

**BEFORE THE BOARD OF SUPERVISORS OF WEST GOSHEN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

IN RE: Conditional Use Application of Franklin BioScience-Penn, LLC d/b/a  
Beyond/Hello

**DECISION AND ORDER**

Franklin BioScience-Penn, LLC d/b/a Beyond/Hello (the "Applicant"), filed a conditional use application (the "Application") on January 25, 2019 requesting conditional use approval from the Board of Supervisors of West Goshen Township (the "Board") pursuant to Section 84-32.M(10) of the West Goshen Township Revised Zoning Ordinance of 1990, as amended (the "Ordinance") seeking approval for a medical marijuana dispensary on a parcel of property located at 1261 West Chester Pike, identified as Chester County Tax Parcel No. 52-6A-29 (the "Property").

The Board conducted a public hearing on the Application on February 19, 2019. The Township was represented by Kristin S. Camp, Esquire and Applicant was represented by John A. Jaros, Esquire. The following individuals requested party status and were either granted or denied party status as indicated below:

- 1) Marjorie Swart, 1519 Links Drive - Party status denied
- 2) Robert Campanile, 1329 Park Avenue - Party status granted
- 3) Dawn Willard, 1301 Park Avenue - Party status granted
- 4) Robert Wiggins, 1301 West Chester Pike - Party status granted

Applicant's counsel, John Jaros, Esquire objected to the Board granting party status to each of the individuals listed above. Upon careful consideration of the law related to protestants' standing in a conditional use hearing, the Board voted that Robert

Campanile, Dawn Willard and Robert Wiggins, who all own property within a ½ mile radius or less of the Property, met the legal burden to establish standing and thus were granted party status over Applicant's objection. Margie Swart, whose property is over four miles away from the Property, did not meet the legal burden to establish standing and thus was denied party status at the hearing.<sup>1</sup>

From the testimony and exhibits presented at the hearing, the Board makes the following:

### **FINDINGS OF FACT**

1. The factual statements set forth in the introductory paragraphs above shall be incorporated herein as findings of fact of the Board.
2. Applicant is the lessee of the Property pursuant to a Lease Agreement dated February 4, 2019 which was admitted into the record as Exhibit A-1.
3. The Property is located on the northwest corner of West Chester Pike and Ellis Lane and contains a total of 1.046 acres of land.
4. The Property is located in the C-5 General Highway Commercial District.
5. The Property is currently improved with a commercial building containing approximately 2,200 square feet which was previously occupied as a bank branch office with a drive through.
6. The existing building on the Property is currently vacant.

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<sup>1</sup> In order to be granted standing, a party must show that he or she is an aggrieved party by establishing a substantial, direct and immediate interest in the application. Friends of Lackawana v. Dunmore Borough Zoning Hearing Board, 186 A.3d 525, 532 (Pa. Cmwlth. 2017); Laughman v. Zoning Hearing Board of Newberry Township, 964 A.2d 19, 22 (Pa. Cmwlth. 2008). In order to be aggrieved, a person or party must have a direct interest that is adversely affected by the challenged action. A substantial interest is one in which there is some discernible adverse effect to some interest other than an abstract interest that all citizens have. *Id.*

7. Applicant seeks approval to use the existing building on the Property as a medical marijuana dispensary which is permitted by conditional use of the Board pursuant to Section 84-32.M(10) of the Ordinance.

8. Applicant proposes to renovate the façade of the building and to extend the roof of the drive-through of the existing building by approximately 4 feet over an existing macadam driveway or pavement area to create a 575 square foot secure delivery area for the dispensary.

9. Applicant currently operates a medical marijuana dispensary in Philadelphia and in Bristol, Bucks County, Pennsylvania.

10. Applicant applied for a medical marijuana dispensary permit from the Commonwealth of Pennsylvania, Department of Health pursuant to the Medical Marijuana Act, 35 P.S. §10231.101 *et seq.* (the "Act").

11. The permit issued by the Commonwealth allows Applicant to open three different dispensary locations under the same permit.

12. Applicant presented as Exhibit A-3 a letter mailed June 29, 2017 from the Pennsylvania Department of Health indicating that the medical marijuana dispensary permit application submitted by Applicant was granted. The correspondence from the Department of Health references a facility name and location in Bristol Pennsylvania not the subject property.

13. Applicant presented detailed testimony and written evidence explaining how the dispensary will be operated on a daily basis in compliance with the Act and regulations promulgated thereunder. *See Exhibit A-2.*

14. Applicant presented detailed testimony and written evidence explaining how access to the dispensary will be limited and closely monitored. Some of the measures that Applicant described include prohibiting individuals under 18 years of age from entering the dispensary unless the individual is a patient or is accompanied by a parent, guardian or caregiver. This restriction will be visibly noted on a sign at the one public point of entry to the dispensary. *See Exhibit A-2.*

15. Additional access to the dispensary will be limited to authorized agents and authorized vendors. Each limited access area will have a conspicuously posted sign which reads "DO NOT ENTER" and "LIMITED ACCESS AREA."

16. Authorized visitors must be logged in and out of the dispensary in a written visitor log, display a visitor identification badge and be accompanied by an authorized agent at all times.

17. While not going into great detail due to security concerns, Blythe Huestis, the President and Director of Retail Operations for Applicant, testified that the dispensary will implement numerous security measures including use of a security guard while the dispensary is open to the public, a secure waiting room, security cameras that monitor the entire facility, panic buttons, duress alarms, glass breaks, motion detectors and a secured delivery area.

18. Applicant testified that medical marijuana will be dispensed in strict accordance with the procedures and protocols required by the Act. For example, patients and their caregivers must present a medical marijuana license issued by the Pennsylvania Department of Health in order to be escorted into the room where the medical marijuana is stored and will be dispensed. The patients will receive the medial

marijuana in the forms permitted by the Act.

19. The dispensary will have full-time medical staff at the site including doctors and licensed pharmacists who will be available to answer questions raised by patients who have received a license from the Department of Health to obtain medical marijuana for one of the 21 prescribed medical conditions under the Act.

20. The hours of the operation of the dispensary will be 9:00 a.m. to 8:00 p.m. Monday, Tuesday and Wednesday, 9:00 a.m. to 9:00 p.m. Thursday, Friday and Saturday and 11:00 a.m. to 5:00 p.m. on Sunday.

21. Applicant presented a surveyor's report certifying that the Property is more than 1,000 feet from a day care and school in compliance with the Act.

22. Applicant presented a proposed floor plan for the dispensary which identifies the entrances, vestibule, waiting room, restricted access sales floor, restricted access inventory, employee offices and lounges, secure loading and unloading dock. See Exhibit A-8.

23. Applicant presented architectural renderings of the proposed lobby area and the sales floor as Exhibits A-11 and A-12 respectively.

24. Applicant also introduced an architectural rendering for the proposed change to the exterior façade of the building which was introduced as Exhibit A-9.

25. Applicant testified that it will install signage on the Property that is tasteful and does not identify that the premises is a medical marijuana dispensary. The signs will be similar to those depicted on the architectural rendering which was admitted as Exhibit A-9 and will comply with the Ordinance.

26. Deliveries of the medical marijuana to the building will utilize the existing drive-through which Applicant proposes to enclose similar to that depicted on the architectural rendering of the proposed enclosed drive-through area which was admitted into the record as Exhibit A-10.

27. The Board introduced the following exhibits at the hearing:

B-1: Conditional Use Application with cover letter from John A. Jaros, Esquire, dated January 25, 2019

B-2: Proof of Publication in the Daily Local News on February 4, 2019 and February 11, 2019

B-3: Affidavit of Posting and photographs of posting on February 5, 2019 and list of adjacent property owners who received notice of hearing

B-4: West Goshen Township Planning Commission Draft Meeting Minutes dated February 12, 2019

28. Applicant introduced the following exhibits at the hearing:

A-1 First and last page of Lease Agreement (redacted)

A-2 Overview of the Proposed Facility

A-3 Dispensary Permit from the PA Department of Health dated 6/29/17

A-4 Surveyors Report prepared by Rodriguez Consulting dated 1/24/2019

A-5 ChescoView of the property

A-6 Buffer Map

A-7 Conditional Use Plan prepared by D.L. Howell dated 1/24/2019, last revised 2/15/2019

A-8 Floor Plan of the Proposed Facility prepared by The Sheward Partnership, LLC

A-9 Front Entrance Rendering

A-10 Secure Delivery Rendering

A-11 Rendering of Lobby Area

A-12 Rendering of Sales Floor

A-13 CV of Chris Daily

29. None of the parties presented any written evidence but did express their objections to the proposed dispensary to the Board

30. Mr. Camponile is concerned about the proximity of the dispensary to residential homes, schools, and the Goshen Fair grounds is concerned about security and crime that he believes will result from the proposed dispensary.

31. Ms. Willard also expressed her concern over safety if the use is approved.

32. Mr. Wiggins was concerned about the parking for the dispensary.

#### **CONCLUSIONS OF LAW**

1. Applicant, as lessee of the Property, has standing to file the Application.

2. The conditional use hearing was duly advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and the Ordinance and the Property was posted in accordance with the requirements of the MPC.

3. The Property is zoned C-5 General Highway Commercial District.

4. A medical marijuana dispensary is permitted by conditional use in the C-5 District pursuant to Section 84-32.M(10) of the Ordinance.

5. Applicant has proven compliance with the criteria in Section 84-75 of the Ordinance.

6. No party presented substantial evidence to demonstrate that the proposed use would have negative impacts on the health, safety or welfare of the surrounding properties.

## DISCUSSION

Applicant seeks conditional use approval for a medical marijuana dispensary. A medical marijuana dispensary is a new use which became a lawful use of land in the Commonwealth of Pennsylvania on May 17, 2016 when the Medical Marijuana Act, 35 P.S. § 10231-101 *et. seq.* went into effect. The Act's intent is to provide access to medical marijuana and provide a safe and effective method of delivery of medical marijuana to certain patients who suffer from serious medical conditions stated in the Act. A dispensary is defined in the Act as "a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the Department of Health of the Commonwealth to dispense medical marijuana." 35 P.S. § 10231-103. "Medical marijuana" is defined in the Act as "marijuana for certified medical use as legally permitted by the Commonwealth of Pennsylvania with [the Act.]. 35 P.S. § 10231-103.

In the Act and its enabling regulations, which are codified in Chapter 64 of the Pennsylvania Code, the Commonwealth heavily regulates almost all aspects of a medical marijuana dispensary. The Department of Health issues permits, registers practitioners, maintains patient and doctor databases and enforces regulations such as: 1) requiring a physician or pharmacist present at the facility at all times; 2) no individuals under 18 years of age may be employed by dispensary; 3) inspections conducted and reporting requirements to the Commonwealth; 4) the marijuana must be stored indoors in an enclosed, secure facility; and 5) no delivery of medical marijuana to a patient's home.



The Act provides that a dispensary shall meet the same municipal zoning and land use requirements as other commercial facilities that are located in the same zoning district. 35 P.S. §10231-§2017. Based on such law, the Board made a legislative determination that a medical marijuana dispensary is similar to a pharmacy and thus should be permitted in the same zoning districts as pharmacies- including the C-5 District, by conditional use approval of the Board.

A conditional use is a permitted use, subject to an applicant's proof of compliance with all applicable conditions and criteria imposed by the Ordinance and reasonable conditions of approval imposed by the Board. A conditional use is not a use which the Board has the unfettered discretion to approve or deny. Rather, the Board is governed by the objective criteria and standards enunciated in the Ordinance when determining whether to grant an application. If the applicant can prove that it complies with the terms of the Ordinance authorizing a conditional use, the Board must grant the conditional use unless substantial evidence was presented to prove that the use will result in substantial injury to the public interest. Susquehanna Twp. Board of Commissioners v. Hardee's Food Systems, Inc., 59 Pa. Cmwlth. Ct. 479, 430 A.2d. 367 (1981; Appeal of Estate of Achey, 86 Pa. Cmwlth. Ct. 385, 484 A.2d. 874 (1984), *aff'd* 501 A.2d. 249 (Pa. 1985).

In granting a conditional use, the Board has the authority to impose reasonable conditions and safeguards in addition to those expressed in the Ordinance, if such conditions are necessary to implement the purposes of the Ordinance and to protect the health, safety and welfare of the surrounding property owners. See Pennsylvania Municipalities Planning Code, Section 603(c)(2), 53 P.S. §10603(c)(2).

Applicant has demonstrated compliance with the subjective criteria in Section 84-75 of the Ordinance. Moreover, Applicant has testified that it will comply with the stringent state regulations governing medical marijuana dispensaries. Applicant also testified that it is currently operating a medical marijuana dispensary in the Philadelphia and Bristol and it has not been issued any fines or notices of violation from the Department of Health. No substantial evidence was presented to indicate that the proposed medical marijuana dispensary will result in injury or adverse impacts to the neighboring property owners.

Thus, the Board will vote to approve the conditional use subject to conditions listed herein below.

#### **ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Application filed by Applicant, the Board votes to approve a conditional use pursuant to Section 84-32.M(10) of the Ordinance to allow Applicant to use the existing building on the Property as a medical marijuana dispensary subject to the conditions of approval stated below.

#### **CONDITIONS OF APPROVAL**

1. The dispensary shall be operated in substantial conformity with all evidence and testimony presented by Applicant, including but not limited to the details provided in the overview of the proposed facility which was admitted into the record as Exhibit A-2 which is attached hereto as Exhibit "A".

2. Applicant shall provide a permit or other correspondence from the Pennsylvania Department of Health confirming that the permit which was admitted into

the record as Exhibit A-3 is valid for the proposed dispensary to be located on the Property.

3. For so long as Applicant operates a dispensary on the Property, it shall obtain and maintain a valid permit issued by the Pennsylvania Department of Health. Applicant shall maintain a copy of the current permit for the medical marijuana dispensary on file with the Township.

4. If Applicant receives any notices of violation or other citations issued by the Commonwealth of Pennsylvania citing it for violations of any provisions of the Act or any other state law, it shall send a copy of said notice of violation to the Township. Applicant shall thereafter communicate with the Township as to how the alleged notice of violation was abated or remedied.

5. Applicant shall restrict vehicles from entering the drive-through lane from Ellis Lane and shall limit any traffic traveling in the drive-through lane to delivery vehicles. Applicant shall install appropriate signage that informs traffic that the drive through lane is limited to delivery authorized vehicles.

6. If applicant installs any signs on the Property to advertise the name of the dispensary, such signs shall comply with the Act and the Ordinance.

7. Applicant and its successors and assigns in interest to the Property shall be strictly bound by: 1) all of the representations, warranties and commitments made by or on behalf of the Applicant in the testimony, plans and other exhibits that were introduced into the record on these proceedings, whether or not express reference is made to said representations, warranties and commitments in this Decision; and 2) all of the foregoing conditions of approval.

8. Applicant shall accept the above conditions in writing addressed to the Board within fifteen (15) days of its receipt of this Decision. Failure to accept all of the conditions shall constitute a denial of this application as their acceptance is necessary to comply with the applicable sections of the Ordinance.

ATTEST:

**BOARD OF SUPERVISORS  
WEST GOSHEN TOWNSHIP**

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Casey LaLonde, Secretary

BY: \_\_\_\_\_  
Robin Stuntebeck, Chair

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Hugh J. Purnell, Jr., Vice-Chair

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Mary R. LaSota, Esq., Member

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Edward G. Meakim, Jr., Member

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Christopher Pielli, Esq., Member