

March 4, 2024

VIA FEDEX AND EMAIL

Township of West Orange Planning Board
Township of West Orange Planning & Zoning Office
66 Main Street
West Orange, New Jersey 07052
Attn: Jamilet Baquerizo Vite, Planning Board Secretary

**Re: Yerrr Canna LLC (“Applicant”)
PB-24-05: Application For Conditional Use & Minor
Site Plan Approval (the “Application”)
76-82 Ashland Avenue; 10 Park Avenue & 26 Park
Avenue
Block 62, Lots 22.01; 32 & 34 (the “Property”)
Application/Motion For Reconsideration & Request
for March 20, 2024 Special Meeting**

Dear Chairman Bagoff and Members of the Planning Board (the “Board”):

As you are aware, this office represents Applicant in connection with the above-captioned Application for the Property. At the February 28, 2024 special meeting of the Board (the “February Special Meeting”), the Application proposing a conditional use permitted in the Industrial (I) zone, which complied with all conditions of the use as per the Township’s Ordinance, was denied on 5-4 vote following a motion to approve the Application with conditions. See N.J.S.A. 40:55D-9a. Following that decision, and in light of the conversation regarding the proposed Application during the course of the hearing and in its aftermath, the Applicant advised the Board that it would re-examine certain areas of the application, particularly as they related to site circulation, access, and landscaping, and submit additional materials in advance of a request for reconsideration.

As per Applicant’s testimony at the February Special Meeting, Applicant has a very narrow timeframe with the state licensing authority to secure planning board and Township Council local licensing approval, the Board’s approval being a prerequisite for the Council’s action. Accordingly, Applicant requests that the Board place Applicant’s motion for reconsideration on the Board’s agenda for the regular meeting scheduled for March 6, 2024. Should the Board grant Applicant’s motion for reconsideration on March 6, 2024, Applicant requests that the Board schedule a special meeting on March 20, 2024 to reconsider the Application. In anticipation of such a request being granted by the Board, the Applicant has already arranged for the publication and mailing of the public notice for said March 20, 2024 hearing.

Township of West Orange Planning Board
March 3, 2024
Page 2

Enclosed with this submission are the following additional items requested by the Board during the February Special Meeting:

- Five (5) copies of Exterior Site Plan, (3 sheets) revised March 2, 2024, prepared by Arch7, Shawn T. Fisher, RA, including Delivery Vehicle Access Plan & Turning Radius Template (Sheet 2); and Emergency Access Plan & Turning Radius Template (Sheet 3);
- Five (5) copies of Lease Agreement, redacted for Personally identifiable information (PII), monetary terms and proprietary information;
- Five (5) copies of New Jersey Environmental Protection (NJDEP) data activity reports relative to on-site monitoring wells;
- Five (5) copies of Photographs taken at the site by Applicant on March 1, 2024, showing existing inlets and paving on Lot 22.01; and
- Five (5) USB flash drives containing: one (1) video demonstrating delivery van access and turning radius template; and (one) (1) video demonstrating emergency vehicle access and turning radius template.

Based on the analysis set forth below and the enclosures submitted herewith, Applicant respectfully requests that the Board reconsider its decision and grant Applicant approval of the Application to which it is entitled as a matter of law.

New Jersey courts have held that a planning board has “the power to review, modify and rescind its decision.” Garofalo v. Burlington Tp., 212 N.J. Super. 458, 465 (Law Div. 1985) (citing, Ruvoldt v. Nolan, 63 N.J. 171 (1973)). In Garofalo, the Court stated that the power to reconsider may be applied by a planning board so long as it observes “due process requirements, namely, notice and an opportunity to be heard.” Id. The submission that accompanies this request addresses the open items related to site circulation, access, landscaping, and some of existing site conditions (including monitoring wells, parking layouts, etc.).

During the course of the hearing on February 28, 2024, testimony was provided that the Applicant was a lessee of the property, and that many of the questions for site access related to the remainder of the property over which the Applicant lacks site control, and were existing site conditions. Notwithstanding that, the Applicant provided factual testimony on certain off-tract conditions, and represented to the Board that it had a lease that required the inclusion of all parking required by law. There were no proposed changes to the safety circulation for the present site, aside from the addition of a security fence around the Applicant’s proposed site, for which the Applicant proposed a Knox box as a safety precaution. The design of this safety system would be finalized with the Fire Official, in the usual course of resolution compliance. The Board’s professionals were queried on multiple occasions by the acting Board chair as to their comfort with resolving certain open questions relative to circulation for emergency vehicles

Township of West Orange Planning Board
March 3, 2024
Page 3

and landscaping through the usual resolution compliance process. **In order to provide further information, the Applicant agreed to the following conditions of approval, including but not limited to:**

- I. Submission of a revised site plan featuring the following details:
 - Dimensions of existing parking areas and drive aisles;
 - Details on the proposed fencing which would comply with the Township's Code requirements;
 - Specifications on the proposed emergency back-up generator;
 - Proposed landscape improvement location and species;
 - Details on proposed lighting to comply with the Township's Code requirements;
 - Emergency Access Plan;
 - Location of existing pavement and drainage; and
 - Submission of utilities improvement plan.
- II. Compliance with comments emanating from fire official review;
- III. Submission of redacted lease agreement(s) for Property; and
- IV. Submission of available information regarding on-site monitoring wells .

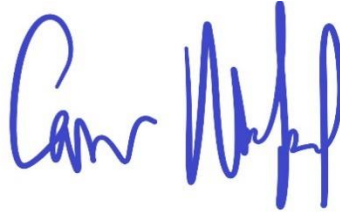
Despite agreeing to these conditions, the Board felt that insufficient materials had been submitted, resulting the narrow denial. These materials have been clarified, revised, and updated to reflect the conditions set forth above, in an effort to placate the concerns raised by certain members of the Board during the course of the hearing.

Based on the above and in consideration of the enclosed revised materials addressing the majority of the proposed conditions of approval, the Board's reconsideration of the Application is warranted. Applicant is a committed member of the community here in West Orange, and has been actively pursuing these efforts on this site, having secured approvals and grants from the State of New Jersey for the development of this permitted conditional use on this property. These materials are submitted to clarify and modify the materials previously submitted, and satisfy the necessary standards under the West Orange code. Accordingly, Applicant respectfully requests that the Board grant the present motion for reconsideration, so that the Applicant may present these materials and the Board reach a final decision on March 20, 2024.

Thank you for your courtesies in this regard. We await your determination on this motion.

Township of West Orange Planning Board
March 3, 2024
Page 4

Respectfully submitted,



Cameron W. MacLeod
Director

Enclosures
CWM/kdm

cc: Diana P. McGovern, Esq.
Geniece Gary Adams
Yerrr Canna LLC
Shawn T. Fisher, R.A.
John J. Hess, P.E.
Joseph Matullo - Fire Official
Anthony Vecchio- Fire Chief
Paul Grygiel, P.P., A.I.C.P.
Kenneth D. McPherson III, Esq.
(all via email)