

MINUTES
RED BANK PLANNING BOARD
May 15, 2023

The Red Bank Planning Board held a Planning Board meeting on Monday May 15, 2023 at 7:00 pm, in the Municipal building, first floor Council Chambers, 90 Monmouth Street, Red Bank, New Jersey.

Chair Dan Mancuso called the meeting to order at 7:10 pm. A roll call showed the following members in attendance: Alix Schroder, Dan Mancuso, Art Murphy, Juanita Lewis, Lou DiMento, Kristina Bonatakis, Barbara Boas, Dave Cassidy and Fred Stone. Also present were Mike Leckstein, Esq., Ed Herrman, T&M Associates and Shawna Ebanks, P.P., AICP, Director of Community Development.

Dan Mancuso 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.

Applications:

P00039: 9-11 West Street, Block 34, Lot 1

The applicant, Canopy Crossroads, LLC., was seeking conditional use approval to permit a retail cannabis sales and delivery establishment at the premises. There are no proposed changes to the existing structure footprint.

This application was continued from the May 1, 2023 meeting.

The applicant was represented by Rick Brodsky, Esq. He explained they did re-notice the application, even though they were not required to.

Steve Raciti, Architect, confirmed he was still under oath. He explained the revised plan, which has not changed, but the requirements were not previously stated correctly on the Architectural Plan. Exhibit A-5; Overview of the Plan listing the bulk requirements in the BR-1 Zone, dated 5/5/23, was entered.

Joseph XX, owner of 169 West Front Street, was sworn. He clarified the condenser would be place in the alleyway, which is between his building and the applicant's building. He stated there were currently people hanging out in the alley.

Peter Wersinger,III, Esq. confirmed the changes were listed in the new notice. There was discussion regarding what was actually noticed and what was listed on the plan.

Andy Zeitlin, Business Owner, was previously sworn. Joseph the owner of 169 West Front Street wanted to know how they were going to share the alleyway. He has approached the landlord with his concerns, but nothing has been resolved. Mr. Zeitlin stated he wants to run a reputable business and he would speak with the landlord.

Joseph stated there is currently work being done at the property. He was instructed to contact the Building Department and Code Enforcement to confirm building permits have been pulled. He also confirmed where the people waiting would be standing, which would be in the front of the building.

Peter Wersinger, III, Esq. confirmed with Mr. Zeitlin that there would be between 8-9 employees on site at any given time and the number of customers that can be accommodated in the middle retail area would be 3 (1 for each POS station) and 2 kiosks. To clarify the number of people in the retail establishment:

At the front of the store, there would be a receptionist, two security guards and a maximum of eight seats.

The occupancy in the waiting area is 4.8 people according to the plan.

The middle retail section could consist of three employees and five customers.

The rear of the store could consist of two employees.

The total could be up to 21 people. This would be the maximum.

The security guards will be in and out.

It is one building – used a liquor store and it is believed, that at some point in the past, an art studio was located there.

Mr. Zeitlin stated the landlord informed him that for 30 years this has been a liquor store.

He confirmed parking fees would be reimbursed to employees.

Red Bank Corporate Plaza owns the Pazzo parking lot, but there has been no agreement entered into with them to arrange for the employees to park there.

Mr. Wersinger questioned if there was a better location for a cannabis retailer than this location. There was discussion regarding this issue. Mr. Zeitlin stated this was not his area of expertise.

He clarified there are no parking spots designated for online pick-up.

Mr. Zeitlin confirmed he is the COO and has worked with the architect in preparation of site plan.

He is not aware of the requirements of a minor site plan.

It was noted that the applicant submitted all requirements for a minor site plan, for this application, per the Board Engineer.

Cindy Burnham, 71 Wallace Street, was sworn. She clarified they are only applying for retail adult use cannabis, not medicinal. There will be 3 registers and 2 kiosks. The kiosk you operate yourself and pick up your items at the pick-up window.

Joseph, the owner of 169 West Front Street, wanted to know why this location next to a liquor store.

It was stated that the zone conformed for a conditional use and it was available.

Damon Mirtha, West Street, still under oath. He confirmed the only way to expand is to take over the liquor store. In that event, they would have to come back to the Board.

He stated his concerns and asked if the applicant would you want his family here. There are families with children in this neighborhood. He is concerned with transients and the people waiting in que. Dan Mancuso stated that was an unfair question.

Suzanne Viscomi, Cedar Street, was previously sworn. She clarified if the employees would be required to park at the Pazzo lot and how would they enforce it if they don't. She wanted to know what recourse the neighbors would have if the employees don't park there.

Mr. Zeitlin stated if they park in the lot located at the building premises, they would be told to move.

Dan Mancuso stated if the application is approved, they can make a contingency in the approval. Then if it is violated, it becomes a code enforcement issue.

No further testimony.

Dan Mancuso stated there was a letter from Chief of Police regarding curb-side pick-up.

Mr. Zeitlin explained this was only going to be utilized during the Covid situation. They do not plan on continuing this.

Comments:

Ron Knox owner 212 West Front Street. The business is Stonewall House Antiques. He extended compliments to Andy Zeitlin and Karen Cohen. Very nice people. However; he does not feel this property is appropriate. He referenced Ordinance 2021-17, which stated any cannabis business is not permitted if it is prohibited by state or federal law and since federal law prohibits cannabis within 1,000 feet of school zone, cannabis retail is not permitted on this property.

He noted a 12/6/22 document from federal CSA stating that marijuana is strictly prohibited as marijuana is listed as federally banned substance.

We must uphold what is written now. Still a schedule 1 substance.

Mike Leckstein stated that it is banned everywhere. It is a terrible gray area that the state is violating federal law. Also, the Attorney General said it should not be prosecuted.

The advice he gives to the Board is to make decisions based on the laws of the State of NJ.

He said the comments made by Mr. Knox are good, everything he said is true.

Mr. Knox stated there are a lot of distractions and the best way is to refer to the Borough's Ordinance.

Alan Hill, was previously sworn. He stated again that there are 10% of the population of Red Bank that are not citizens and wanted to know what are they going to do to safeguard these people from coming into the store.

Dan Mancuso stated they are not going to do doing anything, it is not the Board's job. Just like it is not their job to stop someone from speeding or breaking other federal laws.

Their job is to interpret planning law.

A resident of West Street confirmed no traffic study was done as they are not required to do so for this application. Traffic will be an issue.

This is a family town and there will be transient population coming into the business.

The security guards will be there because there is an increased chance of negative instances to occur, such as crime, mostly property related.

Ron Knox, still under oath. He wanted to understand the PB decision to expand the zone, when reviewing the Master Plan.

Dan Mancuso explained the Planning Board reviewed the areas the Council suggested and they felt they were economically restrictive, with regard to the Master Plan. It was not compliant.

There was not much mention in the Plan.

Shawna Ebanks clarified the zoning process with regard to the Master Plan and suggested Mr. Knox could call here at a later time to discuss this.

Danielle Liss, was sworn. She owns several properties on West Street and would like to make sure the Planning Board is taking into consideration all the issues, including traffic, families, etc., when making their decision.

Dan Mancuso stated you can't deny an application with regard to traffic.

There are 3 retail cannabis licenses permitted in Red Bank. The application for the one to be located at the old China Moon premises has been approved; this application and another one, which was carried to be heard at a later date.

An applicant has a right to open and operate if they are approved

These will all be located within a small area.

The Board took a break at 8:27. A roll call showed the same members in attendance.

Peter Wersinger III, Esq. believes the Board lacks jurisdiction to hear this application.

The applicant has tried to remedy this by re-noticing. Not legally sufficient.

Mike Leckstein stated the Board accepted the application based on the first notice.

He discussed the Issue raised by Mr. Knox citing Ordinance 2021-17, which was codified 490-56.2 L.

He stated the point is being missed, the issue is not whether cannabis is legal at the state or federal level, but that this location is not the right fit. The issue is distance.

The Borough can't change what is codified in State Law, which prohibits cannabis from being sold in or on a premises where sale of alcohol is present.

This is a direct violation.

Council acted quickly didn't address issues.

Dan Mancuso suggested he should have hired a traffic engineer.

Mike Leckstein stated it is state law that you cannot deny an application based on traffic issues.

Ms. Colotto a resident of West Street, was sworn. She wants to be able to walk in and safely purchase what she needs.

Shawn Smith, King Fisher Drive, Middletown, was sworn. He stated the applicants are upstanding citizens and also that the security guards present would provide more safety. He also noted if the building is sold and apartments are built there, then there would be parking issues.

Rick Brodsky summed up the application: these are basically philosophical thoughts of cannabis. The Planning Board's mission is to apply the laws that are applicable; they have limited jurisdiction. Red Bank opted to have retail cannabis sales in specific zones. The Mayor/Council identified the zones and this site lies in that zone. It is a conditional use and the 6 specific conditions, if met, create a conditional use. The applicant met these requirements and they are requesting variance for the existing 7 parking spaces based on the existing square footage. They have put a plan into place to rectify the all employees and owners will be motivated/directed to use the parking lot, located steps away; in order to maximize the use of the 7 spaces provided. The site is appropriate because the zoning laws deemed this a conditional use; the proximity the of parking lot. These are elements the potential business owners have invested in. There are restaurants located downtown, that provide no parking.

Cannabis is legalized in NJ. Congress expressly declined to enforce.
CREMA statute the legalized, specifically referenced this law.
Cannabis specifically removed from list.
Legalized in NJ and Red Bank

Board's mission for this application is to review the application for this location in an existing building, which they are proposing changes to aesthetically improve the look of the building; know that this is a Micro License, with limitations, including size of the location and local ownership. Throughout the state, there are large national companies operating cannabis retail facilities. This application involves investing in the home town. Mr. Brodsky referenced application that were brought before the Board from Mr. Wersinger, on behalf of the applicant, 141 West Front Street, in which the requested variances; and in the testimony, the traffic plan directed all traffic to West Street for that application. Here, on a conditionally permitted use, a thoughtful business plan, in which they are addressing parking, has been proposed. They are a community and will abide by zoning laws. A perfect site may not exist in the zones permitted.

Art Murphy made a motion the close the public portion. All were in favor.

Mike Leckstein stated if thinking out of the box, you get confused. To solve this issue, understand that this is a conditional use. If they were deemed ok to be heard by the Planning Board, there was a 20-day appeal process and no one appealed. The Planning Board was deemed appropriate to hear this application.

A motion was made by Art Murphy, seconded by Lou DiMento to approve the application. Ayes: Alix Schroder, Dan Mancuso, Art Murphy, Lou DiMento, Kristina Bonatakis, Barbara Boas and Fred Stone. Nays: Juanita Lewis. Abstain: Dave Cassidy.

Conditions: No employee parking on site, no curbside pickup; apply for license from Council; delivery and trash twice weekly before 10 am; repair parking lot, mural if requested, must receive Council approval; everything in engineer letter and to provide a trash can out front.

Art Murphy made a motion to adjourn the meeting, seconded by Barbara Boas. The meeting adjourned at 10:00pm.

Respectfully submitted,
Dina Anastasio