

MINUTES
RED BANK BOARD OF ADJUSTMENT
January 5, 2023

The Red Bank Zoning Board held a Zoning Board of Adjustment meeting on Thursday January 5 2023 at 6:30 pm, via Zoom in the Municipal building, first floor Council Chambers, 90 Monmouth Street, Red Bank, New Jersey.

Chair Lauren Nicosia called the meeting to order at 6:40 pm. The Board saluted the flag. A roll call showed the following members were in attendance: Lauren Nicosia, Anne Torre, Richard Angowski, Eileen Hogan, Ray Mass, Sean Murphy and Sharon Lee. Also present were Kevin Kennedy, Esq., Board Attorney, Ed Herrman, PE and Shawna Ebanks P.P. AICP, Director of Community Development.

Lauren Nicosia read the Open Public Meeting Statement Act. An Adequate and electronic notice with the time, place and matter was posted in the two newspapers, with the Borough Clerk's office, the Borough website and posted outside the Red Bank Meeting room and on the front door of Borough Hall.

Anne Torre and Ray Mass were sworn in.

A motion was made by Ray Mass, seconded by Anne Torre, to elect Lauren Nicosia as Chairperson. All were in favor.

A motion was made by Sharon Lee, seconded by Eileen Hogan, to elect Ray Mass as Vice-Chairperson. All were in favor.

A motion was made by Eileen Hogan, seconded by Richard Angowski, to elect Chris Ann DeGenaro as Board Secretary. All were in favor.

A motion was made by Lauren Nicosia, seconded by Sean Murphy, to elect Kevin Kennedy as board Attorney. All were in favor.

A motion was made by Lauren Nicosia, seconded by Eileen Hogan, to elect Ed Herrman (T&M) as the Board Engineer. All were in favor.

A motion was made by Ray Mass, seconded by Sean Murphy, to approve the Bylaws. All were in favor.

A motion was made by Lauren Nicosia, seconded by Richard Angowski, to elect Marc Leckstein as Conflict Attorney. All were in favor.

A motion was made by Lauren Nicosia seconded by Richard Angowski, to elect CME as Conflict Engineer. All were in favor.

A motion was made by Sean Murphy, seconded by Richard Angowski, to approve the Resolution for Board Attorney. Ayes: Lauren Nicosia, Anne Torre, Richard Angowski, Eileen Hogan Sean Murphy Ray Mass and Sharon Lee. Nays: none.

A motion was made by Sean Murphy, seconded by Richard Angowski, to approve the Resolution for Board Engineer. Ayes: Lauren Nicosia, Anne Torre, Richard Angowski, Eileen Hogan Sean Murphy Ray Mass and Sharon Lee. Nays: none.

Applications:

Z14975; 156 West Front Street, Block 6, Lot 20

Ed Herrman and Shawna Ebank were sworn in.

The applicant appealed the denial of the retail cannabis sales application pursuant to Section 490-122 for the Red Bank Development Regulations failing to satisfy the conditional use standards. There were no conflicts.

The following Exhibits were entered: A-1; Cover Letter from John Anderson: A-2; DPA: A-3; Narrative: A-4; Property Owner Survey: A-5; Survey prepared by Seneca dated 10/28/04: A-6; Architectural Plan prepared by SOME Architects (building plan dated 7/12/22, architectural plan dated 7/20/22): A-7; Denial dated 10/17/22: A-8; Notice of Appeal dated 10/27/22: A-9; Ordinance 2021-17 Cannabis Regulation: A-10; Cannabis Restriction Map prepared by Shawna Ebanks 7/21/22: A-11; Borough Workshop Agenda 7/7/22: A-12; Borough Drug Free Map; A-13; 2nd Drug Free Map prepared by T&M dated 12/3/09: A-14; Intent to Proceed 11/3/22: A-15; Ownership Disclosure: A-16; Escrow Agreement: A-17; Confirmation Letter that Taxes and Water Payments are Current: A-18; Subpoena from John Anderson to Shawna Ebanks to appear before the 1/5/23 Zoning Board: A-19; Kevin Kennedy's Response to Subpoena: A-20; Affidavit of Service: A-21; Cannabis Regulatory Commission Approval for Plug 10/28/22: A-22; Resolution of Approval for Plug's approval to retail Cannabis 4/13/22: A-23; Minutes from the 7/7/21 Council Workshop: A-24; 7/7/21 Council Meeting Agenda: A-25; 7/7/21 Regular Council Meeting Minutes: A-26; 8/2/21 Planning Board Agenda: A-27; 8/2/21 Planning Board Minutes: A-28; 8/18/21 Council Meeting Agenda: A-29; 8/8/21 Council Meeting Minutes: A-30; Full Audio's from all 4 above Meetings: A-31; Power Point consisting of 25 slides: A-32; DPA Denial for application at 15 Leonard Street (Z14452): A-33; Aerial Map prepared by SOME 1/5/23: A-34; Radius Map prepared by SOME Architects 1/5/23: A-35; Overlay Map of Cannabis Restricted Area prepared by SOME Architects 1/5/23: A-36; Drug Free Zone Map 2009.

The applicant was represented by John Anderson, Esq.

He described the application and explained that they should be in front of the Planning Board for a conditional use variance.

There is no proximity restriction in our Ordinance.

Richard Angowski clarified the application was denied because they were within 1,000 feet of the Red Bank Charter School.

John Anderson – there is no reference to a drug-free zone.

Richard Angowski stated that since cannabis is not permitted on the federal level, you would think it is generally not permitted. As a Zoning Board member, there are strict instructions that must be followed. There was discussion regarding State and Federal laws and what the Council intended when the Ordinance was passed.

John Anderson discussed the map (A-10), which showed the cannabis restricted areas. The Council and Planning Board reviewed this map intently. The map that the denial was based, was a totally different map.

Garth Case, Managing Member of PLUG Naturals, was sworn. He reviewed the Conditional Approval Letter received from the State of NJ and the Resolution acknowledging them of their compliance of the intended business type in the Borough. He explained how they reviewed the Ordinances, the maps and

spoke with Borough officials before applying. They chose a location in the BR-1 Zone to apply with a conditional use.

Mike Simpson, PP and Architect, was sworn and accepted as an expert witness. He discussed the location of the property on the map as being in the BR-1 Zone. He listed the seven conditions for this type of application. There are no restrictions regarding proximity issues.

There is nothing stating a cannabis retailer cannot be located a certain distance from a school.

Mr. Simpson listened to all the four meetings of the Mayor and Council and the Planning Board, as previously entered into evidence. He reviewed the map presented at the Council meeting, where Resolution 21-17 was approved. He stated there were certain Council members concerned about the areas being restricted and if they were too restrictive. The Council excluded the BR-2 Zone.

Sean Murphy and Richard Angowski discussed the map.

Mike Simpson's impression of the audios from the discussion was where cannabis could not be.

Richard Angowski questioned what if the radius shown on the map was incorrect.

They could not ask this Board to determine if the council made a decision based on an incorrect map.

Kevin Kennedy explained the Board can either affirm or deny Shawna's decision.

Sean Murphy agrees that the Council was looking at a map and they were under the impression the map was correct.

It was noted that Federal law prohibits it everywhere.

Richard Angowski clarified with Shawna Ebanks that the Council was using the map as a reference.

Mike Simpson stated the Council and Planning Board saw the map.

This map would be the one used as a reference for applicants to review.

You cannot make any future maps more restrictive.

The Ordinance that was adopted does not reference any map.

John Anderson and Mike Simpson prepared their own map. It represents accurately utilizing 1,000 ft. radius from any school property. Part of their property is located on both zones

Ed Herrman clarified what part of the building is within the 1,000 ft. of the Charter School.

Mr. Anderson showed the map to the members.

The representation to the council was that this was a 1,000 ft. map. The building of 156 West Front Street is totally within 1,000 ft. of a school.

Mike Simpson referred to Exhibit A-36, which showed the over-layed corner of the school property and it is not totally in the 1,000 ft. radius.

Richard Angowski stated all this Board can rely on is the Ordinance, which does not state any specific proximity reference.

John Anderson played some audio clips from the Council and Planning Board meetings. Mike Simpson summed up. There were no proximity restrictions regarding schools, other than what was discussed.

Mr. Simpson was the Architect for the application of the cannabis cultivator application at the property located at 15 Leonard Street and they received approval from the Planning Board. He is the property owner of the Head Start program and that property is located within 1,000 feet of this property.

Tenisha Victor, Neptune, cannabis expert, was sworn. She has worked with 8 different regulatory markets and was accepted as an expert witness. State of NJ has no restrictions they are actively taking steps to enable CRÈME law, which eliminates cannabis as a controlled dangerous substance. There is a blanket prohibition on the Federal level. There were no questions from the public.

John Anderson stated Shawna Ebanks created the map and presented it to council. Council did not want to create any more restrictions. The only changes they discussed were a possible restriction at Veteran's Park, but decided against it, as they did not feel it was a park, where children would go play. They also discussed a change to Marine Park.

The red bubble depicted on the map accurately shows the 1,000 ft. radius.

Mr. Anderson further stated the denial was based on the 2005 Drug Free Zones Map (Exhibit A-12) and the property is located within 1,000 ft. of that.

The Council and Planning Board never saw this map with regard to the cannabis discussions.

The Ordinance does not represent this map.

A five-minute recess was taken. A roll call showed the same member in attendance.

Susan Viscomi, 25 Cedar Street, was sworn. She attended the Planning Board meeting and most of the Council meetings. She was always told that cannabis is a drug. She is not sure why this is not part of the drug free zone and wants to know why there no limits. People are not educated until after the fact.

She also noted this is not a direct comparison to the application for 15 Leonard Street, as that application will not be open to the public.

Sean Murphy stated they have to abide by the State. This is all new and they have to abide by how the Ordinance was written. No one is to blame. As the Zoning Board, they do not have the authority, other than to abide by the Ordinance.

The public portion was closed.

Kevin Kennedy thanked Shawna Ebanks for her testimony.

Lauren Nicosia explained this is a determination of the determination made by Shawna Ebanks.

A motion was made by Sean Murphy, seconded by Ray Mass to reverse the decision of Shawna Ebanks .

Ayes: Lauren Nicosia, Anne Torre, Ray Mass, Eileen Hogan, Richard Angowski, Sean Murphy and Sharon Lee. Nays: none.

Ray Mass made a motion to adjourn the meeting, seconded by Sean Murphy. The meeting adjourned at 8:45pm.

Respectfully submitted,
Dina Anastasio