

RESOLUTION: #2023-16 (2)

**A RESOLUTION OF THE BELLMAWR JOINT LAND USE BOARD
MEMORIALIZING A USE VARIANCE FOR SATELLITE PARKING AT 115
STANLEY ROAD 1) TO SERVE THE APPROVAL TO CURALEAF NJ II, INC. AT 640
CREEK ROAD DISPENSARY AND 2) A CONDITIONAL USE VARIANCE
EXTENDING HOURS OF DISPENSARY OPERATION TO 9:00 P.M. ADOPTED
CONCURRENTLY WITH AND CONDITIONED UPON THE "IMPROVEMENT
RESOLUTION"**

WHEREAS, on November 6, 2023, consideration was given to the above application by the Borough of Bellmawr Joint Land Use Board pursuant to application properly filed and duly noticed as hereinafter described memorializing a use variance and conditional use variance for satellite parking at 115 Stanley Road; and

WHEREAS, in this integrated hearing, the applicant was represented by Cherylynn Walters, Esquire, and the Board heard testimony from applicant's witnesses, Luke Flood, Senior VP with Curaleaf New Jersey II, Inc., Samuel Renauro, applicant's engineer, Bryan Proska, PE, applicant's traffic engineer, and James Miller, PP, applicant's planner, and the Board having heard testimony of the Board engineer/planner, Stephen Bach, and Board engineer, Nicholas Bishop, and no public appearing to testify; and

WHEREAS, the Board had before it the plans and exhibits identified in the attached Exhibit A including the following:

1. Cover letter addressed to Board Secretary, Joint Land Use Board, prepared by Nehmad, Davis & Goldstein, PC dated June 21, 2023.
2. Borough of Bellmawr Joint Land Use Board Land Development Application.
3. Project Narrative and Variance Justification Report (Revised 10/27/23)
4. Letter addressed to Board Secretary, Joint Land Use Board, prepared by Nehmad, Davis & Goldstein, PC dated August 4, 2023.
5. Cover letter and amended application addressed to Board Secretary, Joint Land Use Board, prepared by Nehmad, Davis & Goldstein, PC dated August 29, 2023.
6. Stormwater Management Report prepared by SR3 Engineers, dated March 17, 2023.
7. Plans entitled "Prepared for Curaleaf NJ Situated in: Bellmawr Borough, Camden County, New Jersey", prepared by SR3 Engineers
8. Traffic Engineer report of 10/26/2023
9. Report of Steven Bach dated 11/2/2023 including the following Exhibits:
 - a. Witness & Exhibit List
 - b. Aerial Rendering

- c. Site Approvals Plan
- d. Overall Site Plan
- e. Traffic Circulation and Sign Plan

WHEREAS, upon the advice of the Board's solicitor, the "improvement" relief (preliminary and final site plan and subdivision with bulk variances) is inextricably intertwined with the use variance relief (for use variance and conditional use), such that the facts concerning all relief may be adduced at an integrated factual hearing, but the use variances must be voted on separately herein; and

WHEREAS, the Board, sans Class I Member Mayor Sauter and Class III Member Councilman Wilhelm having heard testimony from the identified witnesses and having reviewed the subject exhibits makes the following factual findings:

1. The Board had before it all of the plans and documentations referred to in the resolution memorializing the "improvements approvals" regarding site plan subdivision and bulk variances set out in that resolution and incorporated herein as if set forth in full.
2. The Board also heard and considered all of the testimony of the witnesses of the applicant, the Board engineer's testimony as well as the discussions between and among the Board members, Board professionals, applicant and their professionals. Likewise, as memorialized in the improvements resolution, the Board heard the imposition of conditions agreed to by the applicant and memorialized in the improvements resolution adopted concurrently herewith and which resolution was specifically conditioned upon the grant of the use variance and conditional use variance memorialized herein. All findings and facts regarding this testimony are incorporated herein by reference as if set forth in full.
3. The Board adopts all fact findings in the aforesaid improvements resolution as if set forth in full augmented, however, by the following testimony of Planner James Miller specific to those variances for use and conditional use.
4. The Board heard testimony from the applicant's planner, James Miller specific to the use variance and conditional use variance as hereinafter detailed containing details of what are incorporated herein as if set forth in full.
5. Use variance and conditional use professional testimony was offered by James Miller on behalf of the applicant after he was qualified.
6. Mr. Miller argued that N.J.S.A. 40:55D-70(d)(3) indicated that the conditional use variance relief for an extension of closing hours from 7:00 p.m. to 10:00 p.m. per ordinance would be consistent with closing times for retail uses in neighboring communities and with the operational needs of cannabis use and its patrons. In this regard, the Board notes that Mr. Flood's testimony's was some but not all of the other cannabis operators went past 7:00 p.m. to as late as 10:00 p.m. However, the Board is

not making its decision based upon consensus in the industry.

7. Mr. Miller also suggested that the relief would advance the several purposes listed in this MLUL including (a) and (g) which identifies as purposes of the MLUL Act at N.J.S.A. 40:55D-2:

(a) To encourage municipal action to guide the appropriate use or development of all lands in this state in a manner that will promote the public health, safety, morals and general welfare. He also suggested that relief would advance Purpose (g) of the MLUL which states:

and

(g) To provide sufficient space and appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses in open space both public and private according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.

8. He does further argue that the site is particularly appropriate for this use despite deviating from hours of operation. The Board accepts this argument. In this regard, it should be noted that case law establishes that strict Medeci proof standards do not apply to (d)(3) variances.
9. Mr. Miller went on to make analogous arguments regarding no disservice to the purposes of limits on hours of operation: including impact on adjacent uses, and security concerns. The Board accepts this argument as to the positive and negative criteria, but only as to the first 2 hours of the extension sought.
10. He, like Mr. Flood indicated that activity levels on the extended hours will be substantially less than peak hour activity levels and suggests the potential for an incremental decrease in peak hour activity based on the redistribution concepts advanced by Mr. Flood.
11. He further concluded that there would be no adverse impact on parking or other negative impacts during these extended hours. The Board accepts this testimony.
12. With regard to this variance, the Board does see that there is some merit to some relief for the applicant. However, the Board does not think that the arguments have sufficient vitality for the final hour of the 3 hours that are requested by the applicant. To the contrary, the efficacy of that final hour may have an inverse relationship to security issues in an industrial park as late as 10:00 at night, even though there is some security at this "spread out" site. There is no such security in the surrounding Industrial district which is largely deserted in the late evening hours.

13. Hence, on that final hour, the Board concludes that there is satisfaction of the positive criteria for the first 2 hours of the extension (until 9:00 p.m. at night) but the proofs on the positive criteria and the decreasing benefits for the final hour of the extension sought are such that the proofs are not sufficient to satisfy the positive or negative criteria for the final hour, while the proofs are sufficient for the extension from 7:00 p.m. to 9:00 p.m. subject to the conditions of approval below and in the improvement resolution.
14. With respect to the use variance to permit the satellite parking lot, Mr. Miller stated his position on the advancement of the purposes of the MLUL:
 - (a) previously cited in full above; and
 - (g) previously cited in full above which he added the following:
 - (m) To encourage coordination of various public and private procedures and activities shaping land development with the view of lessening the cost of such development and to the more efficient use of land.
15. He offered compelling arguments that the site was particularly suited for this use, in that the lot adjoins the existing parking lot and will function as an accessory use and hence satisfied the positive criteria for a (d)(1) use variance. The Board wholeheartedly agrees.
16. It is also true as Miller argues that the proposed use will be the functional equivalent of a permitted accessory use. Although this is a case by case analysis, the adjacency of the subject satellite lot point in the favor of the relief making the distinction between the two lots a simple matter of legal niceties. One part of the parking area is owned, and the immediately adjacent parking area is leased. These are distinct without differences in this case provided that the conditions of approval and in particular the lease conditions are satisfied.
17. With respect to the negative criteria, Mr. Miller persuasively argued that there would be no substantial detriment to the public good, and the use will not impair the intent and purpose of the zone plan and zoning ordinance by virtue of either use or conditional use variance. Here again, Mr. Miller's specific testimony regarding the general welfare and lack of adverse impact readily satisfies the negative criteria.
18. The Board, therefore, concludes that the applicant has satisfied the positive and negative criteria with respect to the satellite parking subject, however, to the conditions in the improvements resolution adopted concurrently herewith.

NOW, THEREFORE BE IT RESOLVED, after considering the foregoing facts, the Board concludes the application for use variance for satellite parking and conditional use variance extending hours until 9:00 p.m. have substantial merit and should be approved subject, however, to the following conditions:

1. The applicant must contact the Combined Land Use Board office to settle any outstanding review escrow accounts prior to the issuance of building permits.
2. Approval of all appropriate reviewing agencies including without limitation, the MUA, County Planning Board, Traffic Commander, Fire Marshall, Soil

Conservation District, Department of Transportation and Police Department, Water and Sewer Department. (If required).

3. Compliance with all Borough, County, State and Federal rules, regulations and ordinances.
4. Compliance with the Board Engineer's report and comments at the public hearing.
5. Compliance with all representations made by the applicant at all public hearings.
6. Provision of a compliance plan depicting all original improvements with subsequent amendments identified by date of approval.
7. Posting of any required additional performance and maintenance bonding.
8. Compliance with the conditions of approval set forth in this resolution.
9. Applicant shall submit an as-built plan showing all improvements on the campus.
10. Applicant shall submit a separate plan of as-built signage throughout the campus.
11. With respect to the condition of approval regarding provision of as-built plans for campus property improvements and a separate as-built plan for signage, all signs shall contain a reference to the date of approval of same and the plans upon which the signs were depicted. If there are any site improvements that were not depicted upon any plans reviewed and approved by the Board, such should be called out on the site improvement as-built plan so that they may be properly reviewed, inspected, and legitimized as appropriate.
12. Applicant shall confer with the Board engineer to achieve a better circulation plan than that proposed which would minimize to the maximum extent possible traffic of customers circulating the campus in search of parking from going out onto Creek Road, an adjacent roadway that is already overburdened by traffic.
13. Applicant shall advise the lessor of the subject property that the use variance granted to permit the development of the property as a satellite parking lot is limited to serving the contiguous dispensary at 640 Creek Road. Applicant shall also supply the Board with a copy of the lease for the subject property.
14. With respect to all existing leases for existing satellite parking areas, Applicant shall advise the lessors of those properties that the use variances previously granted to permit the development of those properties as a satellite parking lot is limited to serving the dispensary at 640 Creek Road. Applicant previously provided copies of those leases with a prior compliance submission and shall ensure a copy of each lease is on file with the Board.
15. If any existing lease shall not contain language ensuring the limitation in Paragraph 13 above, Curaleaf shall request a lease attachment seeking same.
16. The new satellite parking area will only be used as a parking lot.
17. The area along Coolidge Avenue adjacent to the dispensary that is presently lacking a curb shall be curbed by the applicant at start and stop points to be determined by the Board engineer so as to discourage the customer parking on that area that is currently occurring.
18. Employee parking would not be permitted at the existing dispensary lot or at the new lot created at 115 Stanley Avenue and applicant shall develop a sticker system or a suitable alternative, for identifying employees' vehicles and same shall be subject to the review and approval of the Board engineer.
19. The applicant will undertake good faith efforts to publish on their website a plan describing the available parking areas on the campus.

20. A Dead End sign on Stanley Avenue must be placed for the purpose of keeping customers from going past the parking lots. The location specifications for the sign shall be subject to the review and approval of the Board engineer and shall be noted on the compliance plan.
21. The Board engineer shall review and approve a proposed landscaping plan for the areas involved in or implicated by the subject application.
22. The new parking lot shall be curbed along the interior as described by the Board engineer.

Those Eligible to Vote

Ken Murray
Josh Haas
Mark DeBerardinis
John Scarborough *ABSENT*
Ray Staszak
Emil Andrae
Daniel DiRenzo

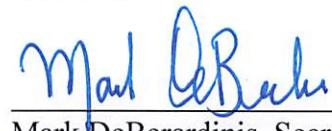
Those in Favor

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Those Opposed

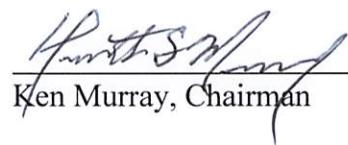
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ATTEST:



Mark DeBerardinis, Secretary

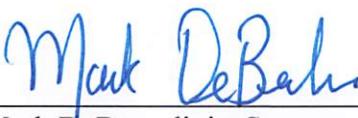
JOINT LAND USE BOARD:



Ken Murray, Chairman

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct copy of a Resolution adopted by the Borough of Bellmawr Joint Land Use Board at a meeting held on the 4th day of December 2023.



Mark DeBerardinis, Secretary