

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, DECEMBER 18, 2023 AT THE BOROUGH HALL BEGINNING AT 7:00 P.M.

PRESENT: Walter, Wojcik, Morgan, Smith, Brothman, Daschko, and Breitz

ABSENT: Pearson, King and DiRenzo.

The meeting was called 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 Mrs. Daschko to approve the minutes of the meeting held on October 16, 2023. Opened to discussion with notation to correct Michale to Michael. Upon roll call the following votes were cast: AYES: Wojcik, Morgan, Smith, Brothman, Daschko. NAYS: None. ABSTAIN: Walter and Breitz. Motion carried.

A MOTION was made by Mrs. Wojcik, seconded by Mr. Smith to approve the minutes of the meeting held on November 20, 2023. Opened to discussion and closed without comment. Upon roll call the following votes were cast: AYES: Wojcik, Morgan, Smith, Brothman, Daschko. NAYS: None. ABSTAIN: Walter and Breitz. Motion carried.

AUDIENCE PARTICIPATION: None.

CORRESPONDENCE: None.

FORMAL APPLICATIONS: None.

EXECUTIVE SESSION:

A MOTION was made by Mrs. Wojcik, seconded by Mrs. Daschko to adopt the following Resolution. Upon roll call the following votes were cast: AYES: Wojcik, Daschko, Smith, Morgan, Walter, Brothman, Breitz. NAYS: None. ABSTAIN: None. Motion carried.

WHEREAS, the Open Public Meetings Act, P.L. 1975, Chapter 231 permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist; and

WHEREAS, the Planning Board wishes to discuss: Contract Negotiations.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the Borough of Andover will go into closed session: 7:10 p.m.

A MOTION was made by Mrs. Wojcik, seconded by Mrs. Daschko to approve a resolution to reconvene the public session. Upon roll call the following votes were cast: AYES: Wojcik, Daschko, Smith, Morgan, Walter, Brothman, Breitz. NAYS: None. ABSTAIN: None. Motion carried. 7:38 p.m.

OLD BUSINESS: None.

NEW BUSINESS:

There was a discussion regarding the advertisement for professional legal services. Three submissions were made from the offices of:

- Dolan and Dolan
- Vogel Chait Collins Schneider
- Eric Bernstein Law

Three interviews were conducted by the subcommittee made up of Wojcik, Brothman, Daschko and Morgan. The board approved the subcommittee to convene to narrow down the final candidate.

AUDIENCE PARTICIPATION: None.

RESOLUTION:

A MOTION was made by Mr. Smith, seconded by Mayor Morgan to approve the memorialization of a resolution of denial for Application PZ02-2023 for Andover Therapeutics, LLC, site plan – 2&4 Lenape Road – block 11 lot 3 & 3.01 – Zone C1 – for Cannabis Dispensary Class 5 – denied on 10/16/23. Upon roll call the following votes were cast: AYES: Brothman, Daschko, Wojcik. NAYS: None. ABSTAIN: Morgan, Smith, Breitz, Walter. Motion carried.

**RESOLUTION
BOROUGH OF ANDOVER
PLANNING/ZONING BOARD
In the Matter of Andover Therapeutics, LLC
Application # PZ-02-2023
Decided on October 16, 2023
Memorialized on December 18, 2023
Preliminary and Final Site Plan and “D(3)” Variance Denial**

WHEREAS, Andover Therapeutics 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 11, Lots 3 and 3.01, as shown on the Tax Map of the Borough of Andover, located on 2 and 4 Lenape Road in the C-1 commercial zone (the “Premises”) for use as a cannabis dispensary;

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 October 16, 2023, after the Board determined it had jurisdiction;

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

WHEREAS, the Applicant was represented by Richard DeAngelis, Esq.

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.

1. **Presentation by Applicant:** The Applicant provided comprehensive details covering various aspects of the proposed operation:
 - **Regulatory Compliance:** Information was shared about adherence to cannabis regulatory requirements.
 - **Architecture and Structural Adaptation:** The existing structure, formerly a bank, was described in terms of suitability for the proposed dispensary use, including architectural modifications.
 - **Operational Concerns:** Aspects such as customer flow, security measures, and management of the dispensary were discussed.
2. **Board Inquiry and Deliberation:** The board conducted a thorough examination of the application, focusing on:
 - **Usage Frequency and Nature:** Questions were raised about the expected frequency and nature of the dispensary's operation.
 - **Impact Predictions:** The board sought clarity on how the Applicant predicted the intensity and frequency of premises usage.
 - **Parking and Access:** Consideration was given to the adequacy of parking and accessibility, especially in light of the proposed drive-through service.

The Applicant testified that its proposed front-yard setback fails to satisfy the 50-foot setback requirement of Ord. § 134-67.1, necessitating the Applicant's request for a D(3) conditional-use variance (and a second use variance would be required to operate a drive-through service). Related parking and traffic concerns were discussed. A motion to approve the Applications was made but did not pass due to concerns about parking and traffic.

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

The Board has the power to grant "d(3)" conditional use variances pursuant to N.J.S.A. 40:55D-70d(3) "in particular cases and for special reasons." This is the so-called "positive criteria" of a "d(3)" variance. As pertains to the positive criteria of a "d(3)" variance, the Board's focus must be on whether the site remains appropriate for the conditional use

despite the failure to conform to all of the ordinance's conditions. Coventry Square v. Westwood Board of Adjustment, 138 N.J. 285, 298-299 (1994). The standard does not require a finding that the site is particularly suitable for the use, as is the case with a "d(1)" use variance. Id. at 297. This is so because the use is permitted (albeit conditionally) and it is the conditions attached to the use from which deviations are sought. Id. The Board may not exercise its power to grant a "d(3)" variance otherwise warranted, however, unless the so-called "negative criteria" has been satisfied. Pursuant to the last unlettered paragraph of N.J.S.A. 40:55D-70: "No variance or other relief may be granted ... without a showing that such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance."

The phrase "zone plan" as used in the N.J.S.A. 40:55D-70 means master plan. Medici v. BPR Co., 107 N.J. 1, 4, 21 (1987). As to the negative criteria of a "d(3)" conditional use variance, the Coventry Square Court held that the strict requirements applicable to "d(1)" use variances do not apply to the first prong of the negative criteria of a "d(3)" variance (whether the variance can be granted without substantial detriment to the public good). Coventry Square, 138 N.J. at 299. Instead, the Board's focus in a "d(3)" conditional use variance case must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial detriment to the public good. Id.

In TSI East Brunswick v. East Brunswick Board of Adj., 215 N.J. 26, 43-46 (2013), the Court held that the strict requirements applicable to "d(1)" use variances do not apply to the second prong of the negative criteria of a "d(3)" variance (whether granting a variance would substantially impair the intent and purpose of the zone plan and zoning ordinance). Instead, the Board's focus in a "d(3)" conditional use variance case must be on whether conditions can be imposed in its approval to ensure that the deviations from the conditional use requirements do not cause substantial impairment of the intent and purpose of the master plan and zoning ordinance, i.e., whether the proposal was "reconcilable with the zone." Id.

In the matter before the Board, the proposed setback fails to satisfy Ord. § 134-67.1, which mandates that a Cannabis Class 5 Retailer be situated in a building compliant with the 50-foot front yard setback requirement. This deviation from the ordinance's

conditions, when combined with the associated traffic and parking concerns presented during the hearings, brings into question the suitability of the site for its intended use. The Board acknowledges its authority under N.J.S.A. 40:55D-70d(3) to grant conditional use variances in specific cases and for special reasons. However, based on the evidence and testimonies presented, it is determined that granting this particular variance would lead to a substantial detriment to the public good. Further, the deviation would impair the intent and purpose of the master plan and zoning ordinance. The Board concludes that the deviations, in this case, are not merely reconcilable deviations but ones that threaten the core objectives of the zoning ordinance and master plan. As such, the applicant's failure to meet the conditional-use variance criteria, as delineated in Ord. § 134-67.1, combined with the significant traffic and parking concerns, renders the site inappropriate for the proposed use.

NOW, THEREFORE, BE IT RESOLVED by the Andover Borough Planning/Zoning Board, that the application of the Applicant is denied for the reasons state in the above findings of fact and law.

A MOTION was made by Mr. Smith, seconded by Mayor Morgan to approve the memorialization of a resolution of approval for Application PZ04-2023 for Hampton Square Wealth – waiver of site plan – 219 Main Street – block 28.02 lot 1 – Zone C1 – for office space – approved on October 16, 2023. Upon roll call the following votes were cast: AYES: Brothman, Wojcik, Morgan, and Smith. NAYS: None. ABSTAIN: Breitz, Daschko, and Walter. Motion carried.

**RESOLUTION
BOROUGH OF ANDOVER
PLANNING BOARD
In the Matter of Hampton Square Wealth Management, LLC
Application #PZ-04-2023
Decided on October 16, 2023
Memorialized on December 18, 2023
Site Plan Waiver and Approval**

WHEREAS, Hampton Square Wealth Management, LLC (“Applicant”) has made application to the Andover Borough Planning Board (“Board”) for site plan waiver for the continued use of the property as office space for the property known as Block 28.02, Lot 1 as shown on the Tax Map of the Borough of Andover, located at 219 Main Street, Andover Borough, New Jersey (“Premises”), and situated in the C-1 Zone; and

WHEREAS, a public hearing was conducted on October 16, 2023, after the Board determined it had jurisdiction; and

WHEREAS, the Applicant's principal, Scott MacKenzie, appeared along with Linda Peoples, Esq., legal counsel to Applicant.

NOW, THEREFORE, the Board makes the following findings of fact, based on evidence presented at its public hearing, at which a record was made.

Ms. Peoples indicated that her client was seeking a site plan waiver. Scott MacKenzie, principal of Applicant, was sworn in.

Mr. MacKenzie stated that the facility would remain unchanged, with the front section designated for office use. According to the lease agreement, eight parking spaces will be available, accommodating a maximum of four employees on-site simultaneously. The nature of their wealth management business typically involves engaging with no more than two households concurrently during office hours. Additionally, Mr. MacKenzie mentioned that while the existing signage will be retained, a company placard will be added. The office will operate seven days a week, from 9 AM to 5 PM..

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

The Municipal Land Use Law states that a Board may grant exceptions from requirements of approval for site plans where such exceptions are reasonable and within the general purpose and intent of the provisions for site plan review, pursuant to N.J.S.A. 40:55D-51. The Board is satisfied that the Applicant is entitled to a waiver from certain requirements of site plan approval because the condition of the property, and the type of the use proposed, and the property meets local ordinance requirements.

A motion was made by Board Member Daschko, seconded by Board Member Smith, to grant the requested site plan waiver and enter the approval recited below on the record.

NOW, THEREFORE, BE IT RESOLVED by the Andover Planning Board, that the application of the Applicant for site plan waiver for the continued use of the Premises as office space is granted, subject to the following terms and conditions:


1. The above recitals, representations and testimony are incorporated herein and made a requirement of this Resolution.
2. The Applicant is bound to comply with the representations made to the Board by the Applicant as recited herein and more specifically detailed on the record of the hearing.
3. The Applicant's hours of operation shall be seven days a week from 9:00 AM to 5:00 PM.
4. The Applicant shall operate with a maximum of four employees on-site.

5. The Applicant shall seek an additional Board approval if the operation expands beyond the current parking limits.
6. The Applicant shall seek an additional Board approval if additional signage is sought.
7. The Applicant must submit good payment of all fees, costs and escrows when due or when they become due. All monies are to be paid within 20 days of any request by the Board's Secretary.
8. The Applicant must submit a certificate that taxes are paid up to the date of approval.
9. Any condition without a specific time limit shall be complied with within six months of the date of this resolution's memorialization.
10. This approval is 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.

The Resolution to memorialize the approval of Application PZ 07-2021 for Dunkin Drive Thru – Site Plan Amendment – 165 Main Street, Andover NJ 07821 – block 23 lot 6.01 - Zone C1 – Amendment of resolution decided on 12/20/21 – approved on November 20, 2023 was tabled until the next meeting.

ADJOURN:

A MOTION was made by Mrs. Wojcik to adjourn the meeting. There were no objections. Motion carried.


Beth Brothman
Board Secretary