

August 6, 2018

BRE 001.01

USE VARIANCE JUSTIFICATION NARRATIVE

Application Information

1909 Associates, LLC
Block 174, Lots 3, 4 & 8; Block 173, Lots 2 & 6
2714 Atlantic Avenue, 2710 Monterey Avenue, 2719 Pacific Avenue,
14 South California Avenue & 2712 Atlantic Avenue

CBD Central Business District & RC Resort Commercial Zoning District

The Applicant proposes the adaptive reuse of an existing building on the block bound by Iowa Avenue, Atlantic Avenue, Pacific Avenue and California Avenue for a use that is a combination of retail, agricultural production and harvesting of cannabis. The site is split between the Central Business District (CBD) and the Resort Commercial (RC) District. The retail use is permitted in both zones. Neither zone specifically permits agricultural use. As such the Applicant seeks a variance pursuant to N.J.S.A. 40:55D-70(d)(1) for the agricultural component of the use.

The site is fully developed with the building and existing parking facilities. Improvements proposed are interior fit out for the proposed retail and agricultural operation, along with secure building access upgrades and security cameras on the outside of the building.

Beyond the building improvements, it is important to note that the functionality of the proposed use has been planned in detail by the operator, Cresco. They have success in operating facilities similar to that proposed with this application in other locations such as Illinois, Pennsylvania and Ohio. An operations narrative is included as part of the application materials, a general outline of which is as follows:

1. The operator has a wealth of experience running similar facilities and will bring that experience to Atlantic City to develop a local workforce to continue the company's success;
2. The company's operations focus on safety, consistency and compliance with applicable regulations;
3. Cresco intends to create economic development through local hiring, technical training at other operating facilities, and onsite training with existing experienced staff from other locations;
4. Cultivation techniques focus on sustainability, good farming practices, and minimizing environmental impact;

5. The layout of the facility is designed to compartmentalize the different pieces of the operation to limit employee access;
6. Dispensing operations will be focused on patient convenience, consistency and security;
7. Security features include architectural security such as building perimeter protection, lighting, entry control and loading and shipping area security, an electronic security system and organizational elements such as visitor control, employee badging, security staff and surveillance.

Relief Requested

Variance pursuant to N.J.S.A. 40:55D-70(d)(1)

A land use board is authorized to grant a use variance only “[i]n particular cases and for special reasons.” N.J.S.A. 40:55D-70(d). This is sometimes referred to as the positive criteria for the grant of a use variance. *Smart SMR of New York, Inc. v. Borough of Fair Lawn Bd. of Adjustment*, 152 N.J. 309, 323 (1998). “Special reasons” is not specifically defined but has been broadly interpreted to mean reasons which advance the purposes of the Municipal Land Use Law. New Jersey case law recognizes three categories of circumstances in which the “special reasons” required for a use variance may be found: (1) where the proposed use inherently serves the public good, such as a school, hospital or public housing facility, see *Sica v. Bd. of Adjustment of Wall*, 127 N.J. 152, 159-60 (1992); (2) where the property owner would suffer “undue hardship” if compelled to use the property in conformity with the permitted uses in the zone, see *Medici v. BPR Co.*, 107 N.J. 1, 17 n.9 (1987), and (3) where the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” *Smart SMR*, supra, 152 N.J. at 323 (quoting *Medici*, supra, 107 N.J. at 4).

In addition, an applicant for a use variance must show that the variance “can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.” N.J.S.A. 40:55D-70. This is sometimes referred to as one of the “negative” criteria for the grant of a variance. *Smart SMR*, supra, 152 N.J. at 323.

Positive Criteria

In this case, the Applicant must demonstrate that the use would serve the general welfare because “the proposed site is particularly suitable for the proposed use.” The test is whether the public benefits because of the community’s need for the use itself. In this case, the proposed use will serve the general welfare because the site is particularly suitable for the proposed use. The site contains an existing building that has adequate space and efficient layout for the proposed agricultural operation, it is located near doctor’s offices who may prescribe the products developed at the site, and it is located near safe pedestrian and public transit access routes Atlantic and Pacific Avenues for customers, employees and the general public. An example of the surrounding businesses that this use will support and complement is as follows:

1. Office of Christine Mayor, APN at 2829 Atlantic Avenue
2. Office of Dr. Linda Stanley, MD at 3207 Atlantic Avenue
3. Offices of Dr. Maria Teresa and S. Daclan, MD at 13 North Hartford Avenue
4. Office of Daud Pana, PC at 6 North Mississippi Avenue
5. Office of Khattar Jayashree, MD at 1925 Pacific Avenue
6. Office of Dr. Mary Onwuka at 1925 Pacific Avenue

The site is conveniently located along Atlantic Avenue and proximate to the Chelsea neighborhood meaning residents can walk to the site or take advantage of public transportation available in the area, rather than having to drive out of the City for similar services.

As summarized in the application materials provided by the Applicant, the facility will be run by a company specializing in medical marijuana cultivation, processing and retail sales with specific experience in highly-regulated states of Illinois, Pennsylvania and Ohio. This use also serves the general welfare because it will be providing a service to help those in need of medical relief associated with disease and illness such as cancer and post-traumatic stress disorder. By keeping the agricultural use combined with retail sales, it allows for efficient product development, handling, packaging and security. It also lessens the environmental impact by not having to transport material from typical agricultural fields outside of the urban environment to a retail store.

This use will also bring new jobs to Atlantic City, which is a focus of the City and State administration. Both of those administrations have also clearly showed they support the cannabis industry beyond the medicinal use approved in 2012.

Multiple purposes of zoning, as enumerated at NJSA 40:55D-2, are advanced by this application:

- a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;

As previously described, the general welfare of the public is advanced by this use since it provides much needed alternative treatment options for patients suffering from illness and disease that is not managed well by other types of medication. Pursuant to 24:61-2 Findings, declarations relative to the medical use of marijuana, "the Legislature finds and declares that: a. Modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999;"

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

This application provides sufficient space in appropriate locations for an agricultural use in an area that does not currently have such facilities to help meet the medical needs of all New Jersey citizens. It would appear agricultural use is not specifically permitted due to the high density urban environment of Atlantic City, but the urban landscape is changing and the indoor cultivation of cannabis is necessary for proper cultivation, harvesting, processing and security of the product. Adaptive reuse of an existing structure for this purpose advances the purposes of zoning.

- m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

Since this application includes the adaptive reuse of an existing building, in lieu of disturbance to virgin ground or replacement of another harvest crop at an existing farm, it is an efficient use of land that will lessen the cost of not only the development of the use, but also in the operation due to reduced delivery and transportation costs and less environmental impact by having the entire operation, start to finish, at the same location under one roof.

In addition, the proposed project will advance a goal of the CRDA Tourism District Land Development Rules which is to “encourage innovative land uses and public-private partnerships to stimulate new markets and strengthen and diversify the Tourism District's economic base.” This innovative use will strengthen and diversify the Tourism District's economic base, bring jobs to the City, and provide an opportunity to enter a market that is not yet served in Atlantic City.

Negative Criteria

To assure that a land use agency does not usurp the governing body's statutory authority to determine the municipality's zoning, an applicant for a use variance must show by “an enhanced quality of proof . . . that the variance sought is not inconsistent with the intent and purpose of the master plan and zoning ordinance” and the Board must make “clear and specific findings” that this showing has been made.” *Medici*, 107 N.J. at 21. “The applicant's proofs and the board's findings . . . must reconcile the proposed use variance with the zoning ordinance's omission of the use from those permitted in the zoning district.”

Since the proposed agricultural use was not contemplated when developing the CRDA Tourism District Land Development Rules, a use variance is appropriate in lieu of a change to the zoning standards. This unique agricultural use, which will be completely enclosed within the existing building, will not look or function differently than any other permitted use, and it will not create a development intensity, traffic, noise, glare, vibration, odor or any other potentially negative impact than what would come from any other permitted use in the district. For these reasons, granting of a use variance to permit this use will not negatively impact the character of the neighborhood, the general health, safety and welfare of the public, or negatively impact the master plan, zone plan or zoning ordinance.