

**PENNINGTON BOROUGH  
PLANNING BOARD MINUTES  
REGULAR MEETING  
December 14, 2022**

Mr. Reilly, Board Chair, called the meeting to order at 7:30 p.m. and announced compliance with the provisions of the Open Public Meetings Act. He stated that the meeting was being held via a Zoom webinar and access to the meeting had been noticed.

**BOARD MEMBERS PRESENT:** Mark Blackwell, Hilary Burke, Debra Gnatt (arrived @7:38) Cara Laitusis, Katherine O'Neill, James Reilly, Douglas Schotland, and Amy Kassler-Taub, Andrew Jackson-Absent

**BOARD PROFESSIONALS PRESENT:** Jim Kyle, Planner, KMA Associates, Brian Perry, Engineer, Van Note Harvey, Ed Schmierer, Attorney, Mason, Griffin & Pierson, Katie Ronollo, Board Secretary

**REGULAR MEETING**

**OPEN TIME FOR PUBLIC ADDRESS**

Mr. Reilly asked if there was any member of the public who had joined the meeting and had comments on items not on the agenda. Dan Pace, Pennington Resident, reached out to John Flemming regarding the use of the parking lot at the Agrain site, 278 North Main Street. Mr. Reilly clarified that the Planning Board is not involved in enforcement of ordinances. Mr. Flemming advised that the owner of the site is planning to come in to the Board for a change of use where the parking lot issues will need to be addressed. If this application does not materialize Mr. Flemming will follow up with the owner of the site. Mr. Pace and Mr. Flemming will meet at a later date to discuss this issue. There being no other member of the public wanting to comment, the open period for public comment was closed.

**APPLICATIONS**

**PB 22-010- Wenzel**, 234 W. Delaware Ave., Block 501 Lot 2, D(1) variance, Change of use from commercial to residential in the B-H Zone.

Mr. Reilly confirmed that this application will be heard by the Planning Board acting as a Zoning Board and a vote of 5 in favor is necessary for approval.

Mr. Schmierer confirmed that the noticing was in order and that the Board has jurisdiction. Ms. Gnatt and Ms. Burke are not eligible to vote due to this being a change of use application. .

Mr. Schmierer confirmed with the applicant the he wants to continue with only 6 members being eligible to vote.

Mr. Reilly requested a motion to approve the requested waivers. Mr. Blackwell made the motion to accept the waivers which was seconded by Ms. Laitusis. All were in favor via voice vote. The waivers are granted.

Mr. Schmierer swore in the applicant, Mr. Wenzel. The applicant was represented by John Mayer. Mr. Wenzel explained that the property was approved for residential use in

2020 but that he has since used it for commercial therefore the need to re-apply for a change of use. With the pandemic induced decline in rentals of commercial space, Mr. Wenzel explained that he has not been able to rent the space despite trying since July 2022. He has had inquiries about use as a residence and believes he would have more success in renting it as a residence. The applicant shared a PowerPoint illustrating the property conditions. No changes will be necessary on the outside or inside of the property to accommodate residential use.

There was question about the parking area. Mr. Perry, the Board Engineer, requested that gravel to accommodate the full length of a car be added to the area where residents park and that the hedge in front of the home be trimmed to allow for improved sight lines when exiting the property.

Mr. Kyle reviewed his memo dated December 7, 2022. He advised that the applicant must show that the public welfare is promoted because the site is particularly suited to the proposed use, or that special reasons exist. As to the negative criteria, the applicant must show the variance can be granted without substantial detriment to the public good, and that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

There were questions about using the property as both residential and commercial but that is not practical due to the size of the building. It was asked if the unit could be mandated as affordable but that is not allowable. Mr. Kyle suggested that Mr. Wenzel contact him to discuss the benefits of having the unit be affordable housing.

Mr. Blackwell made a motion to approve the change of use with the recommended changes to parking with a second by Ms. Laitusis.

**ROLL CALL:**

Blackwell-Yes	Burke-Not Eligible	Gnatt-Not Eligible
Jackson-Absent	Laitusis-Yes	O'Neill-Yes
Reilly-Yes	Schotland-Yes	Kassler-Taub-Yes

With 6 in favor, the motion is approved.

**PB 22-011, Jersey Meds**, 7 Route 31, unit 5, Block 206, Lot 3, Conditional use application for retail cannabis in the B-H Zone

Mr. Schmierer confirmed that the noticing was in order and that the Board has jurisdiction.

Mr. Reilly noted that the ARC recommends approval of requested waivers due to there being no change to the exterior of the building other than new signage and no requests for variances. Ms. O'Neill moved to approve the waivers and Mr. Blackwell seconded. All were in favor of granting waivers via voice vote.

Mr. Schmierer reviewed the concept of conditional use. A cannabis retail operation is a permitted use in the B-H Zone provided the applicant can meet all of the conditions.

Alan Fox, Esquire, Capehart Scatchard, the lawyer for the applicant, discussed information included in the application packet. Ellie Siegel, Consultant with Longview

Strategic, specializing in the Cannabis space, was sworn in and accepted as an expert for this testimony. Ms. Siegel discussed the rigorous state regulations and application process in place in New Jersey which the applicant has already completed. Ms. Siegel discussed each condition specified for conditional use and the ways the applicant will meet or exceed all of the conditions. She specifically mentioned that the hours of operation meet the standard, the security procedures were reviewed and approved by the Chief of Police and included 24 hour surveillance, security guards and an electronic ID verification process for anyone entering the store. The plan is to avoid lines by using an application called Cue Minder which will notify patrons when it is their turn to enter the store. It is anticipated that after the initial curiosity, patrons will order online and the store interactions will be limited. If there is traffic, Chief Pinelli has recommended a service that can assist with traffic control.

Questions from the Board for Ms. Siegel included specifics on ensuring underage patrons do not gain access, ratio of people purchasing online, length of wait time, catchment area, and encouraging patrons not to idle in their cars while waiting. Regarding the verification system's ability to verify out of state identification, Ms. Siegel clarified that the system will be able to authenticate IDs from all 50 states. Mr. Fox stipulated that all fake IDs will be confiscated.

Benedetto Catarinicchia, AIA, ZACS International LLC, the architect for the applicant, was sworn in and accepted as an expert for this testimony. Mr. Catarinicchia discussed the interior floor plan and that all product will be delivered in a secure interior location and the product is stored in a secure area and handed to the purchaser in a sealed container. No product will be manufactured at this site. A more efficient and smaller rooftop filtration system will be added. Mr. Fox noted that a condition is to have the Board of Health approve the odor control/air filtration system. The Board of Health has stipulated that they do not have a procedure to approve an air filtration system. After discussion it was agreed that the applicant will engage an independent 3<sup>rd</sup> party expert to attest to the efficacy of the air filtration system.

Joseph Mancini, PE, PP, TriState Engineering and Surveying, was sworn in and accepted as an expert for this testimony. Mr. Mancini discussed the parking, entrances and exits at the proposed location. He reports there are 124 spaces at the shopping center. He noted that this number differs from the number on the written plans because they have gone out and completed an in-person count. Based on the ordinance the applicant testifies that this amount of parking is enough for this use. There are ample dumpsters and no disposal of cannabis products will occur on site. John Flemming, Zoning Officer, has suggested that the applicant request a cross access agreement with adjacent properties. Brian Perry, Engineer for the Board asked for clarification about the number of spaces currently available at the site. Addressing a comment from the County Planning Board suggesting a pedestrian path from Route 31, Mr. Mancini noted that they do not own the property and cannot install a pathway. In addition, it is not expected that there will be many pedestrian patrons. Mr. Mancini clarified that the site has 6 total driveways, 4 access points on Route 31 and 2 access points on Broemel Place.

Victor C. Anosike, PE, McMahon Associates, the traffic consultant for the applicant, was sworn in and accepted as an expert for this testimony. He discussed the details of the traffic study and the conclusion that the addition of this retail facility will have a minimal or insignificant impact on traffic in the area. Pass by trips, not additional trips to the area, will comprise 40-50% of trips to this site. Mr. Perry asked about what baseline

existing condition was used for the traffic study. Mr. Anosike discussed the DOT allowable guidelines for conducting the traffic study. Mr. Schmierer advised that the now empty bank to the south of the facility will most likely be a Starbucks location and asked if that would change the traffic generation estimates. Mr. Anosike testified that the engineer for the Starbucks would be responsible for generating the traffic number for that site.

There was a question regarding anticipated opening date. The Jersey Meds Team estimated it would take 3-4 months before they would open. Mr. Kyle, Planner for the Board, discussed his memo dated December 2, 2022. He noted that all areas raised in his memo have been covered by the applicant's presentation. A depiction of the proposed sign was shown. The sign meets all local and state requirements. It was clarified that the traffic study was based on the current use and it is expected that traffic, in the long run, will not be exacerbated with the addition of this retail establishment. There being no other questions from the Board, the session was open for public comment. Leo Falgout, interested party, was sworn in by Mr. Schmierer. Mr. Falgout noted that he is part of the Applicant's team and that he thought all points were fully covered during the presentation. He had nothing else to add. There being no other public comments, the public comment period was closed.

A motion to approve the conditional use application with the condition that false identifications are confiscated and that a 3<sup>rd</sup> party expert attests to the efficacy of the air filtration system was made by Mr. Blackwell and seconded by Ms. Gnatt.

**ROLL CALL:**

Blackwell-Yes	Burke-Yes	Gnatt-Yes
Jackson-Absent	Laitusis-Yes	O'Neill-Yes
Reilly-Yes	Schotland-Yes	Alt. #2 Kassler-Taub- Yes

The motion was approved unanimously.

**RESOLUTIONS OF MEMORIALIZATION**

PB 22-007, Zhang- 161 E Delaware Ave, Block 403, Lots 33 & 34, d(4) use variance for new home exceeding Maximum Gross Floor Area by 800 square feet. Approved at the September 14, 2022 Board meeting.

Motion to adopt the resolution was made by Mr. Blackwell and seconded by Ms. O'Neill.

**ROLL CALL:**

Blackwell-Yes	Burke-Abstain	Gnatt-Abstain
Jackson-Absent	Laitusis-Yes	O'Neill-Yes
Reilly-Yes	Schotland-Yes	Alt.# 1 Kassler-Taub-Yes

Motion approved with 6 votes in favor.

PB 22-003, Pennington School, amended preliminary and final site plan approval for the athletic facilities improvements: bleachers, press box, improvements to existing turf field and fence/wall surrounding the field. Approved at the September 14, 2022 Board meeting.

Motion to adopt the resolution was made by Ms. O'Neill and seconded by Ms. Laitusis.

**ROLL CALL:**

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Blackwell-Yes	Burke-Yes	Gnatt-Abstain
Jackson-Absent	Laitusis-Yes	O'Neill-Yes
Reilly-Yes	Schotland-Yes	Alt.# 1 Kassler-Taub-Yes

Motion approved with 7 votes in favor.

**ZONING OFFICER REPORT**

John Flemming reported that there are no pressing Zoning issues at this time.

**OLD BUSINESS**

**MASTER PLAN COMMITTEE UPDATE**

There is no Master Plan update for this evening.

**MINUTES**

The September 14, 2022 minutes were approved with noted corrections via a motion by Mr. Blackwell and a second by Ms. Burke. All were in favor via voice vote.

Ms. O'Neill made a motion, seconded by Ms. Laitusis, to adjourn the meeting. All voted in favor to adjourn via voice vote at 11:06pm.

Respectfully submitted,

*Katie Ronollo*

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Katie Ronollo, Board Secretary