

HEALING SIDE, LLC

NARRATIVE

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The proposed property owners are requesting a use variance for a micro dispensary at 2415-2417 Pacific Avenue, Atlantic City New Jersey . The proposed use as micro dispensary of recreational marijuana is not defined as a legal use as in the subject zone although under the control of the CRDA. However , the requested use is a permitted use according to recent legislation passed. The operatoring LLC of the property is a recognized woman's business entity (copy of certificate is attached), and the five operators are all licensed pharamists in the State of New Jersey. Previously, before the passage of recreational marijuana use, the subject property was approved as a medical dispensary as it is outside of the City's established drug free zones (see attached Map).

A cursory review of the case law and facts indicates the positive impacts far outwieh the negative criteria. The subject site has plenty of parking and was formerly operated as a cash for gold operation and a Poppa Johns restaurant . The property has been vacant for so long that the CRDA has no documentation on its prior use and the applicant is still waiting for documents the city has in archives. (documents are now two weeks overdue from an OPRA request to the City). This vacant property has been vandalized by homeless , is a "hang out " for prostittues and the rear of the facility is a place of illegal drug use and sales. The applicant plans on cleaning the premises, providing a new design , providing lighting and mainttaing the property which would incude 24/7 security until the above referenced issues are fully addressed.

Although only a subsection a. of N.J.S. 40:55D-2 refers to the "general welfare," meeting any of the other purposes listed in that section , it has been consistently construed as serving the general welfare. However, as the Court in Kohl v. Mayor and Council of Fair Lawn, 50 N.J. 268, 279-280 (1967) made clear "there must be a finding that the general welfare is served because the use is peculiarly fitted to the particular location for which the variance is sought. [citations omitted]. This is so because nearly all lawful uses of property promote, in greater or lesser degree, the general welfare." This requirement has been consistently reiterated by New Jersey courts, most notably by Medici v. BPR, Co., 107 N.J. 1, 4 (1987). See Also Stop & Shop v. Springfield Tp. Bd. Of Adj., 162 N.J. 418, 431 (2000); New Brunswick Cellular v. Bd. Of Adj. 160 N.J. 1,6 (1999); Smart SMR v. Fair Lawn Bd. Of Adj., 152 N.J.309, 323 (1998); Burbridge v. Mine Hill Tp.,117 N.J. 376, 386 (1990); Saadala v. E Brunswick Zoning Bd., 412 N.J. Super. 541, 550-551 (App. Div. 2010); Saddle Brook Realty v. Saddle Brook Zoning Bd. Of Adj., 388 N.J. Super. 67, 76 (App. Div. 2006). See discussion of the site suitability component of the positive criteria at 32-4.1. Also note there the discussion of whether the site suitability test applies or should apply inherently beneficial uses.

The general welfare purpose is frequently found to be promoted by uses deemed "inherently beneficial," such as hospitals and schools.

Although not set forth as a specific purpose of zoning as it had been in the prior zoning law (N.J.S. 40:55-32), the Supreme Court has stated that the preservation of the character of a neighborhood and conservation of neighborhood values are still proper zoning purposes, relying particularly on the general welfare purpose, as well as N.J.S. 40:55D-2e and i. Home Builders League of So. Jersey, Inc. v. Tp. Of Berlin, 81 N.J. 127, 145 (1979).

Promotion of a State policy has also been held to advance the general welfare and thus serve as the basis for the grant of a use variance. *Anfuso v. Seeley*, 243 N.J. Super. 349 (App. Div. 1990). The subject request promotes a use approved by the State, cleans a formerly vacant property which fostered illegal activity, makes the neighborhood safer and cleaner, and is exactly between a former adult club and a liquor store. Hence, the Petitioner respectfully suggests that the suggested use is a vast improvement over the activities that formerly occurred in this location.