

## PERKINS TOWNSHIP BOARD OF ZONING APPEALS MEETING

Held By: Perkins Township Board of Zoning Appeals

Place: Perkins Township Service Facility, Meeting Room, 2610 Columbus Avenue

Date: July 5, 2022

Time: 4:00 p.m.

Board Members Present: Mr. Ted Kastor, Chairperson  
Mr. Larry Pitts, Vice Chair  
Mr. David Bertsch  
Mr. Michael Bixler

Board Members Absent & Excused: Mr. Spence, Mr. Gast

Staff in Attendance: Ms. Angela Byington, Planning  
Mrs. Jessica Gladwell, Administrative Assistant

### I. Pledge of Allegiance

Mr. Ted Kastor called the meeting to order and led the Board and staff in the Pledge of Allegiance.

### II. Roll Call

Mr. Kastor asked for roll call to be taken.

Mr. Kastor, here; Mr. Pitts, here; Mr. Bertsch, here; Mr. Bixler, here;

### III. Chairperson's Welcome and Explanation of Public Hearing & Public Meeting

Mr. Kastor welcomed everyone to the meeting. He said it will be held in two (2) parts. First will be the Public Hearing, where the Board will hear from the applicant. Then they will switch to the Public Meeting, where the Board will decide the fate of the application.

Mrs. Gladwell Swore in everyone that signed in.

### IV. Reading of the Request

**APPLICATION #BZA2022-10** A conditional use permit request filed by Robert Bajko HSB Architects on behalf of 5020 Milan Rd, LLC for the property located at 5020 Milan Rd (PPN: 32-03494.013). The conditional Use Permit is to allow a Medical Marijuana Dispensary whereas Section 17.2(14) of the Zoning Resolution requires Conditional Use

Permits for properties zoned "C-2"/General Commercial Distract in order to conduct a Medical Marijuana Dispensary.

## V. Staff Review

Ms. Byington stated This application was tabled at the June 21<sup>st</sup> meeting to allow the Township's legal counsel to determine if the chapel(s) within the Parkvue Community constitute a "church". The Township's legal counsel has reviewed the facts of this application and relevant case law and is of the opinion that the Parkvue Community **does operate as a church.** Mr. Coppler is here to answer any questions that you may have on that.

**Based on the legal advice of the Township legal counsel, staff provides the recommendation that the application for a Conditional Use Permit to operate a medical marijuana dispensary be approved with the following condition:**

1. **A variance must be approved to the minimum distance requirement of 1000 feet between the dispensary and the Parkvue Community property.**
2. **If the parking lot is to be resurfaced, a parking lot permit and landscaping plan will need to be submitted for approval and the parking lot will need to come into compliance with Appendix C of the Zoning Resolution.**
3. **All required building permits must be obtained.**
4. **A security plan must be submitted and approved by the Perkins Township Police Department.**
5. **Outside sales or storage is not permitted.**

Mr. Kastor asked who was here to speak on behalf of the applicant.

Andy Miley – Counsel for the applicant. I just wanted to introduce a few people who I have with me, this is Kate Hart who is director of development, and we also have our architects here as well for any questions you may have. The issue of the church, there is this piece of paper here from your staff, I believe that we received about if the board is of the opinion that if the Chapel is constituted as a Church, we recommend approval with the condition of the variance for the minimum distance requirement of 1,000 ft is approved. Not to get over legally knit picky but the issue isn't really whether is if the Chapel is a church. The issue is the way the code reads as if the entire building is a church, and we think that it is plainly not a Church, and there is nothing before the committee that shows that it would be. So, we would just ask that you approve our application without the need of any variance, other than if you disagree, we will ask a variance be given as the staff report says. There are physical barriers between the facility and our facility such as a person would have to travel a great distance between the two. We really should have no problem granting a variance, and under state law the minimum requirement is 500 ft, which we are well within that. You know, we are eager to be a part of this community and we thank you for holding this hearing the day after the 4<sup>th</sup> of July. This local government that really makes it work. If there aren't any questions, I'd like to turn the floor over to Kate.

Kate Hart- So I just want to say thank you, it seems as if it is being recommended that we are approved for a variance/variance required. We are really looking forward to being in a good community and look forward to serving the local community and businesses. If there are any questions, I am happy to answer.

Gene Dagiau- I'm not really sure, where is the church?

Kate stated that it is called Parkvue Senior Community.

Gene Dagiau asked but where is it?

Mr. Kastor stated Mr. Dagiau what they are talking about is Parview Community over off of Hull Road, I believe its is Boardwalk Ave is what they are talking about.

Gene Dagiau stated doesn't it seems to me is seemed that is more than 1,000 feet away?

Mrs. Kula Hoty-Lynch stated he may be here for the Bogart Road one and told him there are two different ones, this one is the former Pier One building and you live next door to the property on Bogart Rd.

Mr. Kastor asked if he answered his question?

Gene Dagiau stated that he's so confused but he will look into it.

Andy stated I think he knows what he was asking, where there is a church by ours.

Mr. Kastor stated so if you really want to dig your heels in and say that's its not a church, you could ask for a vote on the conditional use without a variance.

Andy stated that they're happy to take a variance if that is what it takes.

Mr. Kastor stated that its probably (he's just speaking for himself), if you were a gambler I wouldn't go in that direction.

Any stated he understands.

Kate stated that its her understanding that we leave here with that variance if the variance is granted if we go that route?

Andy asked if that vote would be today?

Mr. Kastor stated yes – under that conditional use what we could do is grant approval with it based on the approval of the variance to follow.

Andy stated they would like to proceed that way.

Mr. Kastor asked if there has been any correspondence?

Ms. Byington stated that the only correspondence we have received is a phone call from Dr. Deehr that owns property on 250, just inquiring where there was a church, he had no opposition though.

Andy stated that they did submit correspondence with Mr. Coppler to the staff, he wasn't sure if it was received.

Ms. Byington state that it is in the packet.

Mr. Kastor asked if the board had any questions.

Mr. Bertsch asked if there was anyone here speaking for Parkvue Nursing Home Facility?

Andy stated that he doesn't think there is anyone, they have spoke to the church and they don't seem to have any objections.

**VI. Staff Close Public Hearing/Open Public Meeting**

Mr. Kastor asked for a motion to close the public hearing and open the public meeting. Mr. Bixler motioned to close the public hearing. Mr. Pitts seconded. Mr. Bixler, yes; Mr. Pitts, Yes; Mr. Bertsch, Yes; Mr. Kastor, Yes

**VII. Discussion from Board**

Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Bertsch motioned to approve Application #BA2022-012, with the conditions the Township has recommended. Mr. Bixler seconded. Mr. Bertsch yes; Mr. Bixler yes; Mr. Pitts, yes; Mr. Kastor, yes.

Mr. Kastor stated step 1 – I would like to move the 3<sup>rd</sup> application on the docket and address the variance of 1,000 right now, is that okay?

Ms. Byington stated yes.

**VIII. Reading of the Request**

**APPLICATION #BZA2022-16** A variance was requested by the Forrest Sandusky, LLC on behalf of 5020 Milan Road, LLC for the property located at 5020 Milan Road (PPN: 32-03494.013). The variance requested is to allow a Medical Marijuana Dispensary to be located within 1,000 feet of a church whereas Section 17.2(14) of the Zoning Resolution does not allow Medical Marijuana Dispensaries to be located within 1,000 feet from any parcel on which sits a school, church, library, public playground, or public park.

**IX. Staff Review**

Ms. Byington stated as Jessica read Variance to section 17.2(14) of the Zoning Resolution which states, "Dispensaries are to be located no closer than 1,000 feet from any parcel on which sits a school, church, public library, public playground, or public park. The property that the Parkvue Community Chapel is located on is approximately 850 feet from the site of the proposed dispensary. You will see here there are two google map directions, one shows a 5 minute drive and a 32 minute walk. So you can see the only way to really get from one property to the other would be to go along the

road because otherwise you'd be trespassing on private property. So, if you look at the parcel here there is a large parking lot and then a building and then wooded area before you get to the edge of Parkvue Community parcel. Again, I am not sure where the Chapel is within the parcel, but the ordinance and resolution requires it to go to the parcel line basically.

It is staff's opinion that enforcing the 1000-foot distance requirement to the chapel(s) at Parkvue Community would put an undue hardship on the applicant. It takes 5 minutes to drive or 32 minutes to walk between properties. Further, there is a large parking lot, a building and a wooded area between the two properties. The approximate deficient distance of 150 feet will be inconsequential due to the physical barriers between the properties and the distance to travel between them by car or foot.

Staff recommends approval of the variance of approximately 150 feet to allow the dispensary to be located less than 1000 feet from the Parkvue Community Property.

Andy stated that they would support recommendation from the staff and agree the variance would be consequential.

Mr. Kastor asked if anyone here would like to speak on this application.

Mrs. Hoty-Lynch stated she had a question – what was the hardship?

Ms. Byington asked what was their hardship? The distance between them, you can't just get there by just walking 1,000 ft, you have to go much further than 1,000 ft to get there.

Mrs. Hoty-Lynch asked what the hardship was for the applicant.

Ms. Byington stated that applying the regulation onto this property would be an undue hardship, there is not reason to make the standard apply to them. It's an undue hardship.

Mrs. Hoty-Lynch stated she just likes to know for future what's considered a hardship.

Mr. Kastor stated it's a hard thing to define. What may be a hardship for someone doesn't apply for the person next to them, it's so arbitrary?

**X. Staff Close Public Hearing/Open Public Meeting**

Mr. Kastor asked for a motion to close the public hearing and open the public meeting.

Mr. Bertsch motioned to close the public hearing. Mr. Bixler seconded. Mr. Bertsch, yes;

Mr. Bixler, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes

**XI. Discussion from Board**

Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Bertsch motioned to approve Application #BA2022-016, Mr. Bixler seconded. Mr. Bertsch yes; Mr. Bixler yes; Mr. Pitts, yes; Mr. Kastor, yes.

Mr. Kastor stated that on behalf of Perkins Township, we welcome you aboard. See the staff for all the required permits and so forth. What's the game plan? You're going to try to get open when?

Kate stated this year, we have architect here, so now the pressure is on and the contractors. So, now it's in their hands.

**XII. Reading of the Request**

**APPLICATION #BZA2022-13** A conditional use permit request filed by Eric Kmetz on behalf of 250 Bogart Corner, Ltd. for the property located at 6019 Milan Road (PPN: 32-03793.000). The Conditional Use Permit is to allow a Medical Marijuana Dispensary whereas Section 17.2(14) of the Zoning Resolution requires Conditional Use Permits for properties zoned "C-2"/ General Commercial District in order to conduct a Medical Marijuana Dispensary.

**XIII. Staff Review**

Ms. Byington stated this application was tabled at the June 21<sup>st</sup> meeting to allow staff and the Board to review a revised site plan that was submitted the day of the meeting. There are 2 site plans that were submitted, they are in your packets. These are just snippets showing them in general, you will see one has a larger building and one has a smaller. After reviewing both of them, both of them would require some sort of variance as they are currently, based on the setbacks. That property is difficult, the building that used to be there was right up against the right of way. Route 250 and Bogart does have a lot of the right of way in the property there so, it is really tough to position a building on. I know the applicant is working really hard to work through that. Therefore, there are the two options they submitted. I will say that one of them has the parking spaces a little under what is required as well, but they did submit a modest landscaping plan, they will need a little more information in lighting, and they are proposing a masonry wall, which I believe is 6ft along the west side of the property to act as a buffer against residential property.

In conclusion staff recommends approval subject to the following conditions.

1. **A setback variance(s) will need to be granted or a revised site plan shall be submitted showing that all required setbacks are met.**
2. **A variance to the required parking dimensions will need to be granted or a revised plan shall be submitted showing that the parking dimensions meet the requirements of the Zoning Resolution.**
3. **All three parcels will need to be combined prior to the start of the project. The minimum required lot size for commercial properties is 1 acre, a variance may be required for lot combination approval.**

4. **Final façade plan shall be approved by Community Development Staff.**
5. **A landscaping plan shall be approved by Community Development Staff.**
6. **A lighting plan shall be resubmitted showing lumens for approval.**
7. **The applicant will need to work with Erie County Stormwater Management and submit an approval letter to Perkins Township Community Development.**
8. **All Building permits will need to be obtained.**
9. **A security plan will need to be approved by the Perkins Township Police Department.**
10. **Outside sales or storage is not permitted.**

Eric Kmetz- Good Afternoon. We sent an update to Arielle over the weekend, I brought some hard copies. So, this will speak for 1, 2, 4, 5, & 6. We have digital copies as well. On the setback variance we have been able to comply with all but one of the variances, where there is a 60 ft variance and there seem to be willingness to look at 50 ft, which would allow us to get the building to be properly sized for the property. Which is what you see here, the Milan Rd. So, this plan does reflect the 50 ft setback assumption, we would appreciate confirmation on. You will see it gets us about a 4,800 sq ft footprint. Original setbacks only got us about 2,500 sq ft of building. For this parcel because it's a corner property zoned on two roads for a very small building, and very small operation. To be completely honest, we just couldn't get the building to work, to make a viable operation, we did a minimum 4,500 sq ft because we have a weird access for delivery/trash it bumps out to about 4,800 sq ft. The parking has been addressed as well, by code 24 spaces are required, we have 28. The 3 parcels I think is more administrative than architectural or construction. Final façade plan, we are working on that as well, that normally takes us 2-3 more weeks to get that submitted. We right now are just making sure we can get the building the right size, then we will work on exterior design of the building. Landscaping is in the packet you have here, so we have the landscaping buffer on both sides, as mentioned the 6ft retaining wall on the residential side, seems appropriate to our neighbors. The lighting plan is also included showing the light specifications and quick handles. We did meet with the police department, Chief Donald and Sargent Musser on Thursday last week, very productive. They had a couple comments. That's where we are today.

Mr. Kastor asked if anyone else here would like to speak on this variance request.

Gene Dagiau- stated sorry my brain is getting old. I'm not exactly sure where you are. To the south of your property does that but up to Ruta Hotel?

Mrs. Hoty-Lynch stated that it would be to the north.

Mr. Dagiau stated that he is just concerned about the parking lot and a buffer between my property and the parking lot, some people would take offense. My wife would be very much in favor of some sort of landscaping tree type of thing to protect us for parking car lights and things like that, that would be on the west side of your property.

Discussion on where the dispensary is going between staff and Gene Dagiau.

Mr. Bertsch stated since the building that was already there and torn down, is there anything grandfathered in as far as setbacks.

Ms. Byington stated so I will state that there is nothing official in regard to a grandfathering, but the property owner did reach out to the township before hand seeing if we would be open minded to a variance in the future knowing that property had a hardship to it, to get the property re developed.

Mr. Bertsch stated so this application for the 4800 sq ft version will request a variance for the setbacks, right?

Ms. Byington stated it looked like one variance for a 10ft setback.

Mr. Bertsch asked if we have to have that submitted before we act on it or?

Ms. Byington stated yes, we will have to advertise on it so we will put that one and the lot combination under the one acre on the same meeting.

Mr. Kastor asked if they comply with the parking stall size?

Ms. Byington stated it looks like they took care of it. It looks like they're complying. We will go through and double check everything

Mr. Kastor stated so really from the boarding zone of appeals we would approve the conditional use and then the only variance required would be the 10ft setback on the front yard, which would result in 50ft instead of the required 60ft.

Ms. Byington stated and likely the lot size when you put the 3 lots together and being under 1 – acre.

Mr. Kastor asked if they have looked over our sign regulations?

Mr. Kmetz stated that he believed Arielle was going to send those pre-vacation.

Ms. Byington stated she's not on vacation, she will probably be out a week. I can send you all the sign regulations.

Mr. Kastor stated we would like to really work you guys, so you only have to come back one time for the variances. Typically, you know Marijuana dispensaries don't have big signs, they seem to be kind of understated.

Mr. Kmetz stated yes that's on purpose. It's a neighborhood entity, it's not Vegas.



Mr. Kastor stated you know if you drive down 250 you don't think man, I don't know what their zoning sign regulations are, that's fair. We don't have any we've granted pretty much a lot of variances.

**XIV. Staff Close Public Hearing/Open Public Meeting**

Mr. Kastor asked for a motion to close the public hearing and open the public meeting. Mr. Bertsch motioned to close the public hearing. Mr. Bixler seconded. Mr. Bertsch, yes; Mr. Bixler, Yes; Mr. Pitts, Yes; Mr. Kastor, Yes

**XV. Discussion from Board**

Mr. Kastor stated so it sounds like we can approve the conditional use based on approving the variances and the requirements.

Mr. Kastor stated he would entertain a motion or approve or deny the request.

Mr. Bertsch motioned to approve Application #BA2022-013, Mr. Bixler seconded. Mr. Bertsch yes; Mr. Bixler yes; Mr. Pitts, yes; Mr. Kastor, yes.

**XVI. Old Business**

Mr. Kastor asked if we looked at the stored good at the Lowe's parking lot.

Ms. Byington stated she thinks Arielle went out and looked at it but hasn't heard anything.

Mr. Kastor stated the Wolff Inn, they now have additional fake snake plants along the sidewalks. I went by yesterday and they have added a lot of stuff, can you take a look at it to see if it falls in the zoning regs?

Ms. Byington stated yes, a lot of that stuff is hard to regulate that is estitic that they put up but we will take a look at it.

Mr. Kastor asked if there were any updates on Maui Sands.

Ms. Byington stated no, we haven't spoken with the owner quite a while ago, I know we had a break in a couple of weeks ago, so we are continuing to deal with the break ins. Last I've heard they are moving forward last spring with has now passed and I haven't heard from them.

Mr. Kastor asked if there were any complaints from bike week?

Ms. Byington stated she hasn't heard anything from Chief Donald, have you? I think it went well.

Mr. Bixler asked about the old Burger King property and mowing.

Ms. Byington stated that we have them cited right now. Did they mow? So the issue is we were working with the prosecutors officer and they had us change our process for dealing with nuisances, so we can officially certify them to the taxes as before they weren't comfortable with the way it was being done in the past, so it is taking longer. So it may just be a property we cut and don't get our money back on, its bad I will bring it up to Gary tomorrow.

Mr. Kastor Panda Express?

Mrs. Gladwell stated they had a temporary service for electrical, so they are moving forward, Steve was out there last week.

Mr. Kastor asked about the car wash on the Deehr property?

Ms. Byington stated that yeah as far as I know its still going forward. I know they are working with the engineer's office.

Mr. Kastor asked if there is another car wash next to Culver's?

Mrs. Gladwell stated that's the Wave Carwash. They called and inquired some information about the Take 5 Carwash/Oil Change but haven't said if they were continuing or not.

Mr. Kastor asked about the shooting range that was supposed to go into the old Teddy Wears?

Mrs. Gladwell stated they haven't heard anything, I'm pretty sure their conditional use is up timewise.

**XVII. New Business**

Ms. Byington stated there were 2 applications for the next meeting.

Mr. Kastor stated Mr. Coppler thanks for your help.

**XVIII. Adjournment**

Mr. Kastor asked for a motion for adjournment.

Mr. Pitts made the motion and Mr. Kastor seconded. Roll Call: Mr. Pitts; yes, Mr. Kastor; Yes, Mr. Bertsch; yes, Mr. Bixler; Yes.