

A REGULAR MEETING OF THE PLANNING/ZONING BOARD OF THE BOROUGH OF ANDOVER, COUNTY OF SUSSEX, AND STATE OF NEW JERSEY WAS HELD ON MONDAY, JULY 17, 2023 AT THE BOROUGH HALL BEGINNING AT 7:00 P.M.

PRESENT: Walter, Pearson, Breitz, Brothman, King, Wojcik, Smith and Mayor Morgan.

ABSENT: DiRenzo and Daschko

ALSO, PRESENT: Jonathan Frodella, Board Attorney
Cory Stoner, Board Engineer

The meeting was called the meeting to order with a salute to the flag and in accordance with the Open Public Meetings Act by advertising notice of meeting in the N.J. Herald, posting copy of notice in the Borough Hall and on the Borough website.

MINUTES:

A MOTION was made by Mrs. Wojcik, seconded by Mr. Pearson to approve the regular and executive session minutes of the meeting held on May 15, 2023. Opened to discussion and closed without comment. Upon roll call the following votes were cast: AYES: Walter, Pearson, Breitz, Brothman, King, Wojcik, Daschko, Smith and Mayor Morgan. NAYS: None. ABSTAIN: None. Motion carried.

A MOTION was made by Mr. Smith, seconded by Mayor Morgan to approve the regular and executive session minutes of the meeting held on June 19, 2023. Opened to discussion and closed without comment. Upon roll call the following votes were cast: AYES: Walter, Pearson, Breitz, Brothman, King, Wojcik, Daschko, Smith and Mayor Morgan. NAYS: None. ABSTAIN: None. Motion carried.

AUDIENCE PARTICIPATION: None.

CORRESPONDENCE: None.

FORMAL APPLICATIONS:

APPLICATION #: PZ-03-2023 – Pio Costa – Site Plan Amendment
APPLICANT: Carmen Pio Costa / SGP Century LLC
PROPERTY OWNER: SGP Century LLC c/o Pio Costa
BUSINESS NAME: Lake House Café
ADDRESS: 5 Lenape Road, Andover NJ 07821
BLOCK/LOT/ZONE: Block 24 Lot 47 Zone: C1
PREVIOUS USE: Café within complex
PROPOSED USE: Outdoor Dining

Ryan Windels, attorney of the firm King, Moench & Collins opened the hearing by introducing himself and his client Mr. Carmen Pio Costa. He provided explanation the site plan hearing was for amend the site plan to include 26 seat outdoor seating for the use of the Lake House Café unit of the Gristmill building. There will be five tables of four and three tables of two.

Mr. Frank Matarazzo, engineer for the applicant was sworn into the testimony and reported upon his licensure and experience. The proposal is to create some outdoor seating. Exhibit A-1, presented by Mr. Matarazzo, was entered into the record. He explained the property layout and focused on the easterly side of the building to include

outdoor seating on an existing concrete pad. This area was explained as the area around the existing sealed water well. He also displayed additional parking spaces that will be added to the parking lot to make up for the lost of spaces.

Mr. Carmen Pio Costa, applicant and managing owner of the property located at Gristmill Plaza, 5 Lenape Road was sworn in and provided testimony on the type of stone they will use. It's a concrete block, with a stone facing, that are six feet long and two feet wide. Mr. King asked if the type of concrete is a certified type bollard that is ideal for this situation. Mr. Pio Costa testified it was a solid block. Mr. Stoner stated that the specs are not going to be crash certified. Mr. Matarazzo testified that it will be 3000 psi. Mr. Pio Costa assured the board he would be the certification of the specs.

Mr. Matarazzo continued his testimony to show the area where lighting exists, but is not on the plan. Mr. Stoner asked if the lighting is for night use? Mr. Pio Costa testified that the lighting is for parking, not night use.

Mr. Parisella, the owner of the Lake House Café, was introduced and sworn into the testimony. The discussion segued into the hours of operation. Mr. Parisella stated he is not interested in changing his hours on his original resolution PZ-04-2022. In order to proceed with the hearing, Mr. Stoner confirmed with Mr. Pio Costa that as a condition of approval, any night time use would require an engineer lighting plan submission with light readings, etc. that is to the satisfaction of the board. A new hearing would have to be held. This hearing is to determine the outdoor dining use for daytime only. Mr. Pio Costa agreed.

Mr. Stoner continued the hearing by confirming the size of the concrete blocks and spacing taken up. Mr. Smith stated that there is not opening for a wheel chair. Mr. Stoner confirmed the plan will need to be modified to make sure the radius is there. This would reduce the number of tables. The applicant, Pio Costa, and business owner, Parisella, agreed that would be done.

Mr. Walter asked if vehicles can squeeze through that space between the building and the outdoor dining. The space is tight, but should cannot be blocked for the fire department to have access. Mr. Frodella explained this would be a condition of approval. Mr. Stoner suggested a nice-looking roping system to prevent traffic from driving through.

Mr. Parisella stated that he would add umbrellas to the area or tables. No tents. He will take them down every day.

Mr. Stoner focused on the parking element where a variance is needed. He noted that nine new parking spaces are being added here to make up the difference. Mr. Stoner confirmed that an as-built has been submitted for the internal expansion approved by the board a few years ago. Mr. Stoner continued to ask about other use issues such as the school bus and a tractor trailer that parks in that lot. It was confirmed that at Mr. Pio Costa's last hearing he was required to remove them. Mr. Pio Costa confirmed in this hearing that he does collect a rent for these vehicles to park there and that he feels there is enough room. Mr. Stoner confirmed that none of the approvals by the board included temporary parking. Mr. Pio Costa asked to leave them there. This application is not for this use and is not being heard on this evening. Temporary parking is not an approved use and the vehicles should be removed. The requirement to remove them was determined at a prior hearing. Mr. Pio Costa was reminded that these vehicles were not removed as was required. Within this dialogue, Mr. Pio Costa confirmed he may come back for the use of a helistop on the location which is exactly where these vehicles are located. The Mayor was concerned the new spaces were very close to where these vehicles are parking. Mr. Stoner asked about the condition of the parking lot. Mr. Pio

Costa stated that he was considering re-milling and repaving the thoroughfare as well as fix the pot holes. Mr. Pio Costa stated that he would be doing something substantial there. Mrs. Brothman asked how they will be lining the new spots with the bad condition of the lot. Mr. Pio Costa assured the board they will be putting some money in to the parking lot. Mr. Stoner stated that would have to be done before lining the new spaces. Mr. Stoner assured Mr. Pio Costa that would be a condition of approval to repair and patch, at minimum, the parking lot. It was confirmed that there will be diagonal cross hatching where parking is not permitted. Mr. Pio Costa stated that he is committed to doing some milling and repairing some of the larger bad patches. He will do full runs of pavement, not small patches.

The number of dumpsters were discussed. There are three dumpsters near the loading area. There are also three clothing bins near the dumpsters.

The following conditions were confirmed, need to submit updated specifications determining the concrete, updating the plan to include lighting, dumpsters and clothing bins, a lighting plan must be submitted if open at night, ADA compliant plans, change dimensions on plan to match the dimension of the concrete blocks, add roping to protect pedestrians, to fix and repair any broken or defected asphalt. Mr. Parisella confirmed that all these conditions have to be met for the outdoor seating. It was confirmed that they do.

Mrs. Brothman asked Mr. Pio Costa if he will be constructing the signage that he had sought approval for in another application. Mr. Pio Costa stated that price was a factor, but he thought he found a contractor to do it. Mr. Pio Costa is interested in installing it. Mr. Stoner requested that the plan for the sign be included with the update so that all of the uses are displayed on one plan.

Mr. Brothman confirmed the seating indoors and the proposed seating. Mrs. Brothman asked if there is a modification of plan due to the board of health. Mr. Parisella assured the board he is shifting the tables not adding more. He believes he can handle up to 60 tables. There will be no car-hop car service. She also noted that the ADA parking space was not included on the plan. Mr. Stoner noted that it needs to be added to the plan.

A MOTION was made by Mr. Breitz, seconded by Mr. Smith to approve the plan with conditions. The matter was opened for discussion. It was confirmed that the Engineer will confirm that outdoor dining is up to standard in order to be flexible on the outdoor use. Mr. Stoner also confirmed that all conditions must be met no later than 30 days of the memorization of the resolution and that no more than the 50 seats the business is permitted to have by county board of health approval will be had. Mr. Pio Costa agreed to those conditions. Mr. Breitz and Mr. Smith agreed to amend their motions to include that which was confirmed by Mr. Stoner. The matter was opened to the public and closed without comment. Upon roll call the following votes were cast: AYES: Walter, Pearson, Breitz, Brothman, King, Wojcik, Daschko, Smith and Mayor Morgan. NAYS: None. ABSTAIN: None. Motion carried.

OLD BUSINESS: None.

NEW BUSINESS: None.

AUDIENCE PARTICIPATION: None.

RESOLUTION:

A MOTION was made by Mayor Morgan, seconded by Mr. Smith to memorialize a Resolution for **application PZ 01-2023 for Andover Cannabis, LLC – Site Plan – 144/146 Main Street – block 22 lot 1,2&3 - Zone C1 – for Cannabis Dispensary Class 5 - decided on June 19, 2023.** The motion was opened to discussion with no comment given. Upon roll call the following votes were cast: AYES: Walter, Pearson, Breitz, Brothman, King, Wojcik, and Daschko. NAYS: None. ABSTAIN: Smith and Mayor Morgan. Motion carried.

**In the Matter of Andover Cannabis LLC
Application #PZ-01-2023 - Decided on June 19, 2023 - Memorialized on July 17,
2023 - Preliminary and Final Site Plan and “D(3)” Variance Approval**

WHEREAS, Andover Cannabis LLC (the “Applicant”) has made application to the Andover Borough Planning/Zoning Board (the “Board”) for preliminary and final site plan and “D(3)” variance approval for property known as Block 22, Lots 1, 2 & 3, as shown on the Tax Map of the Borough of Andover, located on 144-146 Main Street in the C-1 commercial zone (the “Premises”);

WHEREAS, pursuant to N.J.S.A. 40:55D-25, the Borough of Andover has by ordinance established the Board which has dual powers of planning and zoning;

WHEREAS, a public hearing was conducted on May 15, 2023, after the Board determined it had jurisdiction;

WHEREAS, a second public hearing was conducted on June 19, 2023;

WHEREAS, Board Members Morgan and Smith disqualified themselves from this application and took no part in the hearing; and

WHEREAS, the Applicant was represented by F William Lavigne, Esq., who also is an owner of Applicant and testified in support of the application. **NOW, THEREFORE**, the Andover Borough Planning/Zoning Board makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made. The Applicant sought preliminary and final site plan approval and a conditional use variance to permit a proposed use of a cannabis dispensary on the Premises.

The Board determined the application was complete and Applicant’s Counsel introduced the application and gave the Board an overview of the proposed operations. Mr. Lavigne testified that his son will be living within walking distance of the Premises and will be able to keep watch over the Premises and any related activity as it concerns the operations on and off site. Mr. Lavigne testified that the Applicant’s business would provide benefits to the Borough by drawing more consumers into the Borough and providing additional tax revenue, and that the Applicant is a locally owned business that would not disturb the Borough since the owners are personally related to the area. Mr. Lavigne further testified regarding the security measures to be taken and the statewide regulatory compliance matters.

The Board Attorney swore in Elizabeth Dolan, who testified as the professional traffic engineer in support of the application. The Board incorporates the memorandum from Dolan & Dean Consulting Engineers, LLC dated as of May 4, 2023 as though set forth herein in its entirety. Ms. Dolan testified that she contacted DOT for a letter of no interest and the Applicant agreed to confirm that no NJDOT permits would be needed as a condition of approval. Ms. Dolan further testified that the proposed use would not create a significant increase in traffic and that the proposed parking would be sufficient, stating that

the 13 parking spaces noted in the plans could accommodate 80 customers per hour, and that the Applicant would be expecting 40 customers per hour.

The Board Attorney swore in Jason Dunn, PP, LLA, of Dykstra Associates, PC, who testified as the professional planner in support of the application. Mr. Dunn testified that the Premises are particularly suited for the Applicant's proposed use and that granting Applicant D(3) variance relief it seeks would promote the general welfare by advancing mixed residential/commercial uses in the zone. Mr. Dunn testified that the application is consistent with the master plan and would not substantially impair the zone plan and zoning ordinance. Mr. Dunn testified that the impact of the proposed commercial use would overall be negligible, and cited the Borough's own ordinance allowing cannabis dispensaries as a conditional use within the C-1 zone. Mr. Dunn further testified that the increased traffic to the cannabis dispensary would not disturb the residential use across the street, since there is sufficient parking on the Premises. Mr. Dunn further testified that the Premises are appropriate for the conditional use of a cannabis dispensary since the setbacks and buffers are sufficient and the use would not cause substantial detriment to the public. He further opined that the existing setback deficiency could not be practically changed without undue hardship to the owner, no matter what use occupies the site. Additional low-growing landscape plants could be added to certain areas to help improve the aesthetic of the site and create buffers between the road and parking areas.

Mr. Dunn introduced the following exhibits:

Exhibit A-1 – Colorized rendered overview of the site.

Exhibit A-1 - Aerial photograph of neighborhood and four photographs showing different sides of the proposed building for operations.

Exhibit A-3 - Site plan showing lighting and construction details.

Mr. Dunn provided testimony regarding the site plan and answered the Board's questions regarding access to the Premises.

Mr. Lavigne testified that the Applicant's days and hours of operation would be seven days a week, 9:00 A.M. to 9:00 P.M.

A report from the Board Engineer, Cory Stoner, PE, CME, dated May 15, 2023, was considered by the Board in its deliberations, and its contents are incorporated herein by reference.

The meeting was then opened to the public, and William Haggerty, Esq., appeared on behalf of a neighboring business and challenged various aspects of the applications. John Williams, Esq. also made comments regarding the application, as well as Donna Denny, who testified that she was related to the business on whose behalf Mr. Haggerty spoke.

NOW, THEREFORE, the Andover Borough Planning/Zoning Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The Municipal Land Use Law states that preliminary major site plan approval shall be granted based upon the submission of a "site plan and other such information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met." After careful review of the requirements under the site plan ordinance, the engineering plans, testimony and all other submissions, the Board finds that the detailed drawings, specifications and other evidence conform to the standards established by ordinance for preliminary site plan approval to be granted.

The Municipal Land Use Law states that final major site plan approval is an official action of this Board taken on a preliminary approved major site plan "after all conditions, engineering plans and other requirements have been completed or fulfilled and that the required improvements have been installed or guarantees properly posted for their completion, or

approval conditioned upon the posting of such guarantees". The Board finds that the detailed drawings, specifications and estimates of the application for final approval conform to the standards established by ordinance for final approval as well as the conditions of preliminary approval.

Under the Municipal Land Use Law, a Municipal Land Use Board, when considering a "d" variance, cannot grant relief unless sufficient special reasons are shown and there is no substantial impairment of the intent and purpose of the zone scheme and Zoning Ordinance. In addition, the burden of proof is upon the applicant to establish the above criteria. It is the Board's responsibility, acting in a quasi-judicial manner, to weigh all the evidence presented before it by both the applicant and all objectors, and reach a decision which is based upon findings of fact and conclusions of law and is not arbitrary, unreasonable or capricious.

The New Jersey Courts have been willing to accept a showing of extreme hardship as sufficient to constitute a special reason. Our courts have indicated that there is no precise formula as to what constitutes special reasons unless the use is determined to be inherently beneficial, and that each case must be heard on its own circumstances. Yet, for the most part, hardship is usually an insufficient criterion upon which the Board can grant a variance.

A use not inherently beneficial may be found to promote the general welfare if it is peculiarly fitted to the particular location for which the variance is sought. In these instances, the use promotes the general welfare because the proposed site is particularly suited for the proposed use. The Board is aware that it need not find that the site is uniquely suited for the proposed development. In addition, special reasons have been found where a variance would serve any other purposes of zoning set forth in N.J.S.A. 40:55D-2.

A variance can only be granted if the Board, on the basis of the evidence presented before it, finds that the public interest, as distinguished from the purely private interest of the applicant, would be best served by permitting the proposed use. In these instances, the Board must also find that the granting of the variance will not create an undue burden on the owners of the surrounding properties. The Board also notes the special reasons requirement may be satisfied if the applicant can show that the proposed use is peculiarly suited to the particular piece of property. With regard to the question of public good, the Board's focus is on the variance's effect on the surrounding properties and whether such effect will be substantial. Furthermore, in most "d" variance cases, applicant must satisfy an enhanced quality of proof and support it by clear and specific findings by this Board that the variance sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. The burden of proof is upon the applicant to establish the above criteria.

The Board finds the Applicant has satisfied the positive criteria. The Applicant's proposed use of the Premises would benefit the public by bringing a business to the Borough while maintaining the Borough's character. The proposed use will benefit the entire community and therefore promote the goals of planning as enumerated in N.J.S.A. 40:55D-2, and the Premises are particularly suited for the proposed use. The Board therefore concludes that the positive criteria has been satisfied.

The Board also finds, for the reasons set forth in the Board's findings of fact, that the Applicant has satisfied the enhanced criteria. The Borough's master plan and Applicant's proposed development can be reconciled, and the proposed development would not substantially impair the zoning ordinance. The Board therefore finds that the proposed development and the ordinance can be reconciled and that the enhanced criteria has been satisfied.

The Board also finds that the negative criteria has been satisfied. The Board is persuaded that the Applicant's activities will not disturb neighbors or passersby and the Board concludes that the proposed development will not result in a substantial detriment to the zone plan, zoning ordinance or public welfare. The negative criteria has therefore been satisfied. The Board further concludes that the positive criteria substantially outweighs the negative criteria and that use variance relief may be granted pursuant to N.J.S.A. 40:55D-70d(1). Finally, the Board notes that the standard for granting a D(3) conditional use variance are far less stringent than the preceding test for a D(1) variance, but for the sake of completion the Board explored both variances, finding the D(3) criteria are easily satisfied here. The Board's discussion of any D(1) criteria shall not be interpreted as the Board requiring or finding the Applicant to require a D(1) variance.

NOW, THEREFORE, BE IT RESOLVED by the Andover Borough Planning/Zoning Board, that the application of Andover Cannabis LLC for preliminary and final site plan and "D(3)" variance approval for the property known as Block 22, Lots 1, 2 & 3, as shown on the Tax Map of the Borough of Andover, located on 144-146 Main Street in the C-1 commercial zone, is granted as follows:

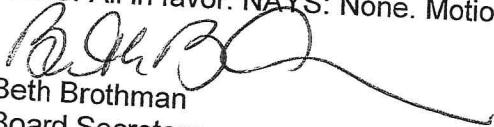
- A. Preliminary and Final Site Plan approval for this application, is granted, pursuant to N.J.S.A. 40:55D-46 and N.J.S.A. 40:55D-50;
- B. Variance approval for this application is granted, pursuant to N.J.S.A. 40:55D-70(d)(3), from Ord. § 134-67.1, which requires a Cannabis Class 5 Retailer to be housed in a building that meets the 50-foot front yard setback requirement, and the Applicant's proposed front yard setback is -6.1 feet.

IT IS FURTHER RESOLVED that the above approvals are granted subject to the following terms and conditions:

1. The development of this parcel shall be implemented in accordance with the plans submitted and approved, and as may be amended by this approval.
2. At least 72 hours before any construction, a pre-construction meeting shall be held including the municipal representatives, the applicant and its engineers and contractors. The meeting shall be held only after the Engineer's Opinion of Probable Cost has been submitted to the municipality for computation of engineering and inspection fees, the form of which is to be approved by the Board Engineer. No work shall commence until such fees have been posted with the municipality.
3. As a condition of the approvals granted in this resolution, Applicant shall obtain and submit a letter of no interest, or its equivalent, from the New Jersey Department of Transportation regarding the proposed use of the Premises.
4. As a condition of the approvals granted in this resolution, Applicant shall submit a lighting plan for review by the Board Engineer.
5. As a condition of the approvals granted in this resolution, Applicant shall continue to maintain the upkeep of the Premises.
6. As a condition of the approvals granted in this resolution, Applicant shall submit a landscaping plan for review of the Board Engineer to address landscape buffering for parking and shall implement such approved plan.
7. As a condition of the approvals granted in this resolution, Applicant shall submit satisfactory evidence of the State's approval of its free-standing sign.

8. The Applicant's days of operation shall be seven days a week, and its hours of operation shall be 9:00 A.M. to 9:00 P.M.
9. A construction permit may be issued based on preliminary site plan approval; however, no certificate of occupancy shall be issued, nor occupancy of the structure permitted, until final site plan approval shall have been granted, based on a final "as built" plan with all required improvements having been installed and conditions of this resolution satisfied.
10. The applicant shall maintain, at applicant's sole cost and expense, a right of way giving access to the property so firefighting and other emergency equipment shall have access to the property. The applicant shall not look to the municipality at any time for any aid or assistance in maintaining and preserving such access.
11. Applicant shall post performance guarantees or maintenance guarantees in accordance with the Municipal Land Use Law.
12. The Applicant is bound to comply with the representations made to the Board by the Applicant and Applicant's professionals.
13. Applicant must comply with all applicable sign ordinance requirements.
14. The Board Engineer shall perform a compliance review prior to signing of the plans and deeds for the application.
15. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid within 20 days of any request by the Board's Secretary or Treasurer.
16. Certificate that taxes are paid to date of approval.
17. Prior to the issuance of any construction permit, the Applicant shall file with the Board and Construction Official an affidavit verifying that the Applicant is in receipt of all necessary agency approvals other than the municipal agency having land use jurisdiction over the application and supply a copy of any approvals received.
18. Subject to all other applicable rules, regulations, ordinances and statutes of the Borough of Andover, County of Sussex, State of New Jersey, or any other jurisdiction.

A MOTION was made by Mr. Pearson, seconded by Mrs. Wojcik to adjourn the meeting.
AYES: All in favor. NAYS: None. Motion carried.


Beth Brothman
Board Secretary