

**SPRINGETTSBURY TOWNSHIP
CONDITIONAL USE HEARING**

**JANUARY 28, 2021
APPROVED**

The Springettsbury Township Board of Supervisors held a Conditional Use Hearing on Thursday, January 28, 2021 at 6:00 p.m. at the offices of Springettsbury Township located at 1501 Mt. Zion Road, York, PA in person and by Zoom technology.

MEMBERS IN

ATTENDANCE: Mark Swomley, Chairman
George Dvoryak, Vice Chairman
Charles Wurster, Assistant Secretary/Treasurer
Don Bishop
Robert Cox

ALSO IN

ATTENDANCE: Mark Hodgkinson, Township Manager
Charles Rausch, Solicitor
John Luciani, Civil Engineer
Chris Naylor, Attorney
Abe Kahn, Bennett Williams
Nicholas Monette, Goodblend PA
Terace Driscoll, Goodblend PA
Dori Bowders, Director of Administrative Operations
Todd King, Chief of Police
Terry Hummel, Finance Director
Dan Hoff, Fire Chief
Ray Markey, Acting Director of Community Development
Abby Gibb, Communications Manager
Filius & McLucas Stenographer
Jean Abreght, Stenographer

1. CALL TO ORDER

SWOMLEY Chairman Swomley called the Conditional Use Hearing to order. He stated the purpose of the Hearing was to discuss a medical marijuana dispensary center in the Town Center Overlay at 100 Memory Lane. He turned the Hearing over to Attorney/Solicitor Charles Rausch.

RAUSCH Solicitor Charles Rausch thanked Chairman Swomley. He stated the Condition Use Hearing was more formal than a normal Board of Supervisors meeting. A Stenographer was present to provide a transcript. He indicated that the Applicant would be first to give testimony, and there are some additional participants who will be able to ask questions. He requested that everyone speak clearly for the record. He noted that the proposed use is a permitted use in the Mixed Use District. The reason that it is before the Board is that it is within the Town Center Overlay and, therefore, is subject to the design criteria in the Town Center Overlay Section, 325-200H, which is the Reuse of an Existing Building. He asked Nicholas Monette, who represented the Applicant to provide testimony for

CU2020-01, a Conditional Use Application for a medical marijuana dispensary center in the Town Center Overlay.

MONETTE Nicholas Monette stated that the Applicant was Good Blend Pennsylvania.

RAUSCH Solicitor Rausch asked who would be testifying.

MONETTE Mr. Monette responded that he and Terace Driscoll would be testifying.

Solicitor Rausch swore in Mr. Monette and Ms. Driscoll along with Mr. Luciani to provide testimony.

RAUSCH Solicitor Rausch questioned Mr. Luciani whether notice of the Hearing was provided in the newspaper and the property posted.

LUCIANI Mr. Luciani responded that an advertisement appeared in the York Daily Record and was published in conformance with the Municipal Planning Code. In addition, property owners within 200-feet were notified. A photograph of a sign is posted in public view of the fact that there's a Conditional Use Hearing on this site at 100 Memory Lane.

RAUSCH Solicitor Rausch asked whether there was anyone else who wanted status to speak in the Hearing.

NAYLOR Attorney Chris Naylor requested Objector Party Opponent Status for Michael Spagnola, who owns property at 4 Kent Road, which is within the 200 feet and is across Kent Road from the subject parcel.

SWOMLEY Chairman Swomley noted a participant who had a hand raised. He invited others who might want a party status to raise their hand. He invited Susan Macado to speak.

MACADO Susan Macado, 40 North Finley Street, stated that the sign that is in front of the building says that the Hearing begins at 7 p.m. That is the time that the Regular Meeting meets. It does not say 6 p.m. and there may be people who are expecting to attend this who do not realize that it's at 6 o'clock. She noted that she has a photo of the sign.

RAUSCH Solicitor Rausch asked Ms. Macado if she was seeking party status or if she was just present to inquire

MACADO Ms. Macado responded that she was inquiring as to what was going on.

RAUSCH Solicitor Rausch noted that Ms. Macado's comment would be duly noted, and that the Hearing would continue. He sked Mr. Monette to proceed with his testimony.

MONETTE Nicolas Monette stated that he is Vice President of Real Estate with Parallel. Parallel is the parent company of Good Blend Pennsylvania, which was a recipient of one of the clinical research licenses given out by the Chapter 20 License Process in the State of Pennsylvania. There are eight research institutes in the state of Pennsylvania and each university was able to partner with one central licensed operator, like Good Blend PA to partner in a research kind of clinical trial relationship. As a result Good Blend PA is partnered with the University of Pittsburgh Medical Center. He stated that Good Blend PA is known in their industry as a Multi-State Operator with operations in Florida where they have 39 retail locations. They have a presence in Massachusetts with three retail locations. They have a retail and a vertical license in Texas and in Nevada.

Mr. Monette stated that the license in Pennsylvania allows them to operate up to six retail locations. They had chosen York as one of six retail locations. Two additional Pennsylvania locations are under construction: Pittsburgh and Erie. The location chosen in York has good visibility in a good community with plenty of parking for a retail medical marijuana dispensary.

Mr. Monette described the plans for the York retail dispensary including the retail sale of medical marijuana; all products permitted by state law. Following initial approval upgrades would be done to the site, lighting, adding benches and landscaping.

RAUSCH Solicitor Rausch requested his testimony for plans in the Town Center Overlay and to show any exhibits.

MONETTE Mr. Monette responded by showing the site plan for 100 Memory Lane. The existing building is 4,500 square feet, single story, landscape, parking, 1,000 feet from a daycare or school.

RAUSCH Solicitor Rausch noted that the site plan was to be marked Exhibit A1 for the record. He requested Mr. Monette to explain the criteria that their plan was subject to within the Town Center Overlay under Subsection H.

MONETTE Mr. Monette responded that he would be happy to walk through those details but he did not have the details of the overlay in hand. He stated further information including the following: the locations are used for pick up of medical cannabis products; loading and unloading of product happens in a covered area; sections of the store; entrance security; waiting area; sales floor; queuing and purchasing point of sale; balance of the building used for storage of packed product. Nothing is grown at the site; everything received in a finished state such as tincture bottle or pill format.

DRISCOLL Terace Driscoll, Director of Retail Instruction, stated that she works closely with the Real Estate Department to build out the selected sites. By law the general public cannot enter the facility. She noted there will be security checkpoints by

guards checking a patient or caregiver's certification at the front door. She verbalized the secured flow of an individual in the facility.

RAUSCH Solicitor Rausch questioned whether they are subject to inspections by the state.

DRISCOLL Ms. Driscoll responded that the operation includes items that must be up to specifications before the Department of Health will issue a license. In addition, there is inspection of the physical space.

RAUSCH Solicitor Rausch stated for the record that the Schematic Plan marked Baumhaus will be labeled Exhibit 2.

BISHOP Mr. Bishop questioned the mention of a covered unloading of product at the facility. He noted he could not tell from the drawing of the facility in York how that was going to be accomplished.

DRISCOLL Ms. Driscoll responded that when the Conditional Use Permit is received they will release the architect to visit the site. They will assess how that can be accomplished. Further schematics and construction drawings will be presented in keeping with the local code.

BISHOP Mr. Bishop noted that Solicitor Rausch had raised a question earlier requesting how they plan to address the relevant section of the Overlay Ordinance concerning the design specifications. Mr. Bishop indicated he was not clear as to how that was being addressed.

MONETTE Mr. Monette noted that it is probably not in these drawings. When the architect goes out, that is when they will design all of those things. They had retrofitted a former Subway in New Port Ritchie, Florida. They added palm trees and landscaping to the front of the building per the city's request. The best representation would be of the site plan provided in the previous exhibit. The architect will design what would be complaint with the Overlay and make sure it meets the standards.

RAUSCH Solicitor Rausch noted that someone rendered the drawing with benches, etc. Someone needs to testify on this.

DRISCOLL Ms. Driscoll stated that their architect sent out their Civil Engineer who provided the renderings, and they intend to adhere to the local code. It would be further embellished from a design perspective. There aren't more detailed drawings, but they are prepared to work on them.

RAUSCH Solicitor Rausch stated that they needed to show how they are planning to meet the design standards in the Town Center Overlay for the reuse of an existing

building. He indicated there are seven criteria. They should be prepared to review those criteria. The purpose of this hearing was to go over that for the Board's information.

MONETTE Mr. Monette asked to provide the criteria of the Town Center Overlay, and he would speak to that as they have every intention to comply.

RAUSCH Solicitor Rausch went through the criteria:

- 1) Locate the primary building entrances towards the street.
Response: The intent would be to use the same entrance of the former restaurant off Kent Road.
- 2) Provide more than 25% transparent or translucent materials on each story below the roofline.
Response: They do not have to provide window coverings in Pennsylvania.
- 3) Locate parking to the side or rear of the principal building.
Response: Looking at Memory Lane the parking is to the side or the rear. Looking at it from Kent Road it is not. Existing parking does not have to be changed.

BISHOP Mr. Bishop commented that they do have to change the parking. The drawing complies but is different from what is currently there.

LUCIANI John Luciani, Interim Zoning Officer stated that the testimony from the Planning Commission indicated the paved area at the former Ember's Restaurant is paved from almost Memory Lane all the way back to Kent Lane. There is very little landscaping if any. One of the modifications from their base plan was that they added the trees and some of the landscaping islands that are shown in this drawing. Mr. Bishop is correct. The parking lot has been altered to better define the entrances and add landscaping islands to break up the parking spaces.

- 4) Address pedestrian pathways; current sidewalks.

BISHOP Mr. Bishop stated that the drawing addresses that as they added two cuts to provide for people out of the parking lot and to the sidewalk that currently exists.

- 5) Landscaping was discussed.
Response: Site Plan addresses landscaping as well as pedestrian scale façade articulation.
- 6) Pedestrian style street lights
Planning Commission testimony indicated street lights and benches along Memory Lane will be similar to those at MOD Pizza.
- 7) Traffic Pattern
Response: Average about 10 customers per hour; 50 to 65 customers a day; transaction time about 10 minutes. Monday through Saturday 10 to 6; Sunday 10 to 5 seven days a week.

RAUSCH Solicitor Rausch questioned whether this was appointment driven.

DRISCOLL Ms. Driscoll responded that it could be appointment driven, but it is open to patients on the registry.

RAUSCH Solicitor Rausch asked whether the Board had any further questions. Hearing none, he provided an opportunity for Attorney Naylor to ask questions.

NAYLOR Attorney Naylor had several questions directed to Mr. Monnette:

- 1) What is the legal entity that is the recipient of the license to dispense marijuana.
Good Blend Pennsylvania LLC.
- 2) Is Parallel the parent company of Good Blend PA LLC?
Yes, correct.
- 3) Who is Joshua R. Busby?
He is the Real Estate Manager on the team. He leads retail site selection,
- 4) Does the operation require a licensed Pharmacist on site at all times?
Yes, by law a dispensary Pharmacist must be employed at all hours of operation; in addition, it could be a Certified Nurse Practitioner or a Physician Assistant.
- 5) Is the essential business operation purpose to dispense medication?
Yes.
- 6) Was Exhibit A1 submitted with the initial application to the Township?
Yes, it was part of the criteria to submit the application.

NAYLOR Attorney Naylor questioned a document he had been given, which is a Boundary and Topography Survey prepared by Foresight Group, LLC. He had requested a copy of the application.

MONETTE Mr. Monette indicated that Application would speak for itself.

RAUSCH Solicitor Rausch questioned Mr. Monette as to whether he had any further testimony or evidence to place into the record.

NAYLOR Attorney Naylor indicated those were all his questions. He appreciated the Board's patience as this was a new process for him. He did note that he had some legal arguments to present.

COX Mr. Cox asked Mr. Monette about the covered delivery area and whether there would be a canopy or a buildout to the side or the back of the building that would allow for the undercover delivery.

DRISCOLL Ms. Driscoll responded that in Erie, they had closed off with panels for a chain link fence. In Pittsburgh, they used CMU walls. She noted it is driven by the local codes.

COX Mr. Cox noted for clarification that it does not necessarily have to be under roof but it must be in a confined area.

RAUSCH Solicitor Rausch stated that the applicant was done presenting their case and the Hearing could move to Citizen Comments or Citizen Questions, if there are any.

SWOMLEY Chairman Swomley opened the floor for any participants who would like to speak. He recognized Susan Machado.

MACHADO Susan Machado, 41 Finley Street, York, PA 17402 spoke concerning an Odor Control Plan that she noticed during a review of the plans. She asked whether there was an odor associated with the dispensary.

MONETTE Mr. Monette responded that, if there is, it is quite minimal and most of the products are distillates or in an oil form that would not emit an odor.

MACHADO Ms. Machado questioned why there would be an Odor Control Plan if there is no odor.

SWOMLEY Chairman Swomley noted that was Springettsbury's Town Center requirement, not a condition that this case is causing.

MACHADO Ms. Machado asked about traffic and noted how much traffic had been generated by a marijuana dispensary already in the Township. She was surprised that the Township would approve more traffic on Memory Lane. The street is already busy and with consideration for the Friday market day will make it worse.

RAUSCH Solicitor Rausch indicated that Mr. Monette could go over the traffic plan again; however, this use is a permitted use in the Mixed Use district. Traffic was taken into consideration. The Town Center Overlay is what requires certain design requirements when re-using an existing building.

MACHADO Ms. Machado understood but asked if the Township was prepared to address it if it becomes problematic.

RAUSCH Solicitor Rausch responded that it would be reviewed.

MACHADO Ms. Machado noted one of the seven criteria for the Town Center Overlay is that they are not going to meet for the 25% Transparency or Translucency. She asked whether that would prohibit them from approval.

RAUSCH Solicitor Rausch noted that state regulations overrule the local Township regulations and if they need to block or cover areas so no one can see in that's what they have to do.

MACHADO Ms. Machado stated that if it doesn't meet that criteria then this isn't the appropriate location for it.

RAUSCH Solicitor Rausch stated the Ordinance: "The applicant will attempt to integrate any of the following design standards." To the extent that the applicant can do it, that's what the Township would like to see. If the applicant can't do it, then they're not required to.

MACHADO Ms. Machado noted that the whole thing is discretionary. She questioned if it is voluntary or discretionary, what is the point of going through the exercise.

RAUSCH Solicitor Rausch responded that the purpose of the Town Center Overlay initially was to, over time, try to make the Township more walkable and more esthetically pleasing from a streetscape standpoint. With an existing building already there, there's not a whole lot that may or may not be able to be done. I mean for instance like with MOD Pizza, you know they took down the Hess Station, so what they designed was in compliance then with the Town Center Overlay. In this situation, there is an existing building, and the Township is attempting to get as much as possible within reason to incorporate that building into this new Town Center Overlay Concept.

SWOMLEY Chairman Swomley added that if they were going to tear that building down and start from scratch, then they still would have to comply.

MACHADO Ms. Machado stated that it appeared that the Township was looking the other way when it's convenient.

RAUSCH Solicitor Rausch responded that she was entitled to that opinion.

MACHADO Ms. Machado indicated that was all her comment at this time.

SWOMLEY Chairman Swomley invited Abe Kahn to address the panel.

KAHN Abe Khan, K-H-A-N, 3528 Concord Road, York, PA 17402 wanted to address the parking situation. He stated that there is no parking on Memory Lane. He noted on a specific drawing shows landscaping. He stated there is a walkway in front of the building, to which they gain access. They're adding more landscaping so it is existing with an additional upgrade to what is already there. In addition, he addressed the traffic concern, Kent Road, traffic could be stacked easily off to the side. He commented that it is not an issue since it is an allowed use. He noted the current drawing that they had with previous testimony of lighting, which will be made to look like the MOD. This will be a significant upgrade.

RAUSCH Solicitor Rausch thanked him for his testimony.

SWOMLEY Chairman Swomley asked whether there was anyone else who would like to speak.

RAUSCH Solicitor Rausch noted that hearing none, he asked Attorney Naylor to give his closing arguments.

NAYLOR Attorney Chris Naylor addressed the Board of Supervisors with some arguments against the Application. They are listed as follows:

First, the application must be denied because the Applicant has no standing. Applicant on the application is Joshua R. Busby, Parallel. Legal owner of the property is Ferrand Realty, LLC. License holder is a legal entity known as Good Blend, LLC. There is nothing on record, and the application should be denied on that basis alone.

Second, the application is deficient based on Springettsbury Township Ordinance 325-207C, article on the Town Center Overlay: Any application must include, and it has an Item A through Letter P, 16 items that must be included with the application, namely the Site Plan I, which must include a narrative of impact on resources; J, landscape and public plaza plan; L, traffic evaluation study and N, a narrative describing improvements. The applicant's application has none of that and fails to meet the criteria. In addition, Section 325-207C2 states, "No application shall be considered complete without all of the above listed items." This is not a technicality, 325-207D, "The Board of Supervisors, in approving conditional use applications shall make compliance with the Site Plan a part of the approval. The applicant shall develop the TC (Town Center) tract in the manner set forth on the Site Plan and any required revisions thereto, unless a change to the Site Plan is authorized." This would be approving nullity, approving a rudimentary sketch on the application. The application is deficient.

Third, the use is not permitted. The Town Center Overlay has three categories of uses that I reference now: 325197. A is permitted use; B is permitted temporary use; C are conditional uses. Conditional Use is any use permitted by right in the underlying zoning district. Medical marijuana dispensary is not permitted in the mixed-use district. It's either a use that's not provided for, or it's a pharmacy. We had Mr. Monette testify this place is effectively a dispensary of medicine. Testimony was that this is overseen by a pharmacist. This is a pharmacy and a pharmacy is not permitted in the end use zoning district.

Fourth, the Conditional Use criteria haven't been close to being met. The Board of Supervisors is not assembled for a discretionary concept; rather the Board is charged with a duty to enforce its ordinance that's been carefully developed and adopted. Conditional Use, 325197 still has a conditional use code which is what the Board has assembled.

NAYLOR Attorney Naylor made several additional statements that the criteria must be evident by the applicant and found credible and competent by the Board of Supervisors. He noted the applicant had effectively relied on the Board and some

staff to basically testify for them, and it must be denied. He stated that the applicant had failed in almost every respect to prove entitlement, which is their burden to make.

SWOMLEY Chairman Swomley thanked Attorney Naylor for his comments. He asked if there was any further discussion from the Board.

RAUSCH Solicitor Rausch indicated that hearing none, the Conditional Use Hearing would be adjourned.

4. ADJOURNMENT

SWOMLEY Chairman Swomley adjourned the hearing at 7 p.m.

Respectfully submitted,

Doreen K. Bowders
Secretary
ja