

DRAFT
MINUTES
TOWNSHIP OF WEST ORANGE
PLANNING BOARD MEETING
April 3, 2024 7:30 P.M.

The Township of West Orange Planning Board held its regular meeting on April 3, 2024 at 7:30 P.M. via virtual ZOOM videoconference.

Chairman Bagoff called the meeting to order at approximately 7:30 P.M. He announced that notification of the meeting was given to the Township Clerk, and posted on the Township Bulletin Board, sent to the West Orange Chronicle and the Star Ledger, and posted on the Township's website calendar. This meeting has been properly noticed to the public in accordance with the Open Public Meetings Act. No new matters will start after 10:30 P.M.

PLEDGE OF ALLEGIANCE

- *Chairman Bagoff* requested all persons stand for the Pledge of Allegiance.

ANNOUNCEMENTS

- The next Planning Board regular meeting will be held **Wednesday May 1, 2024** at **7:30 P.M.**

ROLL CALL

PRESENT: Dr. Robert Bagoff; Mr. Ken Alper; Mr. John Cardoza; Mr. Jerry Guarino; Mr. Lee Klein; Mr. Christopher Morgan, Sr.; Mayor Susan McCartney; Mr. Peter Smeraldo; Council President Rutherford; Ms. Kapferer

ABSENT: Mr. William Wilkes;

ALSO PRESENT: Diana P. McGovern, Esq., Planning Board Attorney;
Kate Keller, Consulting Town Planner;
Mr. John Hess, Board Engineer;
Jamilet Baquerizo Vite, Planning Board Secretary

MINUTES & RESOLUTIONS

10/25/2024 Draft Minutes

Motion: Chairman Bagoff

Second: Mr. Guarino

Alper:	Y	Morgan:	Y
Bagoff:	Y	Rutherford:	---

Cardoza (Alt.2): ----	Smeraldo: Y
Guarino: Y	Wilkes: ----
Kapferer: ----	
Klein: Y	
Mayor McCartney: Y	

11/29/2024 Draft Minutes

Motion: Chairman Bagoff

Second: Mr. Guarino

Alper: Y	Morgan: Y
Bagoff: Y	Rutherford: ---
Cardoza (Alt.2): ----	Smeraldo: Y
Guarino: Y	Wilkes: ----
Kapferer: ----	
Klein: Y	
Mayor McCartney: Y	

1/3/2024 Draft Minutes

Motion: Chairman Bagoff

Second: Mr. Cardoza

Alper: Y	Morgan: ---
Bagoff: Y	Rutherford: Y
Cardoza (Alt.2): Y	Smeraldo: Y
Guarino: Y	Wilkes: ----
Kapferer: ----	
Klein: Y	
Mayor McCartney: Y	

3/6/2024 Draft Minutes

Motion: Chairman Bagoff

Second: Mr. Cardoza

Alper: Y	Morgan: Y
Bagoff: Y	Rutherford: Y
Cardoza (Alt.2): Y	Smeraldo: Y
Guarino: Y	Wilkes: ----
Kapferer: Y	
Klein: Y	
Mayor McCartney: Y	

SWEARING IN

- The consultant planner Kate Keller and board engineer John Hess sworn in.

APPLICATIONS

- **PB-24-05 Yerrr Canna, LLC**
Block: 62; Lots:22.01, 32 & 34; Zone: I
76-82 Ashland Avenue
The applicant is proposing to occupy and develop an existing vacant two-story metal warehouse building space, consisting of approximately 9,482 square feet, into a Class 1 Cannabis Cultivator use with 2,500 square feet of cultivation space on the first floor, to stripe the parking lot and put up a security fence.

PRESENTATION

- Mr. Cameron MacLeod, attorney for the applicant, entered on the record on behalf of the applicant.
- He stated that they are requesting a reconsideration of the application, that has been previously heard, seeking conditional use approval and minor and approval for the development and construction of a cannabis cultivation facility.
- The applicant had the ability to work with the board professionals as well as the Fire Chief and the police chief to advance the plans.
- The realignment of the security fence was approved by Police Chief.
- The applicant is requesting a parking variance for the site.
- For purposes of the conditional use compliance, they are satisfying the number of spaces that's required for the conditional use and they are seeking relief from the number of additional spaces for additional space that's being occupied by the applicant.
- They had submitted a report detailing the drainage on the site and the history of its

development.

- The architect, Mr. Shawn Fisher, entered on the record and he was sworn under oath and provided the following testimony.
- Mr. Fisher presented page one of the updated plans submitted on March 19, 2024.
- Based on the square footages and the number of spaces per square feet a total of 52 spaces are required, but the applicant is proposing 48 spaces.
- The site plan shows the existing fence and gate along the property line. Previously they had shown a much tighter area that was fenced and after further review and approval of the Police Department and security requirements determined that they no longer need it and it will greatly free up traffic throughout the site which is a great benefit.
- The handicap parking will be strip and it will include signage as required.
- 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.
- The delivery vehicle plan shows that the largest Mercedes sprinter van, which is the largest type of delivery vehicle, was able to make deliveries coming off of Ashland Avenue and would be able to circulate, park into any spot, and back out really easy.
- Mr. Fisher presented page 7 that shows the circulation of a 40-foot-long fire truck coming off of Ashland Avenue, entering the property, backs up turns around and it can go right back into Ashland Avenue without having to go through any other gates or fencing. This plan has been approved by the Fire Department.
- The 3,192 square feet of the second floor will be unused. If in the future the applicant decides to use it, the applicant would have to come back to the board and get approval.
- It will have a continuous wall from floor to ceiling. The only reason they have a door on the second floor is for fire egress in the event that the other entrance is blocked then they can get out using the stairs.
- There will be lighting on the unoccupied second floor.
- No external sign on the building other than a building number.
- The compact car parking spaces will be at the corner to minimize the possible obstruction of a vehicle. There will be one EV parking space ready to use.
- The applicant will submit lighting plan to comply with the ordinance.
- The applicant will discuss with the owner about eliminating the monitoring wells, since they are not longer needed.

BOARD QUESTIONS

- Mayor McCartney asked if there's any contemplation on the potential use of the second floor. The question was directed to the owner Mr. Jackson.
- Mr. Alper asked if all entry and exits to the site was coming from the Park Avenue side; he said that there wasn't supposed to be any on Ashland Avenue. Mr. Jackson said that as part of their original submission there was no condition as to access being only from Park Avenue.
- Mr. Alper asked why we should feel good about they're not being security fencing. Mr. Jackson said that there's no requirement for security fencing in the state regulations for cannabis security. Initially it was proposed as per the record of the previous hearings. The security fencing was proposed as an added bonus, but once they heard the feedback from the board, it was decided that the security fence actually makes the site a more difficult to access.
- Mr. Alper asked how will odor be mitigated. The attorney Mr. McPherson, said that the

odor would be neutralized utilizing carbon filtration system.

- Mr. Klein asked if the parking spaces proposed will be striped and if the cars parked there at the present moment will be moved. Mr. Fisher answer in the affirmative.
- Mr. Smeraldo asked how the system that the applicant is proposing is better than having an interlock system. Mr. Jackson said they will be having a zero-pressure interlock system on the doors and in the grow rooms and in addition they will have AC splits to make sure the smells stay inside.
- Mr. Smeraldo asked what the noise level will be. Mr. Jackson said that they will not have huge carbon filtration systems and it will be inside the facility.
- Mayor McCartney asked if Park Avenue will not be used as an entrance/exit. Mr. Fisher said that the primary entrance into the site will be from Ashland Avenue.
- Chairman Bagoff asked where the seven spots will be for the grow center in the lot for employee parking. Mr. Fisher referred to the drawing on page Site 2 and said they will be located at the south east of the property and will be identified as employee parking.
- Mr. Smeraldo asked if the building requires sprinklers. Mr. Fisher said that a sprinkler system is required for this building because it's a factory occupancy based on the cultivation use of the building. He said the sprinkler system will be installed in the building along with a required subsequent fire alarm system needed to monitor the sprinkler system to notify the fire department of an event.
- Mr. Smeraldo asked if it is going to be a wet system, dry system or pre-action system. Mr. Fisher said that it will be a wet pipe sprinkler system.

PROFESSIONALS QUESTIONS

- Mr. Hess said that if a vehicle is coming in from Park Ave. there are two-way access drives, but when it intersects the drive-in front of the proposed parking spaces it's one way heading towards Park Ave. He asked if they going to put a do not enter sign in that location. Mr. Fisher said that he believes they have enough space for a two-way lane, but if they don't, they will put up a "do not enter" sign.
- Ms. Keller asked for clarification regarding the second-floor area; he said if anything was to go there, they would have to come before the board, but if any cannabis use was to expand there that would not be permitted. Mr. Jackson said that they cannot operate outside of the 2,500 square feet because they are considered a micro business license.

PUBLIC QUESTIONS

- Councilwoman Michelle Casalino asked for clarification if coming into the lot you can only go in on Ashland Avenue and out on Park Avenue. Mr. Jackson said that the purpose of the Ashland Avenue entrance is for emergency vehicles, deliveries as well as product would be coming out of the Park Avenue entrance.

PRESENTATION

- Alexander Dougherty, Planner for the applicant, entered on the record, was sworn under oath, his credentials were accepted by the board and provided the following testimony.
- He stated that they satisfied the parking requirements by virtue of the condition and because of the size of the site.
- There will be a maximum of 10 employees and there will be multiple shifts meaning that not all the parking will be used at the same time.

- He stated that they have ample parking to accommodate future tenants and he believes that then parking demand for this particular use will not cause an impact to the surrounding area.
- Mr. Dougherty was shown exhibit A1 and stated that it shows where the property is located and the zone.
- He stated that is a very unique site and very suitable for this particular type of operation and given the size and scale of the building more than enough adequate space for the micro growth facility.
- At the moment there is a lot of debris and rubble, but the applicant is planning to clean up, stripe and resurface the parking lot.
- There's no need for more parking than what they are proposing for this operation.
- Security measures aren't going to be discussed publicly.
- The concerns that the board had, have already been addressed by state regulations.
- They have satisfied all the conditional use standards for this use and is a permitted use in the zone.
- The parking standard, with regard to any future expansion within the upper floor of the building, would not allow them access to that space for use purposes, they will have to come back to the board for approval.

BOARD QUESTIONS

- Mr. Klein asked what he meant by one way access. Mr. Doherty said that vehicles coming in off Ashland Avenue into the site.
- Mr. Klein asked if he thinks there is going be a problem with a future tenant. Mr. Doherty said that the other property at 76 Ashland Avenue is also unique because it has parking right in front of it as well for those immediate employees.
- Mr. Klein asked if someone from the state will reprimand the applicant in case of any violations. Mr. Jackson answered in the affirmative. The applicant will have a specific field investigator that will be in charge of doing inspections and make sure that everything is in compliance.

NO PROFESSIONALS QUESTIONS

NO PUBLIC QUESTIONS

PUBLIC COMMENT

- Charles Penn at 712 Trotting Road, Union, NJ, commented that he fully supports the proposed business and it stated that it will bring value to the town.

BOARD RECOMMENDATIONS

- Chairman Bagoff recommended that the applicant should do an air quality test prior to beginning of operation.

CONDITIONS

- 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.
- The EV space will be operational.
- The applicant will submit a lighting plan to be approved by the Board Engineer.
- The applicant will clean up the parking lot.
- Applicant shall repave or resurface or patch the parking lot of the Property at the direction and discretion and approval of the Zoning Officer.
- Applicant shall stripe the parking spaces for use by its employees and label the compact car spaces and properly designate the ADA parking space.
- 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.
- Applicant shall provide emergency vehicle striping to the parking lot pavement.
- 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.
- Vehicles may enter from Ashland Avenue only (one way) and may enter on Park Avenue but may exit onto Park Avenue only.
- Deliveries and product movement from the facility shall be by the Park Avenue ingress and egress only.
- The applicant is prohibited from subletting the empty space to another entity
- Pressure controlled doors shall be installed at the entrance and exit of the cultivation site.
- Only an address number shall be permitted on the building.

Motion: Chairman Bagoff

Second: Mr. Guarino

Alper:	Y	Morgan:	Y
Bagoff:	Y	Rutherford:	Y
Cardoza (Alt.2):	Y	Smeraldo:	Y
Guarino:	Y	Wilkes:	----
Kapferer:	----		
Klein:	Y		
Mayor McCartney:	Y		

- **PB-23-09 Essex County Country Club**
Block: 156; Lots:1; Zone: R-2
350 Mt Pleasant Avenue
The applicant is proposing modifications to existing improvements and construction of new accessory buildings associates with its golf course and other facilities.

OBJECTOR'S PROFESSIONAL PRESENTATION

- Mr. Peter Steck, Planner, entered on the record on behalf of the objector, was sworn under oath and provided the following testimony.
- He testified that near the proposed location of the halfway house there are wetlands that the applicant's site plan ignored and the applicant has not provided a witness to address the issue.
- One of the issues he raised was that not only are trees going to be removed from the proposed halfway house, but said that if you simply look at the location of the trees and the extent of disturbance that is on the plans, there are more trees going to be removed necessarily than shown on the plan. He said that it's an inaccurate rendition.
- Not addressed by the applicant is the fact that the utility lines are going to go down adjacent to the fairway and then angle to Old Indian Rd. and cut through a wooded area
- The applicant is required to get permits for tree removal. It has to show which trees are removed. This is going to involve trenching of a line, which means cutting off the roots of the trees. There's no indication of what tree damage is going to occur, but surely is going to occur not only in the 75 feet but for an extensive area.
- Mr. Steck showed pictures of the property. The first photograph is looking from the rear yard of a property toward the area where the facility is going to be located, the second one is taken in the reverse direction showing the wetlands that exists, the third one is in a northerly direction toward the wetlands and the 4th is looking in a northwesterly direction.
- If it turns out that the limits of the wetlands are greater than is shown on the site plan that means that the buffer even though it's 50 feet might be greater and it certainly means that if they're extraordinary value, the building cannot be located in that location by state law, so it is a fundamental issue in this application to know the limit of the wetlands and the categorization of the wetlands.
- During Mr. Steck testimony the attorney Lisa John-Basta added that the applicant is not required to produce an environmental expert during the local board proceedings to answer questions on the impacts of development might have in existing ponds and dismiss an objector's argument to that end. In this instance the applicant has agreed that, as a condition of approval, if the board were to approve this application it would submit a letter of interpretation to the New Jersey Department of Environmental protection that letter would verify whether the proposed structure is being placed within wetlands or not, if it's being placed in wetlands or not, they would have to come back to the board and modify the approval, if it is not then they can go forward with the project.
- Ms. John-Basta also mentioned that the application is for a halfway house that will have two restrooms' facilities and 100 square foot walk up snack bar that will sell prepackaged goods that might include alcohol. They do not have approval from the ABC Commission to serve alcohol at this structure, since they don't have approval from the board to actually construct it. In the event that they were granted the approval they will apply to the appropriate regulatory authorities that have jurisdiction over the sale of alcohol.
- Mr. Steck testified that the notice was changed to say that alcohol may be sold that's essentially an admission by the applicant that it is a needed component of the notice because a facility that serves alcohol in his opinion from a land use point of view has different characteristics than one that doesn't.
- Mr. Steck believes the distance between the proposed halfway house to the nearest residential property line is relevant, since the applicant's planner said otherwise.
- In Mr. Steck opinion the proximity to a residential property line is a significant feature and the halfway house that is less than 70 feet from a residential property line is not a

customary accessory use.

CROSS EXAMINATION FROM APPLICANT'S ATTORNEY

- Ms. Lisa John-Basta asked if the presented exhibit earlier in the evening that was dated March 6th 2024, Mr. Steck didn't file it with the board in advance of tonight's meeting to provide the board and the applicant an opportunity to review it. Mr. Steck said that an objector is not required to submit information in advance.
- Ms. Lisa John-Basta asked where were photographs taken for the exhibit. Mr. Steck said that the pictures were taken from the golf course neighbor's property.
- Ms. Lisa John-Basta asked if Mr. Steck is a specialist in wetlands, a civil engineer or a NJ license attorney. Mr. Steck said no.
- Ms. John-Basta asked if Mr. Steck was present during the applicant's professionals' testimony and agreement that it would submit for an LOI to approve this application. Mr. Steck he was present during that testimony.
- Ms. John-Basta asked if Mr. Steck has done any independent reviews or research related to the 122 golf courses in the state of New jersey and how many of them might have halfway houses. Mr. Steck said that said that he did not because the applicant needs to do it.
- Ms. Jonh-Basta asked how many how many golf courses out of 122 was the applicant required to demonstrate had halfway house. Mr. Steck said that it does not have to be the majority, but the proximity to residential property lines is important to consider.
- Ms. Lisa John-Basta asked if Mr. Steck reviewed the planner memo indicating that in his professional opinion to halfway house is a customary accessory structure. Mr. Steck said he did, but that Mr. Grygiel did his memo without seeing the evidence presented during the meetings.
- Ms. Lisa-John Basta asked for Mr. Steck's professional opinion that the board may request greater setback requirements then the code itself requires. Mr. Steck said that under the site plan provisions the board has the ability to do it.
- Ms. John-Basta asked under the municipal land use law what body has the exclusive power to zone. Mr. Steck said the governing body.
- Ms. John-Basta asked what is the minimum rear yard setback requirements in the R2 zone. Mr. Steck said it 45 feet.

BOARD QUESTIONS

- Chairman Bagoff asked if the halfway house is an accessory use. Mr. Steck said that it may be but because of the specifics of this application, in his opinion, it is not a permitted accessory use because of the uniqueness of serving alcohol and its proximity to residential properties.
- Council President Rutherford asked if wetlands have been classified as either intermediate or extraordinary. Mr. John Hess said that there was a site visit by an environmental scientist who was hired by the applicant and he did a delineation of what he felt was the wetlands boundary and then based on his observation of the wetlands he made a determination that it was, in his opinion, that it was intermediate value wetlands and would require 50-foot buffer. The only way to get an affirmative answer is to file an application with the DEP for wetlands letter of interpretation and in that letter the DEP will confirm the delineation or tell the applicant that they need to make certain adjustments and the DEP will also set forth the classification of the wetlands. If the DEP

finds that the wetlands are exceptional resource value and require 150-foot buffer then the applicant cannot proceed with the project and has to come back before the board.

- Council President Rutherford asked what animals could be in danger during this project. The board attorney said that there have not been any allegations in regards endangered species for this application.
- Mayor McCartney asked if there will be landscaping at the property line. Ms. Lisa John-Basta said that as a condition of approval they will work with the town professionals to place additional landscaping along the property boundary line.
- Chairman Bagoff asked about the letter that Mr. John Hess wrote about the drainage near properties at Old Indian Road. Mr. Hess said that based on his findings with the township engineer the runoff from the roof area will be minimal, also the plans show that the roof drains from the halfway house would be connected to an infiltration basin and that infiltration basin will allow the runoff to recharge into the ground. The storm water report from the applicant demonstrates that there will be no discharge from the infiltration during the storms. So, therefore it would have absolutely no impact from the runoff. The distance from the halfway house to the nearest existing residence is 175 feet which is substantial. Finally, the grading plan also shows that if there were an overflow, then the runoff from the halfway house would remain on the golf course property and would not be discharged off site towards any of the existing residential.

PUBLIC QUESTIONS

- David Robinson at 39 Old Indian Road asked in regards to an outlet of water that rolls into the wetlands near his property, should that have been part of the original plan. Mr. Steck answered in the affirmative.
- Kevin Malanga at Ridge Road asked can you characterize the location of six of the halfway houses presented as being distant from property lines. Mr. Steck said the distance was 240 feet of those and one exception there was one for 165 feet to a residential property line.
- Donna Graham at 31 Old Indian Road asked if there is a site plan for this particular project that shows all the trees that will be removed to the building of the halfway house. Mr. Steck said that there is not.
- Donna Graham asked if there is a site plan that shows all the trees that will have to be removed and the tree root systems that will be damaged for the building of the sewer line for the halfway house. Mr. Steck said there is not.
- Donna Graham asked if these root systems are damaged by the sewer line is there any remediation. Mr. Steck said that the standards are that the applicant is to identify the trees that are removed and the board has the ability to flex the location of the lines in his opinion as part of its site plan powers and if trees have to be removed there are formulas for replacements.
- Donna Graham asked in his considerable experience, when he sees similar site plans for projects like this, do those site plans generally indicate specifically and clearly every single tree that has to be removed because of the project. Mr. Steck said that in West Orange tree removal ordinance requires the identification of trees that are going to be removed and with respect to golf courses particularly trees within 75 feet of the perimeter.
- Donna Graham asked in Mr. Steck's opinion is this plan as submitted without the specificity of the trees that are going to be removed is it adequate as it stands. In Mr. Steck opinion, he said no.

PUBLIC COMMENT

- Donna Graham at 31 Old Indian Road commented that there are several reasons to why she strongly objects to the location of the halfway house.
- Alan Graham at 31 Old Indian Road agrees with Donna Graham comments in regards the location of the proposed halfway house.
- Lou Picciano at 29 Old Indian Road commented that he is concern about the wetlands and the location of the halfway house.
- David Robinson at 39 Old Indian Road commented that he agrees with his neighbor Donna Graham testimony.
- Susan Campbell at 39 Old Indian Road commented that she objects to the application because her property was not part of the original plans.
- Jennifer Sharret at 11 Howell Drive commented that the DEP should do their investigation first before the board makes a final decision.
- Micaela Bennet commented that would be no objection if the golf course considered the neighborhood and the environment, had the golf course heard the concerns of the neighborhood and environment and simply relocate it to a more sensible place.

***The application has been carried to the April 17, 2024 Planning Board Special meeting. ***

Meeting adjourned at 12:40AM.

ADOPTED:

Jamilet Baquerizo Vite
Planning Board Secretary