

RESOLUTION

Township of West Orange

Planning Board

PB 24-05 Yerrr Canna LLC

76-82 Ashland Avenue; 26 Park Avenue & 10 Park Avenue

Block: 62 Lots: 22.01; 32 & 34

Zone: I

Decided on April 3, 2024

Memorialized on April 17, 2024

Application for Conditional Use, C2 Variance and Minor Site Plan Approval

WHEREAS, Yerrr Canna LLC (hereinafter the “Applicant”) has made an application for conditional use, C2 Variance and minor site plan approvals for the proposed Licensed Cannabis Cultivation use in an existing two-story commercial building at property located at 76-82 Ashland Avenue, also known as Block: 62; Lot 22.01, with access proposed through property located at 26 Park Avenue and 10 Park Avenue, also known as Block 62; Lots 32 and 34 (the “Property”), in the I- Industrial zone (the “Application”); and

WHEREAS, a properly noticed special public hearing was conducted on February 28, 2024; and

WHEREAS, at the first hearing conducted on February 28, 2024 the Board voted to deny the Application with a 5-4 vote due to various insufficiencies; and

WHEREAS, before any resolution was adopted by the Board a motion for reconsideration was filed by Applicant to vacate the Board’s denial and request permission to supplement the record with additional plans that included turning templates, Fire Department review and approval, removal of a fence with the consent of the Chief of Police as to the security plan, and clarification of parking not related to the cannabis use and in support of a variance for parking requirements

related to the non-cannabis uses on the Property pursuant to N.J.S.A. 40:55D-70(c)(2), which was heard by the Board at a regular meeting held March 6, 2024; and

WHEREAS, the Board granted Applicant's motion for reconsideration to present additional site plan information and vacated the denial of the Application; and

WHEREAS, the Application was set down for a properly noticed regular public hearing conducted on April 3, 2024; and

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

WHEREAS, the Applicant provided expert testimony from James Sherrard, as a Cannabis Security Consultant; Shawn T. Fisher, R.A., as a professional architect; and Alex Dougherty as a professional planner and operational testimony from James Jackson, as a representative of the Applicant; and

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

ITEM	SIGNED BY	DATE/REVISION
Location survey	Vincent Manno, P.L.S.	11/29/2022
Existing Conditions Survey (Lot 32)	Robert L. Cigol, N.J.P.L.S.	12/28/2021
Site Plan (1 sheet)	Shawn T. Fisher, R.A.	2/7/2024
Architectural Floor Plans (1 sheet)	Shawn T. Fisher, R.A.	1/10/2024
Site Plan (3 sheets)	Shawn T. Fisher, R.A.	3/2/2024
Approval of Annual License Application	Diana Houenou	2/9/2023
Resolution of Local Support	Karen Carnevale, R.M.C.	9/20/2022
Memorandum on Existing Conditions	Chirag V. Thakkar, P.E.	3/20/24
Site Plan (7 Sheets)	Shawn T. Fisher, R.A.	3/19/24

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 application requires the following bulk variance (c (2)) relief from the Board:

Section	Required	Existing	Proposed
25-12.2b. Minimum required number of parking spaces ¹	52	48	48

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 1 Cannabis Cultivator as well minor site plan approval and c2 variance relief.
2. The Property is comprised of portions of three tax lots, which have frontages on Ashland Avenue, Park Avenue and Spring Street.

¹ The Board also was requested to grant relief as to the number of parking spaces required by the Applicant's use of the building as proposed, seeking relief for the non-cannabis related uses, and proposing a total of seven (7) spaces for all operations proposed by the Applicant at this time. For clarity, a total of forty-eight (48) spaces were proposed for the cumulative uses on the Property.

3. The building proposed to house the conditional Class 1 Cannabis Cultivator use is located in the rear portion of Lot 22.01, an L-shaped parcel with frontage on Ashland Avenue.
4. Access and parking for the proposed Cultivator business is proposed on portions of Lots 32 and 34, utilizing existing driveways on Park Avenue.
5. The seven (7) parking spaces for the cultivator in the Northeast corner of the property will be reserved for employee parking and will include the operational EV space.
6. Deliveries and product movement out of the facility will be via the Park Avenue exit/entrance only.
7. The area surrounding the subject property is developed with a mix of land uses, including commercial, industrial, residential, park and public uses; the municipal boundary with the City of Orange is located a short distance to the east.
8. The Applicant is seeking conditional use approval for a Class 1 Cannabis Cultivator use as such term is defined by State law, which fits within the definition of a “Licensed Cannabis Entity” by local ordinance.
9. As testified to by the Applicant’s Architect, the Applicant is seeking to occupy a vacant existing two-story building in the rear of Lot 22.01 with the gross floor area of the first floor of the building being approximately 4,695 square feet and an overall building area of approximately 9,390 square feet with approximately 2,247 square feet of the first floor space to be utilized as the cultivation space, approximately 3,576 square feet of support/office space combined on the first and second floor with the remaining 3,567 square feet on the second floor to remain unused.

10. Parking for the cannabis facility operations is proposed with 7 new parking spaces comprised of 6 full size spaces and one compact parking space on Lot 22.01 including an ADA compliant space and an electric vehicle space, satisfying the parking requirement for the applicable conditional use standard.

11. The Application requires the following bulk variance (c (2)) relief from the Board:

Section	Required	Existing	Proposed
25-12.2b. Minimum required number of parking spaces	52	48	48

12. The Application requires parking variance relief from the Board related to the overall square footage of the building and office space for the Applicant's building, as well as the other buildings located on the Property, where a total of 52 parking spaces are required under the Code and only 48 parking spaces exist on Lot 22.01 (There are sufficient parking spaces for the Conditional Use related to cannabis cultivation as 7 parking spaces are provided, including the EV space and ADA space).

13. No landscaping currently exists on the site and the Applicant is proposing four new landscaping improvements on Lot 22.01, as shown on the Site Plan dated March 19, 2024.

14. No signage is proposed other than the numerical address to be mounted on the building.

15. 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.
16. 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).
 17. 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.
 18. Chapter 25, Section 14.2(b)(2)(o) of the Township of West Orange Municipal Code, as amended by Ordinance #2808-23 adopted on August 22, 2023, 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, except a Pre-Approved Entity at its originally approved location, shall be located within five hundred feet (500') from the property line of any property with any school building.
- (3) No Licensed Cannabis Entity, except a Pre-Approved Entity at its originally approved location, shall be located within 500 (500') feet from the property line of any property with a House of Worship, as defined under Chapter 25, Section 4.
- (4) All Licensed Cannabis Entities shall comply with the following Parking Requirements for Nonresidential Uses: (i) License Cannabis Retailers shall comply with the minimum required number of parking spaces for Retail Stores and personal service stores or studios not separately listed; and (ii) all other Licensed Cannabis Entities shall comply with the minimum required number of parking spaces for Light industrial, laboratory and research uses.

- (5) No Licensed Cannabis Entity shall be housed in a vehicle or any movable or mobile structure.
- (6) No Licensed Cannabis Entity shall be allowed to operate as a Home Occupation.
- (7) Any signage for a Licensed Cannabis Entity shall be subject to the approval from either the Planning Board or the Zoning Board of Adjustment under the guidelines and standards governing commercial signs as set forth within the Township Municipal Code.
- (8) A Licensed Cannabis Entity shall meet all of the required security measures as set forth in Chapter 5, Section 34 of the Township of West Orange Municipal Code.
- (9) Cannabis Consumption Areas, as defined in the New Jersey Cannabis Regulatory Enforcement Assistance, and Marketplace Modernization Act, N.J.S.A. 24:6I-31, et. seq., shall be prohibited from all License Cannabis Entities.

- 19. The Applicant is a Pre-Approved Entity, as defined by Ordinance #2808-23, because it received a Resolution of Local Support from the Township on or before January 10, 2023; and received a license from the New Jersey Cannabis Regulatory Commission. In addition, 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.
- 20. The Applicant's cannabis security expert, James Sherrard, testified that the security plan for the proposed development exceeds the requirements of the Cannabis Regulatory Commission (CRC).

21. 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 February 22, 2024. The Chief of Police confirmed in a subsequent email that the plan is approved even with removal of a security fence.
22. Anthony A. Vecchio, Fire Chief, provided a letter dated April 3, 2024, that advised that sufficient fire apparatus ingress and egress currently exists at the property with suggested conditions that were accepted by the Applicant for signage and striping of the fire lanes.
23. Applicant will install a generator that will comply with the ordinance decibel requirements.
24. The parking is satisfactory for the proposed use because only 10 employees maximum are permitted at the proposed cultivation facility by formula established by State statute pertaining to micro cannabis grow facilities.
25. 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 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.

26. Applicant presented planning testimony to establish that the benefits of the reduced parking outweigh any detriments to the parking shortfall as the proposed application will clean up the site, and satisfy purposes a, g, i, and m under the M.L.U.L.
27. The CRC (Cannabis Regulatory Commission) mandates that cannabis cultivators maintain and update their security plans and the CRC does periodic inspections to ensure that such security plans are followed and up to date.

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 Cultivator as set forth in the Township of West Orange Land Use Regulations Ordinance, §25-24.2b.(o), as amended by Ordinance #2808-23.
2. This Application requires the following variance relief pursuant to N.J.S.A. 40:55D-70(c)(2):

Section	Required	Existing	Proposed
25-12.2b. Minimum required number of parking spaces	52	48	48

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 Licensed Cannabis Cultivator (Micro) and Conditional Use, C2 Variance and Minor Site Plan approval for the application of Yerrr Canna LLC for property located at 76-82 Ashland Avenue, 26 Park Avenue and 10 Park Avenue, is hereby granted with waivers requested as to items #3,4,7, 8,17, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 45, 46, 47, 48, and 52; and

IT IS FURTHER RESOLVED that the approval granted to Yerrr Canna 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. Architectural plans showing the areas of the building to be utilized by employees, delivery persons or any other persons gaining access to the Property shall be provided

including hallways and demonstrating appropriate emergency access within the building.

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, the location of which must be included on the site plan. Applicant shall provide all necessary design specifications for such a generator, including noise data to demonstrate that the generator will comply with all applicable state and local noise codes, 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. If any of the unused portion of the second floor is to be utilized for any purpose the Applicant must return to the Board for amended site plan approval and review of parking requirements.

11. The Electric Vehicle parking space must be operational from the inception of the business.

12. Applicant shall add additional light poles as may be necessary to comply with the standards of the West Orange Zoning Code and will submit a lighting plan to be approved by the Board Engineer.

13. Applicant shall repave or resurface or patch the parking lot of the Property at the direction and discretion and approval of the Zoning Officer.

14. Applicant shall stripe the parking spaces for use by its employees and label the compact car spaces and properly designate the ADA parking space.

15. Applicant shall provide emergency vehicle striping to the parking lot pavement.
16. The seven parking spaces for the grow center shall be reserved for employee parking (including the E.V. space) and appropriate signage should be provided to that effect.
17. The traffic path as to two-way traffic or one-way traffic and aisle width design shall be determined by the Board Engineer and Applicant shall provide any recommended signage to that effect.
18. Deliveries and product movement from the facility shall be by the Park Avenue ingress and egress only.
19. Vehicles may enter from Ashland Avenue only (one way) and may enter on Park Avenue but may exit onto Park Avenue only.
20. Pressure controlled doors shall be installed at the entrance and exit of the cultivation site.
21. Only an address number shall be permitted on the building (no identification signs shall be affixed to the exterior of the building.)
22. Applicant shall provide an emergency contact list with an emergency action plan to the Township Engineer and Chiefs of both the Police and Fire Departments.

The undersigned secretary certifies the decision set forth herein was made by this Board on April 3, 2024, and memorialized herein pursuant to N.J.S.A. 40:55D10(g) on April 17, 2024.

Jamilet Baquerizo Vite
Planning Board Secretary

Vote Action Taken by the Board on April 3, 2024:

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			X			
W. Wilkes						----
W. Rutherford			X			
J. Cardoza			X			
L. Kapferer					----	
R. Bagoff	X		X			

Vote on Memorialization on April 17, 2024:

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