security and alarm system.
21. Deliveries are made in unmarked vehicles and deliveries are made at random times from third party vendors.
22. 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.

23. Any overflow parking or queuing of vehicles or persons will be managed by Applicant's on-site staff.
24. Applicant's plans provided all information required by the ordinance.
25. 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.
26. 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.
27. 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.
28. 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 per the conditions agreed to by Applicant and set forth below.
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 (Micro), and Conditional Use and Minor Site Plan approval for the application of The Library of New Jersey, Inc. for property located at 1 & 5 Washington Street, is hereby granted with waivers requested as to items #10, 22, 24, 25, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43, 46, 48, and 49; and

IT IS FURTHER RESOLVED that the approval granted to The Library of New Jersey, Inc. 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. 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.)

8. The Applicant shall list all conditions of approval onto a final site plan submission prior to the submission of the building permit.
9. Applicant shall install a generator with the approval of the Township Engineer and Zoning Official as to its location. Said generator must be included on the site plan and noise data for that generator shall be submitted to the Township Engineer and Zoning Official to demonstrate that the generator will comply with all applicable state and local noise codes. Applicant shall provide all necessary design specifications for such a generator within 30-days of the issuance of a certificate of occupancy, and the installation of such a generator shall not be a condition of zoning compliance or occupancy; however, a generator shall be installed within 90-days of the issuance of a certificate of occupancy.
10. Applicant will provide construction details for all the proposed site improvements.
11. Applicant will provide a lighting plan. The Applicant must demonstrate that the lighting in the rear parking lot will comply with the Township Ordinance requirements regarding minimum lighting levels and the spillage of light onto adjoining properties or right of way.
12. Security cameras must be operational twenty-four hours a day, seven days a week.
13. Applicant will supply security video if requested by West Orange Police Department, Orange Police Department, or other police department without need for a subpoena.
14. The debris located in the rear of the building will be cleaned up by appropriate means, including removal of any hazardous or environmentally sensitive materials that are left at the site.

15. The broken exterior windows will be secured and repaired to the satisfaction of the Zoning Official and the Chief of Police.
16. Applicant shall repair, or replace sections or in its entirety, the chain link fence to the satisfaction of the Zoning Official. The decision as to the repair/replacement is within the complete discretion of the Zoning Official.
17. The loading zone currently indicated on the plans will be removed and new parking space(s) will be added after consultation with and approval of the Zoning Official and Township Engineer.
18. The parking lot will be resurfaced with “cool pavement” or porous pavement for any pavement that is replaced or when it becomes necessary to replace any or all of the parking lot. (Whether all or any part of the current parking lot requires replacement is subject to the decision of the Zoning Official.)
19. The new roof will be light color and solar panels will be installed within twelve (12) months after the retail establishment has been open for business. If an extension of time for installation of the solar panels is warranted in the opinion of the Zoning Official, an extension of time may be granted for such installation by the Zoning Official.
20. Vehicles exiting the rear parking lot must be restricted to a “Right turn only,” and a sign limiting turning to the right shall be installed by the Applicant.
21. Applicant shall supply and maintain storm water inlets and the control basin proposed and the Township shall have access to such inlets and basins for inspection.
22. Applicant must supply soil disturbance information to the Township Engineer and if the area of disturbance is established to be greater than 5,000 sq. ft. then Applicant must supply a soil erosion and sediment plan and must obtain a soil erosion and

sediment control plan certification from the Hudson Essex Passaic Soil Conservation District.

23. Applicant agrees to supply the items listed in the Hess report dated August 3, 2023 as confirmed by Applicant in the attorney letter dated August 9, 2023, more specifically items relating to waivers: # 40 (Construction details), 44 (Lighting plan and details), 45 (Landscape Plan and details), and 52 (COAH compliance if applicable) and Item 15 (Turning movement plan to demonstrate that emergency vehicles, delivery vehicles and garbage trucks will be able to safely navigate the site).
24. Applicant shall delete the word "Dispensary" from the exterior sign (Unless mandated by the CRC) and will also add the logo of a book with a lotus flower to the sign (Unless prohibited by the CRC).
25. Except as clarified during the public hearing, the Applicant agrees to address the various engineering comments in the Hess report dated August 3, 2023.

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 September 6, 2023.



Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on August 9, 2023:

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

Vote on Memorialization on September 6, 2023:

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