

RESOLUTION PB#2022-07

**TOWNSHIP OF WEST AMWELL PLANNING BOARD
COUNTY OF HUNTERDON, STATE OF NEW JERSEY**

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION REGARDING THE
APPLICATION OF GMNJ PROPERTIES, LLC AND GREEN MEDICINE NJ, LLC
FOR CONDITIONAL USE APPROVAL AND PRELIMINARY AND FINAL SITE PLAN
APPROVAL TO OPERATE A CANNABIS CULTIVATION CENTER ON PROPERTY
KNOWN AS BLOCK 16, LOT 17.02**

The Planning Board of the Township of West Amwell, in the County of Hunterdon and State of New Jersey, upon motion of Board Member Balaam, seconded by Board Member Dale, adopts the following findings of fact, conclusions and resolution:

WHEREAS, GMNJ Properties, LLC (the “Property Owner”) is the owner of certain property located 638 Brunswick Pike in West Amwell, New Jersey and designated on the Tax Maps as Block 16, Lot 17.02, consisting of approximately 22.12 acres (the “Property”); and

WHEREAS, the Property is partially located in the Neighborhood Commercial Zone (“NC Zone”) and partially in the Sourlands Regional Planning District (“SRPD Zone”) and has frontage on both Brunswick Pike (County Route 518) and Rock Road West Extension; and

WHEREAS, the Property is developed with a former church building and related site improvements including parking lot, drainage improvements, well and septic system, landscaping and lighting; and

WHEREAS, all of the site improvements, with the exception of the septic system are located on the portion of the Property within the NC Zone; and

WHEREAS, the Property is currently served by an existing septic system, which is located within the SRPD Zone, and two (2) potable water wells, which are located within the NC Zone; and

WHEREAS, all improvements on the Property, including the existing septic system, received approval from the Township pursuant to Planning Board Resolution No. 5-90 adopted on May 15, 1990 and Planning Board Resolution No. 2007-18; and

WHEREAS, Green Medicine NJ, LLC (the “Facility Operator”) was awarded a Cultivation Permit Endorsement to Operate an Alternative Treatment Center by the New Jersey Cannabis Regulatory Commission (“CRC”) on or about October 15, 2021; and

WHEREAS, the Property Owner and Facility Operator propose to operate a cannabis cultivation center within the existing building, which will require the following:

- Construction of two (2) concrete pads on the east and west sides of the building for air handling units, condensing units, and two (2) concrete pads on the south side for an and emergency generator and transformer,
- Installation of certain HVAC and odor mitigation equipment, an emergency generator, a sound attenuation wall surrounding the HVAC and odor mitigation equipment, landscaping, signage, lighting, and septic system repairs
- Repairs to the existing parking lot, lighting, and septic system

WHEREAS, the Property Owner applied by application dated April 19, 2022 (the “Application”) for conditional use approval and preliminary and final site plan approval to operate a cannabis cultivation center in compliance with Chapter 109, Part 10, XLIII of the Township Code; and

WHEREAS, by letter dated June 10, 2022; the Property Owner amended the Application to include the Facility Operator as an applicant; and

WHEREAS, the Applicant initially applied for a variance to install a security fence; however, such variance request was withdrawn during the course of the public hearings on the Application; and

WHEREAS, the Property Owner and Facility Operator are collectively referred to as the “Applicant” hereafter; and

WHEREAS, pursuant to Section 109-264(C)(4) of the Township Code, cannabis cultivation centers are permitted conditional uses in the NC Zone that the Planning Board has the power to grant; and

WHEREAS, the West Amwell Township Planning Board (the “Board”) took jurisdiction over the Application pursuant to N.J.S.A. 40:55D-46 et seq. and Section 109-38 of the Township Code; and

WHEREAS, the following documents were submitted to the Board by the Applicant with regard to the Application, are on file with the Board, and are part of the record in this matter:

1. Cover letter from the Spadaccini Law Firm, LLC to Maria Andrews, Board Secretary, summarizing the updated documents being provided as part of the application, dated April 19, 2022.
2. West Amwell Township Planning Board Application for Development with associated Development Review Checklist Rider to Application, dated April 19, 2022.
3. Memorandum of Understanding.
4. Escrow Agreement.
5. Owner Disclosures.
6. Certification of Taxes Paid.
7. Letter prepared by Roberts Engineering Group LLC summarizing the list of checklist waiver requests, dated April 19, 2022.

8. Plans entitled "Preliminary & Final Major Site Plan for GMNJ Properties LLC, Tax Block 16, Tax Lot 17.02, West Amwell Township, Hunterdon County, New Jersey" (consisting of 14 sheets) as prepared by Cameron Corini, P.E. and Ted W. Pivovarnick, P.L.S. of Roberts Engineering Group LLC, dated January 12, 2022, last revised April 19, 2022.
9. Architectural Plans entitled "Green Medicine, 638 Brunswick Pike West Amwell Township, NJ, 50% Design Development" (consisting of 4 sheets) as prepared by 2WR Architecture, dated March 11, 2022.
10. Report entitled "Cannabis Cultivation Facility – Block 16 Lot 17.02" as prepared by James T. Kyle, P.P., dated April 15, 2022.
11. Report entitled "Environmental Impact Statement" with Appendices as prepared by J.S. Held, dated April 2022. (hereinafter referred to as the "EIS").
12. Jurisdictional Determination from Delaware and Raritan River Canal Commission, dated May 26, 2022
13. Cover letter from the Spadaccini Law Firm, LLC to Tara St. Angelo, Esq., Board Attorney, addressing outstanding items, dated June 10, 2022.
14. Complete Survey of the Property prepared by Ted W. Pivovarnick, P.L.S. of Roberts Engineering Group LLC, dated June 21, 2022.
15. Letter from the Hunterdon County Planning Board to Maria Andrews, Board Secretary, advising of a Conditional Approval granted to the Applicant, dated June 3, 2022.
16. Letters from Cameron Corini, P.E. of Roberts Engineering Group LLC, regarding water demand and wastewater discharge, dated June 10, 2022 and June 17, 2022.
17. Letter from JS Held to Nate Morin of Green Medicine NJ, LLC, regarding a wetlands assessment, dated June 29, 2022.
18. Letter from Septic Management Group, regarding septic inspections, dated June 10, 2022.
19. Hunterdon County Board of Health Construction Permit, dated June 20, 2022

WHEREAS, Applicant had submitted an application and supporting documents dated February 3, 2022, which was replaced and superseded by the above-referenced revised documents; and

WHEREAS, by letters dated March 15,, 2022 and March 28, 2022, Woodmeier Farms, LLC (the "Objector") requested to be recognized as an objector to the Application; and

WHEREAS, based upon the findings and recommendations of the Board Engineer, William H. Burr, IV, P.E., the Board deemed the Application complete on May 17, 2022 subject to the following submission waivers from checklist items:

1. *Item F: Certification from Property Owner regarding prior approvals.* The Applicant testified that it purchased the Property on or about December 10, 2021, and is unaware of any previous approvals, but can only assume that the existing structures and site improvements obtained approvals in connection therewith and requests that the municipality provide information regarding any and all prior approvals that is has in its files.

2. *Item G: Proof of Application to Outside Agencies.* The Board received proof of submissions to the Hunterdon County Board of Health, Hunterdon County Planning Board, and Delaware and Raritan Canal Commission during the course of the public hearings. Applicant testified that a will serve letter from the electric company and approval from the Soil Conservation District could be made conditions of approval. Therefore, only a temporary waiver was sought and granted.
3. *Item I. Stormwater Management Plan.* Applicant testified that the existing storm sewer system remains in use and there is a decrease in impervious coverage. There is a proposed minor storm system consisting of a short run of pipe and yard drains that will drain a partially enclosed wall area and will tie into the existing system which follows the original point of discharge.
4. *Item K: Valid NJDEP Letter of Interpretation.* The Board initially granted a temporary waiver of the requirement based on Applicant's testimony that the existing footprint of disturbance was not being increased. The Board reserved the right to request an LOI be submitted as a condition of approval. However, the Board ultimately decided to require the submission of an LOI as a condition of approval. It is understood that this LOI requirement shall not preclude Applicant from receiving a Temporary Certificate of Occupancy prior to LOI completion.
5. *Item 11: Plan of existing and proposed streets.* Applicant testified that no new streets or improvements to existing streets were proposed.
6. *Location of Wells and Septic Systems within 100 feet.* Applicant testified that the proposed well is more than 300 feet from any adjacent property and there are no new septic systems proposed.
7. *Item 16: Location of Natural and manmade features on site and within 200 feet of the property.* Applicant testified that no new improvements (other than the sound attenuation wall close to the building) are proposed.
8. *Item 17B: Plans and profiles for all proposed drainage and utilities.* Applicant testified that no new utility connections are proposed for the site. The existing storm sewer system remains in use and there is a decrease in impervious coverage. There is a proposed minor storm system consisting of a short run of pipe and yard drains that will drain a partially enclosed wall area and will tie into the existing system which follows the original point of discharge.
9. *Item 17C: Plans and profiles for all proposed drainage and utilities.* Applicant testified that no new utility connections are proposed for the site.
10. *Item 18. Soil Test Locations.* Applicant testified that no new septic systems were proposed, therefore, no soil tests were performed.
11. *Item 19: Locations of Flood Hazard Areas.* Applicant testified that no new improvements are proposed near flood hazard areas.
12. *Item 20: Calculations and determinations regarding Critical Area Compliance.* Applicant testified that an EIS was submitted and no site improvements are proposed near critical areas.
13. *Item 21: Documents required by Stream Protection Ordinance.* Applicant testified that no streams are present on the site and, therefore, no site improvements are proposed in stream corridors.

14. *Item 23: Documentation required by Woodland Protection Ordinance.* Applicant testified that no site improvements are proposed in any woodland areas and no woodlands will be disturbed by the proposed development.
15. *Item 27: Documentation Required by Soil Removal Regulations.* Applicant testified that no soil is anticipated to leave or be brought to the Property.
16. *Item 28. Plan drawn from actual boundary survey.* Applicant initially requested a waiver from this requirement. However, Applicant provided a complete boundary survey during the course of the public hearings.
17. *Item 30. Signage.* Applicant provided information on the plans regarding the property-identification sign. However, Applicant testified that all other on-site signage would be testified to during the course of the hearings.
18. *Item 35: Monumentation.* Applicant testified that no new improvements (other than the sound attenuation wall) are proposed.
19. *Item 37: As-built plans.* Applicant requested a temporary waiver and testified that such would be provided as a condition of approval.

WHEREAS, the Board's professionals provided the following reports:

- Engineering Review Letters from William H. Burr, IV, P.E. (collectively referred to as "Engineering Review Letters")
 - Completeness Review Letter, dated February 4, 2022
 - Technical Review Letter, #1 dated February 18, 2022
 - Technical Review Letter #2, dated May 6, 2022
- Planning Review Letters from Joanna Slagle, P.P. (collectively referred to as "Planning Review Letters")
 - Planning Review #1, dated February 17, 2022
 - Planning Review #2, dated May 6, 2022

WHEREAS, the following additional correspondence was received by the Board from the Applicant and Objectors (the descriptions below are not meant to be exhaustive):

- Correspondence from Objector
 - Letter objecting the jurisdiction of the Board, dated April 29, 2022
 - Letter objecting to jurisdiction of the Board, dated May 10, 2022
 - Letter objecting to the testimony of Brian Zimmerman, dated June 6, 2022
 - Letter objecting to jurisdiction of the Board, dated June 9, 2022
 - Letter regarding stormwater management planning, dated June 20, 2022
 - Letter regarding septic system and wetlands, dated June 20, 2022
- Correspondence from Applicant
 - Letter regarding jurisdiction of the Board, dated May 6, 2022
 - Letter regarding jurisdiction of the Board, dated May 13, 2022
 - Letter regarding jurisdiction of the Board and the septic system, dated June 17, 2022

WHEREAS, the Board considered the Application at duly noticed public hearings on May 17, 2022; June 21, 2022; and July 14, 2022; and

WHEREAS, Applicant provided notice compliant with N.J.S.A. 40:55D-12 of the public hearing on May 17, 2022, which was continued on the record without need for additional notice to June 21, 2022; and

WHEREAS, the July 14, 2022 public hearing was held at a special meeting of the Planning Board and the Applicant provided notice of such hearing in compliance with N.J.S.A. 40:55D-12; and

WHEREAS, during such hearings, the Applicant was represented by Dino Spadaccini, Esq. and the Board was represented by Tara Ann St. Angelo, Esq.; and

WHEREAS, the Objector was represented by Stuart Lieberman, Esq. and Zoe Ferguson, Esq. during the above-referenced public hearings; and

WHEREAS, the following individuals testified during the hearing, were subject to cross examination, and their testimony is part of the record in this matter:

1. Dan Sullivan and Tiffany D'Amato (representatives of GMNJ Properties, LLC)
2. Cameron Corini, PE of Roberts Engineering Group, LLC (Applicant's Engineer)
3. Ted Pivovarnick, PLS of Roberts Engineering Group, LLC (Applicant's Surveyor)
4. Michael Starr of 2WR+Partners (Applicant's Architect)
5. Michael Devos (Applicant's Landscape Designer)
6. Brian Zimmerman, P.E. of Impact Engineering, Inc. (Applicant's Odor Mitigation and Fire Safety Expert)
7. Dean Regan of Urban Gro, Inc. (Applicant's Irrigation Expert)
8. Tom Stover of Stover's Wells and Pumps (Applicant's Well Consultant)
9. Kelly O'Such of Engineering & Land Planning Associates, Inc. (Applicant's Septic System Consultant)
10. Jack Zybur, P.E. of Lewis S. Goodfriend & Associates (Applicant's Acoustician)
11. Nick Verderese, P.E. of Dynamic Traffic, LLC (Applicant's Traffic Engineer)

12. Jeffrey Anderson, CHMM, LSRP of J.S. Held (Applicant's Environmental Consultant)
13. James L. Peterson, P.G., LSRP of Princeton Geoscience, Inc. (Applicant's Consulting Geologist)
14. Hector Corchado of Radiant Professional Solutions, LLC (Applicant's Security Expert)
15. Tiffany Morrissey, P.P. of Tiffany Morrissey, PP, LLC (Applicant's Planner)
16. Thomas Cahill (Applicant's Septic System Inspector)
17. Joanna Slagle, P.P. of Banisch Associates (Board Planner)
18. William H. Burr, IV, P.E. of Colliers Engineering & Design (Board Engineer)
19. Geoff Goll, P.E. (Objector's Engineer)

WHEREAS, the following documents were submitted as exhibits into evidence during the hearing by the Applicant, are on file with the Board, and are part of the record in this matter:

- A1. Map entitled "Aerial Map" dated May 17, 2022 prepared by James T. Kyle, PP/AICP.
- A2. Existing Conditions Plan dated January 12, 2022 prepared by Roberts Engineering Group, LLC
- A3. Color rendering of site plan.
- A4. Plan entitled "50% Design Development" prepared by 2WR + Partners, dated March 11, 2022, Sheet A1.1, "First Floor Plan."
- A5. Plan entitled "50% Design Development" prepared by 2WR + Partners, dated March 11, 2022, Sheet A1.2, "Second Floor Plan."
- A6. Plan entitled "50% Design Development" prepared by 2WR + Partners, dated March 11, 2022, Sheet A4.1, "Exterior Elevations."
- A7. Plan entitled "50% Design Development" prepared by 2WR + Partners, dated March, 2022, Sheet A4.2, "Exterior Elevations."
- A8. Photograph of site from intersection of Brunswick Pike and Rock Road, current conditions.
- A9. Photograph of site from Brunswick Pike, current conditions.
- A10. Photograph of site from Rock Road, current conditions.
- A11. 3D Rendering from northeast, at installation.
- A12. 3D Rendering from northeast, with vegetation growth.
- A13. 3D Rendering from southeast, at installation.
- A14. 3D Rendering from southeast, with vegetation growth.
- A15. 3D Rendering from southwest, at installation.
- A16. 3D Rendering from southwest, with vegetation growth
- A.17. Video regarding Odor Mitigation

- A18. Video regarding water use
- A19. PowerPoint Slideshow regarding hydrogeology prepared by Jim Peterson
- A20. Permit for Septic System from Hunterdon County Board of Health

WHEREAS, counsel for the Objector appeared and cross-examined witnesses and presented the following documents as exhibits, which were accepted into evidence by the Board and are on file with the Board and part of the official record in this matter:

- W-1. Photograph of the Property.
- W-2. Photograph of the Property.

WHEREAS, members of the public appeared at the hearing, cross-examined witnesses, made comments, and provided the following documents, which were accepted by the Board, are on file with the Board, and are part of the official record in this matter:

- P1. Conditions of Approval document from J. Hoff
- P2. Letters from Kimberly Capone
- P3. Letter from Megan Hudson to the Planning Board regarding wetlands on the Property, dated June 21, 2022
- P4. Letter to the Hunterdon County Board of Health from Megan Hudson regarding the septic system approval with exhibits, dated July 6, 2022.
- P5. "Active Medical Business NJ Permits" prepared by Holly Abitz
- P6. "Rare Wildlife Sighting" Report from Aurelle Sprout, dated July 9, 2022 (submitted by Fairfax Hutter)

WHEREAS, Applicant's counsel objected to the submission of Exhibit P4 due to alleged "inaccuracies" contained within the letter; and

WHEREAS, on or about June 30, 2022, Objector filed a lawsuit entitled Woodmeier Farms, LLC v. Green Medicine NJ, LLC, et al. (Docket No. HNT-286-22) challenged the County Department of Health's approval of the septic system on the Property (the "Lawsuit"); and

WHEREAS, the Board acknowledged the filing of the Lawsuit; however, the Board noted that no orders or other restraints were issued by the Superior Court of New Jersey affecting the conduct of the public hearings on the Application before the Board; and

WHEREAS, after considering the Application, documents, testimony, and exhibits referenced above, and giving appropriate weight to same, and based upon its understanding of the applicable law, the Board makes the following factual findings and legal conclusions for the purpose of memorializing in a written resolution in accordance with N.J.S.A. 40:55D-10g(a) its action in granting the Application and associated design waivers subject to the conditions set forth below:

Findings of Fact

1. **The Application.** As set forth above, the Application seeks to convert the use of the existing building on the Property to a cannabis cultivation center, which is a permitted conditional use in the NC Zone. The proposed development will require the following:

- Construction of two (2) concrete pads on the east and west sides of the building for air handling units, condensing units, and two (2) concrete pads on the south side for an emergency generator and a transformer.
- Installation of certain HVAC and odor mitigation equipment, an emergency generator, a sound attenuation wall surrounding the HVAC and odor mitigation equipment; landscaping, signage, lighting, and septic system repairs
- Repairs to the existing parking lot, lighting, and septic system.

During the course of the public hearings, the Application was amended to (1) eliminate the proposed security fencing, thereby eliminating the need for a variance for the fence height; and (2) add Green Medicine NJ, LLC as an applicant.

2. **Completeness Review.** The Application was deemed complete at the May 17, 2022 meeting. The following waivers were requested by the Applicant and granted by the Board based on testimony from the Applicant:

- a. *Item F: Certification from Property Owner regarding prior approvals.* The Applicant testified that it purchased the Property on or about December 10, 2021, and is unaware of any previous approvals, but can only assume that the existing structures and site improvements obtained approvals in connection therewith and requests that the municipality provide information regarding any and all prior approvals that it has in its files.
- b. *Item G: Proof of Application to Outside Agencies.* The Board received proof of submissions to the Hunterdon County Board of Health, Hunterdon County Planning Board, and Delaware and Raritan Canal Commission during the course of the public hearings. Applicant testified that a will serve letter from the electric company and approval from the Soil Conservation District could be made conditions of approval. Therefore, only a temporary waiver was sought and granted.
- c. *Item I: Stormwater Management Plan.* Applicant testified that the existing storm sewer system remains in use and there is a decrease in impervious coverage. There is a proposed minor storm system consisting of a short run of pipe and yard drains that will drain a partially enclosed wall area and will tie into the existing system which follows the original point of discharge. During the cross-examination of Applicant's Engineer, Mr. Corini, it was noted that the stormwater design does not account for "green infrastructure." However, Applicant noted that the stormwater design would be reviewed by the D&R Canal Commission. Upon advice of the Board Attorney, the Board determined, Section 109-259 of the Township Code does not require submission of the green infrastructure plan and that the Board has enough information to deem the application complete.
- d. *Item K: Valid NJDEP LOI.* The Board initially granted a temporary waiver of the requirement based on Applicant's testimony that the existing footprint of disturbance was not being increased. The Board reserved the right to request an LOI be submitted as a

condition of approval. However, the Board ultimately decided to require the submission of an LOI as a condition of approval

- e. *Item 11: Plan of existing and proposed streets.* Applicant testified that no new streets or improvements to existing streets were proposed.
- f. *Location of Wells and Septic Systems within 100 feet.* Applicant testified that the proposed well is more than 300 feet from any adjacent property and there are no new septic systems proposed.
- g. *Item 16: Location of Natural and manmade features on site and within 200 feet of the property.* Applicant testified that no new improvements (other than the sound attenuation wall close to the building) are proposed.
- h. *Item 17B: Plans and profiles for all proposed drainage and utilities.* Applicant testified that no new utility connections are proposed for the site. The existing storm sewer system remains in use and there is a decrease in impervious coverage. There is a proposed minor storm system consisting of a short run of pipe and yard drains that will drain a partially enclosed wall area and will tie into the existing system which follows the original point of discharge.
- i. *Item 17C: Plans and profiles for all proposed drainage and utilities.* Applicant testified that no new utility connections are proposed for the site.
- j. *Item 18: Soil Test Locations.* Applicant testified that no new septic systems are proposed, therefore, no soil tests were performed.
- k. *Item 19: Locations of Flood Hazard Areas.* Applicant testified that no new improvements are proposed near flood hazard areas.
- l. *Item 20: Calculations and determinations regarding Critical Area Compliance.* Applicant testified that an EIS was submitted and no site improvements are proposed near critical areas.
- m. *Item 21: Documents required by Stream Protection Ordinance.* Applicant testified that no streams are present on the site and, therefore, no site improvements are proposed in stream corridors.
- n. *Item 23: Documentation required by Woodland Protection Ordinance.* Applicant testified that no site improvements are proposed in any woodland areas and no woodlands will be disturbed by the proposed development.
- o. *Item 27: Documentation Required by Soil Removal Regulations.* Applicant testified that no soil is anticipated to leave or be brought to the Property.
- p. *Item 28. Plan drawn from actual boundary survey.* Applicant initially requested a waiver from this requirement. However, Applicant provided a complete boundary survey during the course of the public hearings.
- q. *Item 30. Signage.* Applicant provided information on the plans regarding the property-identification sign. However, Applicant testified that all other on-site signage would be testified to during the course of the hearings.
- r. *Item 35: Monumentation.* Applicant testified that no new improvements (other than the sound attenuation wall) are proposed.
- s. *Item 37: As-built plans.* Applicant requested a temporary waiver and testified that such would be provided as a condition of approval.

3. **Jurisdiction of Board.**

N.J.S.A. 40:55D-67a provides that a zoning ordinance may provide for conditional uses which shall be granted by the Planning Board if an applicant meets “definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness...” in the ordinance. A “conditional use” is a “use permitted in a particular zone, but only upon certain conditions.” Omnipoint v. Bedminster Board of Adjustment, 337 N.J. Super. 398, 413 (App. Div. 2001), *certif. denied*, 169 N.J. 607 (2001). N.J.S.A. 40:55D-67b provides that the “review by the planning board of a conditional use shall include any required site plan review.” However, if the application does not comply with all ordinance requirements, the Board must deny approval. CBS Outdoor, Inc. v. Lebanon Planning Board / Board of Adjustment, 414 N.J. Super. 563, 582 (App. Div. 2010). Therefore, if a conditional use application does not comply with all conditional use ordinance standards, a condition cannot be imposed providing for subsequent compliance. Id. (a “promise from an applicant about its future potential compliance with a conditional use standard or specification is not permitted...”). If the proposed conditional use does not meet all of the conditions for the use, an applicant can apply for a “d(3)” conditional use variance, but any such variance application must go to the Board of Adjustment pursuant to N.J.S.A. 40:55D-70d(3); Coventry Square, Inc. v. Westwood Zoning Board of Adj., 138 N.J. 285, 295 (1994). The Planning Board does not have jurisdiction to hear or decide conditional use variance applications. Id.

Additionally, the Zoning Board of Adjustment has exclusive jurisdiction to hear and grant applications for use variances. N.J.S.A. 40:55D-70(d)(1).

The Objector asserted to the Board (via letters dated April 29, 2022; May 10, 2022; June 9, 2022; and June 17, 2022, referenced above, and testimony presented at the May 17, 2022 public hearing), that the Board lacks jurisdiction to hear the Application because (1) the proposed development requires a conditional use variance as a result of the height of the existing building; and (2) the proposed development requires a use variance as a result of the location of the septic system within the SRPD Zone. The Applicant addressed these issues on the record at the May 17, 2022 public hearing, as well as by way of letters dated May 6, 2022; May 13, 2022; and June 17, 2022. As set forth below, the Board determined, based on advice of the Board’s Attorney and its professionals, that Applicant did not require a conditional use variance or use variance.

a. Conditional Use Variance

Pursuant to Section 109-264(C)(4)(b)(1) of the Township Code, one of the conditional use standards for cannabis cultivation centers is “adherence to the site design standards of the Township Land Development Ordinances...” Pursuant to Chapter 109, Attachment 2, the maximum building height in the NC Zone is 2.5 stories or 35 feet. Objector provided a report from a professional surveyor dated April 26, 2022 (via Objector’s letter dated April 29, 2022 referenced above) opining that the existing building is 40 feet nine inches in height. Objector did not present such surveyor as an expert witness for cross-examination, nor did Objector request such report be accepted as an exhibit and part of the official record in this matter. However, Applicant’s architectural plans note the height of building as 41 feet 9 inches.

In any event, the existing building was the subject of two prior approvals. First, the construction of the building and use as a church was approved by the Board pursuant to Resolution No. 5-90 adopted on May 15, 1990. Such Resolution stated, "The church will be 50' high which is allowed in the zone for this proposed use." ¶13. The Board granted conditional use approval to use the existing building as a school pursuant to Resolution No. 2007-18. Although Resolution No. 2007-18 states that "no portion of the building is 35' high," it also states that "no changes are proposed to the exterior of the building." Both resolutions were attached as exhibits to the May 13, 2022 letter from Applicant referenced above.

A variance runs with the land. See e.g., Stop & Shop Supermarket Co. v. Bd. of Adjustment of Springfield, 162 N.J. 418 (2000). Although a variance was never granted for the height of the building, the height of the building was approved by the Planning Board and a determination that such was permissible and is entitled to the same protection. Additionally, the Application does not require any additional variances and is not exacerbating the pre-existing condition. Non-conforming structures are entitled to building permits for additions where the non-conforming condition is not being exacerbated. Sherman v. Borough of Harvey Cedars Zoning Bd. of Adjustment, 242 N.J. Super. 421, 436 n.1 (App. Div. 1990). The existing building on the Property is entitled to such protection.

Therefore, the Board determined that the proposed development does not require a conditional use variance.

b. Use Variance.

As stated above, a portion of the Property is situated in the NC Zone, where cannabis cultivation centers are permitted conditional uses, and a portion of the Property is situated in the SRPD Zone, where cannabis cultivation centers are not permitted. All site improvements (existing and proposed) are located within the NC Zone, with the exception of the existing septic system. Objector asserted that the septic system requires expansion; and, therefore a use variance is required. However, the Application does not contemplate any expansion to the septic system and only requires repairs. The septic system is a pre-existing structure and may continue to be used, so long as it is neither extended nor expanded pursuant to Section 109-92(c) of the Township Code. The existing septic system, which extends into the SRPD zone, was approved for use pursuant to Resolution 2007-18, which approved the use of the property as a school. At the time such resolution was adopted, schools were a conditional use in the NC zone and a prohibited use in the SRPD zone. The Planning Board approved the school use in the building in the NC zone, expressly approving the use of the septic system extending into the SRPD zone. The present application proposes the same arrangement: a conditional use where such use is permitted, and continued use of the preexisting septic system appurtenant thereto. Such Resolution states, "[s]ince no changes to the septic system are contemplated, it requires no relief and this matter is within the Planning Board's jurisdiction." ¶ 9.

The Hunterdon County Department of Health approved the use of the septic system in its current state for the proposed use pursuant to an approval issued on June 20, 2022 and included as supplemental Application material.

4. **Notice.**

Applicant provided adequate notice pursuant to N.J.S.A. 40:55D-12 for the May 17, 2022 hearing, which occurred during a regular meeting of the Board. The Board Secretary and Board Attorney reviewed the affidavit of service provided by Applicant and confirmed the adequacy of the notice. The public hearing was carried to the Board's June 21, 2022 regular meeting on the record without the need to further advertised. The May 17, 2022 and June 21, 2022 Board meetings were held in the auditorium of the South Hunterdon High School in order to accommodate the anticipated crowd. The Board Secretary published adequate notice of the change of venue in compliance with the Open Public Meetings Act (N.J.S.A. 10:4-8(d)) and the Municipal Land Use Law (N.J.S.A. 40:55D-9).

The public hearing was carried to a special meeting of the Board held on July 14, 2022. However, the date of such meeting could not be determined by the Board at the close of the public hearing on June 21, 2022. Therefore, the Applicant provided notice in compliance with N.J.S.A. 40:55D-12, which was confirmed by the Board Attorney and Board Secretary's review of the affidavit of service. The Board published adequate notice of the special meeting in compliance with N.J.S.A. 40:55D-12.

The Objector objected to the holding of the special meeting by letter dated July 5, 2022. The Board also received correspondence from members of the public objecting to the holding of the special meeting. However, all statutory notice requirements were met by the Board and Applicant.

5. **Testimony and Cross Examination.**

a. *Dan Sullivan and Tiffany D'Amato* (representatives of GMNJ Properties, LLC)

Mr. Sullivan and Ms. D'Amato are two of the principals of the Property Owner and Facility Operator. They were sworn in and testified at the May 17, 2022 public hearing that they operate a cannabis cultivation facility in Colorado and formerly operated one in Arizona.

Mr. Sullivan and Ms. D'Amato were cross-examined by members of the public and Objector's counsel. In response to questions, Mr. Sullivan indicated that Green Medicine NJ, LLC is the license holder and GMNJ Properties, LLC is the property management company.

b. *Cameron Corini, PE of Roberts Engineering Group, LLC* (Applicant's Engineer)

Mr. Corini testified at the May 17, 2022 public hearing. Mr. Corini summarized his credentials and experience as a professional engineer and was accepted by the Board as an expert witness. Mr. Corini relied on Exhibits A-1 (aerial photograph) and A-2 (survey) to provide an overview of the site improvements. He stated that all site improvements are located in the NC Zone (with the exception of the septic system) and that the limits of disturbance are approximately 1.3 acres and the impervious coverage is actually being reduced. Mr. Corini noted that the parking lot would be re-configured and accessed from Rock Road. Applicant proposes 140 parking spaces for a facility that would have a total of 60 employees. The existing well will be used for continued domestic use and a new well will be drilled to serve the

cultivation operations. The existing septic system will be used, but water from the cultivation operation would not be directed into the septic system and will be transported off-site for disposal. However, Mr. Corini noted that other experts would testify as to the specifics of the systems. A transformer and emergency generator are proposed as part of the development. Thirteen HVAC units are proposed at the east and west of the building and will be shielded by a fifteen-foot sound barrier and landscaping.

Mr. Corini testified as to the easements on the property and the environmental constraints. He stated that as a condition of approval the Applicant would provide a stormwater easement and operations and maintenance manual. However, he noted that further experts would be presented to testify as to the wetlands on the Property.

Mr. Corini noted that the state standards for stormwater maintenance would be complied with. A new drain will be installed along the east side of the building behind the sound barrier.

Mr. Corini noted that the Chief of the local fire department inspected the Property on May 12, 2022 and requested certain modifications. One such modification is the installation of underground water tanks for fire-fighting purposes. As a condition of approval, Applicant will provide a written letter or memo from the chief of the local fire department and comply with all conditions.

Mr. Corini testified as to the proposed lighting on the Property. Parking lot lighting will only be on until about 8pm and only lighting mounted on the building will be one 24 hours per day for security purposes. Mr. Corini testified that all existing lighting will be replaced with LED lighting and all lighting will be shielded.

As to signage, Mr. Corini stated that there will be one identification sign on the driveway to Rock Road West and that such signage will comply with all Township ordinances.

Mr. Corini noted that a construction trailer is proposed and will not house any cultivation activity.

Mr. Corini further testified that all cracks in sidewalk and pavement will be repaired and such will be confirmed with a site inspection by the Board Engineer.

Mr. Corini was cross-examined by Objector's counsel and members of the public at the May 17, 2022 public hearing. With regard to questions about the septic system, Mr. Corini indicated that more specific testimony would be given by other experts and that the Applicant made application to the County Department of Health. In response to questions about the stormwater design, Mr. Corini indicated that the plan did not include "green infrastructure" as required by applicable regulations should an expansion of the current facility be sought. However, Mr. Corini and Applicant's counsel indicated that the Application would be reviewed by the D&R River Canal Commission.

c. *Michael Starr of 2WR+Partners* (Applicant's Architect)

Mr. Starr summarized his professional experience and qualifications and was accepted by the Board as an expert in the field of architecture. Mr. Starr was sworn in. He testified as to the interior improvements and the exterior aesthetic improvements that will be made to the building to help the building blend into the agricultural character of the surrounding area. Mr. Starr was cross-examined by members of the public and counsel for Objector.

d. *Michael Devos* (Applicant's Landscape Designer)

Mr. Devos summarized his credentials and was accepted as an expert in landscape design. Mr. Devos was sworn in. Mr. Devos summarized the plans. He noted that the renderings submitted as exhibits are not completely accurate. The site plans note more trees and plantings. He noted that ninety percent (90%) of the species used in the design are native. He noted that the larger trees will be 10 to 12 feet tall at planting and the smaller flowering trees will be 8 to 10 feet tall. Landscaping will not require irrigation. In response to questions from the Board he stated that screening was not provided on the side of the property abutting the meadow to the west of the building.

In response to questions from Board members, Mr. Devos noted that a maintenance guarantee could be provided as a condition of approval and that he would review the site with the Board Engineer and Planner to determine if more landscaping is needed.

e. *Brian Zimmerman, PE of Impact Engineering, Inc.* (Applicant's Odor Mitigation and Fire Safety Expert)

Mr. Zimmerman testified at the May 17, 2022 and June 21, 2022 public hearings. Mr. Zimmerman summarized his experience and qualifications and the Board accepted him as an expert in cannabis odor mitigation equipment.

Objector's counsel questioned Mr. Zimmerman's qualifications as he is not licensed as an engineer in the State of New Jersey and is only licensed in the State of Colorado. However, the Board has discretion to rely on experts that will assist its decision making. Moreover, N.J.S.A. 45:8-40 permits a professional engineer licensed in another State who is not a resident of and does not have an established place of business in New Jersey to practice engineering in New Jersey so long as that practice does not exceed 30 consecutive days in any calendar year. Applicant has retained an engineer licensed in the State of New Jersey.

Mr. Zimmerman testified as to the design of the odor mitigation system and noted that the odor mitigation units will not be venting to the outside as it is a closed loop HVAC system. The only air leaving the building will be air vented from non-cultivation areas. Further, he testified that the cultivation rooms as metal-paneled rooms with vapor barriers. He testified that the air is treated with carbon filters that are changed monthly.

In response to questions from Board Members, Mr. Zimmerman noted that in an emergency all doors are equipped with panic hardware. Mr. Zimmerman also noted that an operations and maintenance manual will be kept on file for the odor mitigation equipment as a condition of approval.

Mr. Zimmerman was cross-examined by Objector's counsel and members of the public.

f. *Dean Regan of Urban Gro, Inc. (Applicant's Irrigation Expert)*

Mr. Regan testified as to his credentials and was accepted by the Board as an expert in irrigation engineering. Mr. Regan was sworn in. Mr. Regan stated that he has a bachelor's degree in mechanical engineering, but he is not a licensed professional engineer. However, all of his designs will be reviewed by and on plans signed by a New Jersey-licensed engineer.

Mr. Regan testified that the existing well will only be used for the bathrooms used by the employees and; based upon the well testing provided by Stovers Well and Pumps, produces approximately 3-4 gpm or 4,320 gpd, of which approximately 900 gallons per day will be utilized. The second newly construct well will be used to serve the cultivation activities and; based upon the well testing provided by Stovers Well and Pumps, produces approximately 20 gpm or 28,800 gpd, of which approximately 850 gallons per day will be utilized.

Sensors will be placed on all plants to track humidity, temperature, and nutrient levels. Drip irrigation will be used to water the plants. The drip irrigation system will be fed by two holding tanks that will be filled over a period of time so as not to overwhelm the well.

Mr. Regan referred to a letter dated June 17, 2022 from Robert Engineering submitted to the Board as part of the Application that details the water usage and wastewater amounts. Mr. Regan testified that all cultivation runoff will be pumped into a tank inside the building and will not go into the septic system. He anticipates that 100 gallons per day of cultivation water will be pumped into these tanks. He further stated that 75% of the irrigation water is recaptured with a dehumidifier.

In response to questions from Board members, Mr. Regan noted that the wastewater from the cultivation activities will contain concentrated nutrients used to feed the plants. Mr. Regan also noted that a new well was constructed for the cultivation operation because the reverse osmosis system requires 14-15 gallons per minute in order to operate properly. The existing well only produced 2-3 gallons per minute. Mr. Regan noted that the Applicant would work with the Board to develop a system to monitor the output of the wells.

Mr. Regan was cross examined by the Objector's counsel and members of the public.

g. *James L. Peterson, P.G. of Princeton Geoscience, Inc. (Applicant's Consulting Geologist)*

Mr. Peterson summarized his credentials and was qualified as an expert in hydrogeology by the Board. Mr. Peterson referred to graphics (Exhibit A19) to note the location of the new well on a geologic map showing a cross section of the depths of the new well and existing nearby wells. He testified that in his opinion there is a low probability of interference with the neighboring and surrounding wells.

In response to questions from Board members, Mr. Peterson discussed the possibility of metering the wells and performing a well interference test.

Mr. Peterson was cross-examined by members of the public and Objector's counsel. In response to questions, Mr. Peterson reiterated his conclusions that the proposed well on the Property would not interfere with neighboring wells.

h. *Tom Stover of Stover's Wells and Pumps* (Applicant's Well Consultant)

Mr. Stover did not provide separate testimony, but was present to answer questions from Board Members and members of the public. Mr. Stover summarized his credentials and was accepted by the Board as an expert. Mr. Stover noted that he did not receive complaints from property owners in the area when he ran the well tests for the new well. He noted that many of the nearby wells are much deeper than the new well and probably are in a different rock formation and not in the same aquifer.

i. *Kelley O'Such, P.E. of Engineering & Land Planning Associates, Inc.* (Applicant's Septic System Consultant)

Mr. O'Such summarized his qualifications and was accepted by the Board as an expert in septic system design. Mr. O'Such was sworn in. Mr. O'Such testified that the Applicant submitted an application to the Hunterdon County Health Department to review the capacity of the septic system as it relates to the proposed use and Applicant received a permit. He noted that the septic system requires maintenance and repair, but no upgrades or expansion.

In response to questions from Board members, Mr. O'Such stated that there was no evidence that the existing septic system is malfunctioning.

Mr. O'Such was cross-examined by counsel for the Objector. Mr. O'Such acknowledged that a November 2021 report noted that certain tanks could not be located due to the overgrown condition of the area around the septic system. However, Mr. O'Such stated that upon re-inspection, the disposal field was located. In response to questions regarding the wastewater discharges, counsel for Applicant noted that the Applicant was able to rely on warehouse standards for the sizing of the septic system pursuant to N.J.A.C. 7:9A-7.4(c)(3), which permits applicants to rely on "appropriate additional sources."

j. *Jack Zybura, P.E. of Lewis S. Goodfriend & Associates* (Applicant's Acoustician)

Mr. Zybura testified as to his credentials and was accepted by the Board as an expert in acoustics. Mr. Zybura was sworn in. Mr. Zybura reviewed the acoustical impacts and noted that state standards for noise levels are 65 decibels at commercial and residential property lines, which level is reduced to 50 decibels at night for residential receiving uses. In order to conduct his analysis, he created a 3-dimensional acoustical model including the HVAC systems and generator. The sound barrier is required in order to meet the nighttime limits at the residential property lines. Mr. Zybura stated that his models did not take into account any of the

landscaping. The generator will be exercised once per month for a period of 30 minutes during daytime hours.

Mr. Zybura was cross-examined by Objector's counsel and members of the public.

k. *Nick Verderese, P.E. of Dynamic Traffic, LLC* (Applicant's Traffic Engineer)
Mr. Verderese summarized his credentials and was accepted by the Board as a traffic expert. Mr. Verderese was sworn in. He stated he prepared a traffic assessment dated March 22, 2022 using traffic counts at the intersection of Brunswick Pike and Rock Road West at morning peak hours. He also pulled data from NJDOT dating back to 2018, which was higher than his traffic counts. So, he used the NJDOT data in his analysis. He also utilized data from the ITE for marijuana facilities which noted twenty vehicles during peak hours. His understanding was that the facility would operate from 7 am to 7pm with three shifts of 20 employees each. In addition, the traffic to and from the site would consist of once per week trash pick up, product shipments with vans and box trucks twice per day, supply deliveries 2 to 3 times per week, and four deliveries per week with small vans to local dispensaries.

He noted that 161 parking spaces are provided where 66 are required. The driveways have adequate site distances.

In response to questions from Board Members, he noted that the site distances take into account the landscaping. In response to questions from the Board Engineer he noted that he did not take credits for traffic generated by the "church use" in his calculations. He further noted in response to the Board Engineer's questions that egress to the site could be limited to only right turns on to Rock Road and no left turn signage could be installed.

Mr. Verderese was available for cross-examination by Objector's counsel and members of the public.

1. *Jeffrey Anderson, CHMM, LSRP of J.S. Held* (Applicant's Environmental Consultant)

Mr. Anderson provided his credentials and was accepted by the Board as an expert in environmental and wetlands issues. Objector's counsel questioned Mr. Anderson regarding his credentials. Mr. Anderson was sworn in. He noted that there was no history of hazard waste and no evidence of the presence of threatened or endangered species on the Property. He stated that in his opinion the wetlands line noted in the 1989, expired, LOI had not changed. He also noted that, in his opinion, the area of the detention basin did not constitute a regulated wetland. The Board's Engineer questioned Mr. Anderson regarding whether an updated LOI is needed.

Mr. Anderson was cross-examined by Objector's counsel and members of the public. In response to questions, Mr. Anderson noted that the wetlands line on the site plans (as verified by site inspections by his staff) matched the wetlands line on the 1989 LOI.

m. *Hector Corchado of Radiant Professional Solutions, LLC* (Applicant's Security Expert)

Mr. Corchado summarized his credentials and was accepted by the Board as an expert in security. Mr. Corchado was sworn in. Mr. Corchado testified that the security installed at the Property will comply with requirements of the CRC. Video surveillance with off-site monitoring will be used and the Township Police Department will be provided access in the event of a security breach. Mr. Corchado stated that all requirements of the Fire Department Chief will be addressed and that emergency access plans with local emergency providers will be developed.

Board members and Board professionals asked questions of Mr. Corchado. Mr. Corchado was offered for, but not cross examined by Objector or members of the public.

n. Tiffany A. Morrissey, P.P. of Tiffany A Morrissey, LLC(Applicant's Planner)

Ms. Morrissey testified as to her credentials and was accepted by the Board as an expert in planning. Ms. Morrissey was sworn in. She testified as to how the Application meets each of the conditional use standards set forth in Section 109-264 of the Township Code.

- Adherence to the Township's site design standards. Ms. Morrissey reviewed the site design standards set forth in Section 109-163 of the Township Code as follows:
 - The provisions of the zoning regulations with respect to height, lot areas, open space, etc., are complied with.
 - Ms. Morrissey referred to testimony of the Applicant's engineering experts noting that the proposed development conforms to all zoning regulations applicable in the zoning district. Ms. Morrissey acknowledged the issue regarding the building height and noted that pre-existing nonconformities are deemed approved.
 - Adequate provision is made for off-street parking in accordance with this chapter, and adequate traffic circulation, traffic safety and protection to adjoining property is provided.
 - Ms. Morrissey referenced the testimony of the Applicant's traffic engineer. Ms. Morrissey noted that adequate off-street parking is provided.
 - Adequate provision is made for the disposal of stormwater as approved by the Township Engineer and meets the requirements of Article XXVIII, Stormwater Management, of this Part 5.
 - Ms. Morrissey referred to the testimony of Applicant's Engineer.
 - The location, design or construction of any building shall not be likely to involve risks of traffic congestion, public safety or hazard.
 - Ms. Morrissey referred to the testimony of Applicant's Traffic Engineer, which noted a minimal increase in traffic at the site.
 - The design or construction of any building or use will be consistent with the character of the neighborhood so as to maintain the value of adjacent or nearby properties.

- Ms. Morrissey referred to the Applicant's architect's testimony and noted that the Applicant's design of the exterior of the building is compatible with the agricultural nature of the surrounding area.
 - All unpaved areas shall be attractively landscaped, including but not limited to grass lawns, ground covers, shrubbery, and trees, unless allowed by the Planning Board to remain in their natural state.
 - Ms. Morrissey referred to the testimony of the landscape designer and noted that vegetation is being added to the Property.
- In compliance with Section 37(b) of the NJ CREAMMA, cultivation centers are not permitted on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland 6 Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).
 - Ms. Morrissey testified that the Property is not farmland assessed.
- Issuance of zoning permit and site plan approval is required.
 - Ms. Morrissey noted that Applicant is complying with this provision by appearing before the Board.
- Cultivation centers shall not be located immediately adjacent to school property used for school purposes which is owned by or leased to any elementary or secondary school or school board).
 - Ms. Morrissey testified that none of the adjacent properties are used for school purposes currently.
- Secured in accordance with all applicable provisions as defined in the Act and outlined in Subsection G below.
 - Ms. Morrissey referred to the testimony of Applicant's security consultant.
- No signage other than directional or discrete building identification shall be permitted. Signage shall remain innocuous and part of the general directional signage typically found in industrial manufacturing facilities. Facade signs will be limited to those at the point of entry to the facility and may not be more than six square feet.
 - Ms. Morrissey testified that the only signage, other than directional or traffic-related signage, is the identification sign at the entrance to the Property, which will be developed in accordance with the Township Code.
- Unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited. Odor mitigation filtration systems must be installed and maintained in perfect working order.
 - Ms. Morrissey referred to the testimony of the Applicant's odor mitigation expert.
- light pollution, glare or brightness resulting from glow lamps must be 0.5 {00720273-1} candle or less at the property line
 - Ms. Morrissey referred to the testimony of the Applicant's engineer and noted that all lighting will be turned off after 9pm.

- noise beyond the decibel level permitted by Township noise ordinances shall be prohibited.
 - Ms. Morrissey referred to the testimony of Applicant's acoustics engineer.
- The cultivation of cannabis must be conducted indoors and shall not be permitted on exterior portions of a lot, unless under Special Permit for the Cultivation of Hemp that is in conformance with Federal Agriculture Improvement Act of 2018 (2018 Farm Bill). The cultivation of cannabis within a building or unit must not be perceptible from the exterior of the building or unit from a street or residential use.
 - Ms. Morrissey noted that the site plans contemplate only indoor cultivation.

Ms. Morrissey was offered for, but not cross examined by Objector or members of the public.

9. *Thomas Cahill* (Applicant's Septic System Inspector)

Mr. Cahill did not provide independent testimony, but was present at the July 14, 2022 public hearing to answer questions and provide verification of an updated septic inspection. Mr. Cahill summarized his credentials and was accepted by the Board as an expert. Mr. Cahill was sworn in. He was cross-examined by Objector's counsel and stated that, according to his inspections, the septic system did not need to be upgraded or expanded and only repaired.

o. *Geoff Goll, P.E.* (Objector's Engineer)

Mr. Goll's testimony is summarized in Section 7 below.

6. **Review by Board's Professionals.**

a. *Joanna Slagle, P.P. of Banisch Associates* (Board Planner)

Ms. Slagle did not provide separate testimony, but questioned Applicant's witnesses. Ms. Slagle provided the above-referenced Planner Review Letters.

b. *William Burr, P.E. of Colliers Engineering* (Board Engineer)

Mr. Burr did not provide separate testimony; however, he questioned all witnesses and provided comments regarding proposed conditions on an approval of the Application and other issues. Mr. Burr also provided the above-referenced Engineering Review Letters.

7. **Presentation by Objector**

Objector was represented by counsel at all meetings. Objector's counsel was provided the opportunity to cross-examine all witnesses.

Objector presented the testimony of Geoff Goll, P.E. Mr. Goll summarized his credentials and the Board accepted him as an expert. Mr. Goll was sworn in. Mr. Goll provided testimony concerning three areas: (1) Stormwater, (2) wetlands, and (3) the septic system.

With regard to the stormwater design, Mr. Goll opined that the proposed development would increase impervious surface by about 1,000 square feet. With regard to wetlands, Mr. Goll opined that the detention basin area qualifies as a regulated wetland because it was not managed properly and recommended that a new LOI be made a condition of approval. With regard to the septic system, Mr. Goll opined that Applicant miscalculated the sanitary flows.

8. Public Comments

Members of the public appeared at all of the public hearings held on the Application. Members of the public were permitted to cross examine witnesses and provide general comments concerning the Application.

Members of the public questioned witnesses regarding sound levels, the septic system, hydrogeology, wetlands, the need for an LOI, water usage, and the effect on neighboring water wells. Members of the public provided comments regarding concerns about effects on neighboring wells, odors, endangered species, noise, traffic, and other issues.

As noted above, the following documents were presented by members of the public and made part of the official record:

- P1. Conditions of Approval document from J. Hoff
- P2. Letters from Kimberly Capone
- P3. Letter from Megan Hudson to the Planning Board regarding wetlands on the Property, dated June 21, 2022
- P4. Letter to the Hunterdon County Board of Health from Megan Hudson regarding the septic system approval with exhibits, dated July 6, 2022.
- P5. "Active Medical Business NJ Permits" prepared by Holly Abitz
- P6. "Rare Wildlife Sighting" Report from Aurelle Sprout, dated July 9, 2022 (submitted by Fairfax Hutter).

Applicant's counsel objected to the submission of Exhibit P4 due to alleged "inaccuracies" contained within the letter

9. **Definition of Cannabis Cultivation Center.** Pursuant to Township Code Section 109-264(A), a "cannabis cultivation center" is defined as follows:

A building, structure, or premises used for the cultivation or storage of cannabis. Includes the planting, propagating, cultivation, growing, harvesting, labeling or manufacturing, compounding and storing of cannabis...

10. **Preliminary and Final Site Plan Review.** As set forth above, preliminary and final major site plan approval has been requested.

N.J.S.A. 40:55D-46b and 50a guide consideration of the preliminary and final site plan applications. N.J.S.A. 40:55D-46b provides that the Board “shall” grant preliminary site plan approval if the proposed development complies with all provisions of the applicable ordinances. Similarly, N.J.S.A. 40:55D-50a provides that final site plan approval “shall” be granted if the detailed drawings, specifications, and estimates of the application conform to the standards of all applicable ordinances and the conditions of preliminary approval. As such, if the application complies with all ordinance regulations and requirements, the Board must grant site plan approval.

Provided that (1) Applicant complies with the conditional use standards set forth in Section 109-264 of the Township Code, and (2) the conditions set forth below are imposed and complied with, the Board finds that the proposed development and the site plans will comply in all respects with all remaining applicable zoning ordinance regulations and all applicable site plan ordinance requirements.

11. Conditional Use Standards of Section 109-264 of the Township Code. Pursuant to Section 109-264 of the Township Code, Applicant provided testimony and the Board made findings of fact regarding the following conditions for cannabis cultivation centers:

- *Adherence to the Township's site design standards set forth in Section 109-163 of the Township Code.*
 - *The provisions of the zoning regulations with respect to height, lot areas, open space, etc., are complied with.* Based upon testimony from the Applicant's Engineer, the provisions of the zoning regulations with respect to height, lot areas, open space, etc., are complied with. As noted above, the Board determined that the building height was approved via prior resolution and is a previously approved deviation from site design standards.
 - *Adequate provision is made for off-street parking in accordance with this chapter, and adequate traffic circulation, traffic safety and protection to adjoining property is provided.* Based on the testimony of the Applicant's Traffic Engineer, Applicant complies with this condition. More parking is provided than required by Township Code. Applicant also agreed to post signage to prohibit left-hand turns on to Rock Road West in order to minimize traffic.
 - *Adequate provision is made for the disposal of stormwater as approved by the Township Engineer and meets the requirements of Article XXVIII, Stormwater Management, of this Part 5.* Applicant's Engineer testified that the impervious coverage on the site is actually reduced and there are existing stormwater maintenance facilities on site.
 - *The location, design or construction of any building shall not be likely to involve risks of traffic congestion, public safety or hazard.* Applicant's Traffic Engineer, which noted a minimal increase in traffic at the site, provided testimony to note compliance with this standard.

- *The design or construction of any building or use will be consistent with the character of the neighborhood so as to maintain the value of adjacent or nearby properties.* Applicant's architect testified that the design of the exterior of the building is compatible with the agricultural nature of the surrounding area.
- *All unpaved areas shall be attractively landscaped, including but not limited to grass lawns, ground covers, shrubbery, and trees, unless allowed by the Planning Board to remain in their natural state.* Applicant's landscape designer testified to the robust landscaping plan for the Property.
- *In compliance with Section 37(b) of the NJ CREAMMA, cultivation centers are not permitted on land that is valued, assessed or taxed as an agricultural or horticultural use pursuant to the "Farmland 6 Assessment Act of 1964," P.L.1964, c.48 (C.54:4-23.1 et seq.).* The Property is not farmland assessed.
- *Issuance of zoning permit and site plan approval is required.* Applicant has appeared before the Board for site plan approval.
- *Cultivation centers shall not be located immediately adjacent to school property used for school purposes which is owned by or leased to any elementary or secondary school or school board).* The Property is not adjacent to any properties used for school purposes.
- *Secured in accordance with all applicable provisions as defined in the Act and outlined in Subsection G below.* Applicant's security expert testified regarding the security of the Property and the specific standards of Section 109-264(G), including (1) the required surveillance system; (2) lighting of outdoor areas; (3) a contact person provided to the West Amwell Township Police Department; (4) presence of security staff during operating hours; (5) limited access to the premises; (6) the enclosure and locking of the facility; (7) the storage of currency; and (8) compliance with CRC security requirements.
- *No signage other than directional or discrete building identification found in shall be permitted. Signage shall remain innocuous and part of the general directional signage typically found in industrial manufacturing facilities. Facade signs will be limited to those at the point of entry to the facility and may not be more than six square feet.* The only signage proposed, other than directional signage and a façade sign, is the identification sign at the entrance to the Property, which will be developed in accordance with the Township Code.
- *Unusual odors, smells, fragrances or other olfactory stimulants shall be prohibited. Odor mitigation filtration systems must be installed and maintained in perfect working order.* Applicant provided testimony from its odor mitigation expert.
- *Light pollution, glare or brightness resulting from glow lamps must be 0.5 {00720273-1} candle or less at the property line.* Applicant provided testimony from its engineer and

noted that all lighting, other than security lighting, will be turned off by 8pm, all lighting will be down shielded, and all security lighting will be on motion sensors.

- *Noise beyond the decibel level permitted by Township noise ordinances shall be prohibited.* Applicant proposed sound attenuation barriers and offered testimony from its acoustics expert.
- *The cultivation of cannabis must be conducted indoors and shall not be permitted on exterior portions of a lot, unless under Special Permit for the Cultivation of Hemp that is in conformance with Federal Agriculture Improvement Act of 2018 (2018 Farm Bill). The cultivation of cannabis within a building or unit must not be perceptible from the exterior of the building or unit from a street or residential use.* The Applicant only proposed indoor cultivation.

CONCLUSIONS

1. Conclusions as to Compliance with Conditional Use Standards Set forth in Section 109-264 of the Township Code.

N.J.S.A. 40:55D-67a provides that a zoning ordinance may provide for conditional uses which shall be granted by the Board if an applicant meets “definite specifications and standards which shall be clearly set forth with sufficient certainty and definiteness...” in the ordinance. A “conditional use” is a “use permitted in a particular zone, but only upon certain conditions.” Omnipoint v. Bedminster Board of Adjustment, 337 N.J. Super. 398, 413 (App. Div. 2001), *certif. denied*, 169 N.J. 607 (2001). The Board must thus determine whether the proposed conditionally permitted use complies with all conditional use requirements set forth in the applicable ordinance, in this case Section 109-264 of the Township Code. N.J.S.A. 40:55D-67b provides that the “review by the planning board of a conditional use shall include any required site plan review.”

Having made the Findings of Fact set forth above the Board determined that the proposed cannabis cultivation facility conformed to all applicable provisions of Section 109-264 of the Township Code, subject to the referenced conditions, and that the Application was entitled to conditional use approval. The Board found that pursuant to Section 109-264(A), the application meets the definition of a cannabis cultivation center. At the hearing the Board heard testimony and made findings of fact as set forth above on the conditions set forth in Township Code Section 109-264 and that the Application met the conditions pursuant to said Ordinance.

2. Conclusions as to Site Plan Review

Pursuant to N.J.S.A. 40:55D-46b and 50a, because the Application complies with all ordinance regulations and requirements, the Board must grant site plan approval. As such, the Board found it proper to grant preliminary and final site plan approval.

3. **Conclusions as to the Imposition of Conditions.** Boards have inherent authority to impose conditions on any approval they grant. North Plainfield v. Perone, 54 N.J. Super. 1, 8-9 (App. Div. 1959), certif. denied, 29 N.J. 507 (1959). Additionally, Township Code Section 160-112(C) expressly provides that the Planning Board may impose conditions on the grant of a conditional use.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, that Applicant, GMNJ Properties, LLC and Green Medicine NJ, LLC, is granted the following relief:

1. **Approval to Operate a Cannabis Cultivation Center.** The requested conditional use approval and preliminary and final site plan approval is granted for certain improvements on Block 16, Lot 17.02 in order to operate a cannabis cultivation center as shown on the Site Plan and other supplemental documents presented, subject to the conditions set forth below.

BE IT RESOLVED FURTHER, that the Applicant is granted conditional use approval and preliminary and final site plan approval to operate a cannabis cultivation center and constructed necessary improvements and appurtenances subject to the conditions set forth below:

- A. Customary conditions including:
 - 1. Any required easements approved by Township Attorney and Engineer
 - 2. Payment of all taxes and liens
 - 3. Execution of a developer's agreement in a form approved by the Township Attorney
 - 4. Payment of COAH non-residential development fees
 - 5. Payment of all fees, escrow up to date, etc.
- B. Revise plans in accordance with all testimony and representations made at hearings.
- C. Revise plans to address any comments in Burr and Slagle reports.
- D. Provision of as-built plans for review and approval of Board Engineer, prior to the issuance of a Temporary or Final Certificate of Occupancy.
- E. Obtain all outside agency approvals, including but not limited to:
 - 1. County Planning Board
 - 2. Soil Conservation District
 - 3. County Board of Health approval of septic system
 - i. If the Lawsuit results in voiding or overturning the County Health Department's approval of the septic system, Applicant shall immediately cease operations and the Township shall work with the Applicant towards establishing temporary septic system operating criteria (in consultation and with approval of the Hunterdon County Health Department) that will facilitate the Applicant resuming operations while it corrects, moves, or rebuilds the septic system and progresses towards County Health Department approval.
 - ii. If Applicant is required to move or rebuild the septic system and such is to be completed within the NC Zone, Applicant will not be required to attain amended site plan approval.

iii. If the Applicant is required to move or rebuild the septic system and such is to be completed within the SRPD Zone, this approval is void and Applicant must make application to the Township Zoning Board of Adjustment.

4. Will serve letter from electric company in the form of a "Confirmation of Enrollment" letter from JCP&L

5. NJDEP (specifically a Letter of Interpretation and a permit to clear vegetation in the detention basin area).

6. Delaware and Raritan River Canal Commission

7. New Jersey Cannabis Regulatory Commission

F. Facility Operator's normal operating hours shall be limited to 7am to 7pm, 7 days per week. Exceptions shall be made for emergency or special maintenance. Deliveries, shipping, removal of cultivation wastewater, trash collection, routine maintenance and repairs shall be conducted during normal operating hours.

G. Property Owner shall revise the current plans to include increased shielding for the dumpster area to the satisfaction of the Board Planner and Engineer.

H. Stormwater easement and O&M Manual to be reviewed and approved by the Board Attorney and Engineer and recorded

I. Property Owner shall provide a letter or memo from the Chief of the Township fire department regarding the fire inspection and traffic circulation review and comply with all therein conditions

J. Replace all existing lighting with LED. A color range of LED lighting to be provided and approved by the Board Engineer and Planner.

K. Utilize downshielded lighting fixtures. Plans shall be revised accordingly.

L. All lighting shall be turned off by 8pm, except any security lighting, which will be on motion sensors, provided that doing so will be in compliance with all New Jersey Cannabis Regulatory Commission Security regulations and guidelines. Plans shall be revised accordingly.

M. Lights in the rear parking lot area shall only be used during normal operating hours and shall be turned off by 8:00 PM.

N. Perform a night-light test with results provided to Board Engineer for review and approval.

O. No signage shall be lit, other than the sign at the driveway entrance, which shall be up-lit. Plans shall be revised accordingly.

P. Repair all cracks in and replace damaged sections of drainage, curb, sidewalk and pavement. A site visit shall be conducted with the Board Engineer and Applicant shall comply with recommendations for the repairs

Q. The temporary construction trailer shall only be used for construction purposes and cultivation activity shall be prohibited in the construction trailer.

R. The construction shall be phased in order to begin with landscaping as seasonally appropriate

S. No HVAC, odor mitigation equipment, air handling units, or condensing units located on the two (2) concrete pads on the east and west aides of the building shall be used prior to construction of the sound attenuation walls.

T. Applicant shall provide s assessment report regarding increasing the height of the sound attenuation walls to no greater than 20 feet and potentially angling a top portion. Such will be provided to the Board Engineer to determine whether increasing the height will result in greater

sound reduction. Any increase to the height or potential angling of the sound attenuation walls shall be approved by the Board Engineer, up to 20 feet. Plans shall be revised accordingly.

U. Provide a landscape maintenance guarantee in an amount determined by the Board Planner and Engineer to be in place in compliance with applicable law.

V. All landscaping must be replaced if dead or dying for the life of the development. This provision can be enforced by the Township Zoning Officer. If Applicant, or its successors and assigns, fail to replace dead or dying landscaping in a timely fashion, the Township may mitigate the issue and place a lien on the Property for all associated costs.

W. Provide for a site walk with the Board Engineer and Planner to determine if landscaping needs to be supplemented and compliance with the reasonable recommendations. Plans shall be revised accordingly.

X. Provision of O&M manual for the odor mitigation equipment. The odor mitigation and maintenance requirements will be part of the site plan and can be enforced by the Township Engineer upon site inspection or the Zoning Officer in the future. Applicant shall provide an annual report regarding maintenance of the odor mitigation equipment and the Township shall require increased reporting and periodic inspections if noncompliance is demonstrated.

Y. Applicant shall provide quarterly reports to the Township Engineer regarding the removal of cultivation wastewater from the Property.

Z. Installation of a water meter on both of the wells. Applicant shall provide quarterly reports to the Township. Well usage shall not exceed 2,000 gpd (for both wells combined) based on a monthly average. This shall apply to the initial filling of the fire suppression tanks and cultivation storage tanks. Township representatives shall be permitted to enter on to the Property to confirm the meter readings. Exceptions to the limitation on well usage shall be provided in the case of man-made or natural emergencies.

AA. Compliance with all applicable rules and regulations regarding disposing of the cultivation wastewater.

BB. Cultivation wastewater shall not be placed into the septic system. All such water must be collected in separate holding tanks, to be shown on revised plans, removed from the Property, and properly disposed of.

CC. Revisions to plans to reflect the underground fire suppression tanks.

DD. Perform a well interference test to determine if there is any impact on neighboring wells, which shall be paid for by applicant. Applicant will work with the Board Engineer to develop a test with the following minimum parameters:

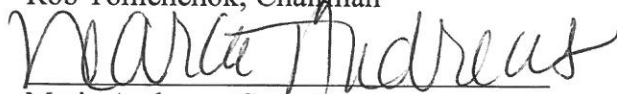
1. At least four (4) test wells
2. Test wells must be within a maximum of 2,000 feet of the proposed well
3. Locations to be determined by the Township Engineer (hydrogeologist) in consultation with the applicants' well driller and hydrogeologist/geologist.
4. Producing wells existing within the 2,000-foot distance from the new well may be used as observation wells to determine well interference. If more than four wells qualify as observation wells, preference will be given to the nearest wells and to those located symmetrically around the test well or along known geologic structures.

EE. Notify residents with wells within 3,000 feet of new well of the date of the interference test to allow residents the opportunity to coordinate their own simultaneous test with the Township Engineer (hydrogeologist) in consultation with the Applicants' well driller and hydrogeologist

- FF. No Final Certificate of Occupancy issued until ALL permits from outside agencies granted (including NJDEP). With the exception of an approval for the septic system from the Hunterdon County Department of Health, Applicant may obtain a Temporary Certificate of Occupancy prior to receiving all outside agency approvals. However, such shall be done at Applicant's own risk and Applicant shall indemnify and hold the Township harmless related to obtaining such Temporary Certificate of Occupancy. Applicant shall not obtain a Temporary or Final Certificate of Occupancy until being issued a valid permit from the Hunterdon County Department of Health for the operation of the septic system.
- GG. Revise plans to remove black iron fence
- HH. Noise test upon completion to ensure the equipment complies with noise requirements
- II. Comply with decibel levels set forth herein. This provision can be enforced by a Township official.
- JJ. Compliance with Township sign requirements and plans to be revised accordingly
- KK. Stormwater Management Report and design to be updated to comply with Township Ordinance.
- LL. Split rail fence along Rock Road West Extension to be extended to the driveway.
- MM. Left turns out of the driveway onto Rock Road West shall be prohibited with proper signage posted.
- NN. No tractor trailers permitted on the Property, with the exception of trucks used to dispose of cultivation wastewater, maintenance vehicles, construction vehicles, and emergency vehicles.
- OO. Provide Security Training for all employees and coordination w/ local emergency services.
- PP. Provide copies of all documents referenced in the EIS.
- QQ. If Applicant desires to remove vegetation from the detention basin prior to receiving an LOI, Applicant shall apply to NJDEP for a permit to clear brush and debris from the detention basin or other indication of no interest from NJDEP.
- RR. Applicant shall apply to NJDEP for an LOI and provide such to the Board professionals.
- SS. Applicant can begin work interior to the building and selective site work in areas without an effect of potential NJDEP-regulated areas. Such work shall be done at the risk of the Applicant and in consultation with the Board Engineer.
- TT. Applicant shall be permitted to obtain building permits and begin construction prior to meeting all conditions set forth herein and prior to the expiration of any applicable appeal period in consultation with the Board Engineer. Such shall be done at the Applicant's own risk and Applicant shall indemnify and hold the Township harmless related to beginning such work.



Rob Tomenchok, Chairman



Maria Andrews, Secretary

I hereby certify the above to be a true copy of the Resolution adopted by the West Amwell Township Planning Board at its regular meeting on July 19, 2022, and further certify that same is a true memorialization of the Official Action taken by the said Board at a special meeting on July 14, 2022.



Maria Andrews, Secretary

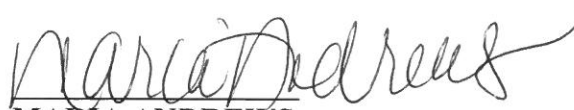
THOSE IN FAVOR: Balaam, Cally, Dale , Hamtil, Haug, Ippolito, Morgan, and Tomenchok

THOSE OPPOSED: Petrucci

The above memorializing resolution was adopted on July 19, 2022 by the following vote of eligible Board members:

Member	Yes	No	Abstain	Absent
Balaam	X			
Cally	X			
Dale	X			
Hamtil				X
Haug	X			
Ippolito	X			
Petrucci			X	
Morgan				X
Tomenchok	X			
Alternates				
Flemming	X			

ATTEST:


MARIA ANDREWS
Board Secretary