

IN THE MATTER OF	*	BEFORE THE
VILLAGE GREENWOOD, LLC - LEGAL	*	BOARD OF APPEALS
OWNERS AND TEMESCAL WELLNESS	*	OF
OF MARYLAND, LLC, LESSEE	*	BALTIMORE COUNTY
PETITIONERS FOR SPECIAL	*	CASE NO: 17-281-X
EXCEPTION ON THE PROPERTY	*	
LOCATED AT 1636 REISTERSTOWN ROAD	*	
3 <sup>rd</sup> Election District	*	
2 <sup>nd</sup> Councilmanic District	*	
* * * * *		

**OPINION AND ORDER**

This case comes to the Board following appeal from the Administrative Law Judge Opinion and Order, dated June 23, 2017, and the related Opinion and Order on Motion for Reconsideration, dated June 29, 2017, ultimately granting the Petition for Special Exception.

A *de novo* hearing was held on October 17 and October 24, 2017. The parties were represented by counsel: Adam Rosenblatt, Esquire, represented Petitioners; Michael McCann, Esquire, represented most of the Protestants, particularly, Pikesville Communities Corporation, Eleven Slade Apartment Corporation, Ruth Hoffman, and Revanne Aronoff; and Howard Needle, Esquire, represented the remainder, including Pine Ridge Community Association, Arnold Slade, and Linda Halpert.

Petitioners called two (2) witnesses in their case-in-chief and on rebuttal: Ted Rebholz, CEO of Temescal Wellness of Maryland, LLC, who was called as a fact witness and also as an expert witness in the legal cannabis industry, and Mitchell Kellman, an expert witness in land use and zoning. Protestants called numerous residents from the surrounding communities, including Revanne Aronoff, Linda Halpert, Dr. Herman Brecher, Arnold Simon, Theresa John, Bernard Stokes, Ruth Goetz, Jane Barrett, Roberto Lizano, and Mr. Needle, as well as witnesses with business interests within the subject area, particularly Rebecca Hodnot, the property manager of

the nearby Pomona Park and Pomona Square, and Gregory Kennedy, Corporate Counsel for Southern Management Corp. Protestants also relied on the testimony of two expert witnesses, Bruce Doak as an expert in property line surveying, land planning, and Baltimore County special exception matters, and Christopher Jakubiak, an expert in land development and zoning. A pressing deadline related to the Petitioners' licensing necessitated an accelerated schedule for the parties' post-hearing memoranda and the Board's public deliberation.

At the deliberation, held on October 31, 2017, the Board concluded that Petitioners presented sufficient evidence to grant their Petition, but imposed several conditions to address concerns and issues raised by Protestants and their supporting witnesses that arose during the course of the two-day hearing.

### **Background**

In 2013, Maryland enacted legislation to establish a medical marijuana program, one that is heavily regulated and requires certain licensing, classified as processor, grower, and dispensary, though as Mr. Rebholz testified, there are up to fifteen state-wide licenses that permit a licensed grower to also have a licensed dispensary. State law restricts the number of dispensary licenses to two per legislative district, which, as per Mr. Rebholz, results in a maximum of ninety-four total licenses, but that is independent of the even more limited hybrid grower-dispensary license. As such, it is possible to have three dispensaries within a legislative district.

In 2015, Baltimore County, envisioning the related zoning issues on the horizon, enacted regulations regarding the operations of medical marijuana facilities. While petitions had been filed by other parties for other locations, this is the first case regarding medical cannabis zoning matters in front of this Board and therefore, is a case of first impression.

It is generally assumed that medical cannabis products are the same as the marijuana perhaps available for purchase and/or use in various college dorms, alleyways, and/or coffee shops in Amsterdam. Unbeknownst to most, not all medical cannabis products cause the euphoria associated with marijuana. Many of the products that will be available onsite will have different chemical composition and properties so that consumption of many of the dispensaries' cannabis products will not result in the psychoactive effects of tetrahydrocannabinol (THC). See Petitioner's Ex. No. 4.

The property at issue is located at 1636 Reisterstown Road, which is at the intersection of Reisterstown Road and Naylor's Lane. The property is .54 acres and was developed in the 1960s, such development consisting of one building with parking spaces running adjacent to Naylor's Lane, and continuing at the intersection with additional parking spaces facing Reisterstown Road, as well as spaces facing the building, with some additional parking spaces past the Reisterstown Road entryway to the property facing the adjacent Seasons grocery store. In addition to Seasons, the Pomona development to the north (which includes residential and commercial uses), St. Mark's on the Hill, Druid Ridge Cemetery and Sunrise of Pikesville are within close proximity. Formerly, this property had been leased to a dress store on one side and a 7-Eleven on the other, but more recently, had simply been vacant for the last several years.

The property is snugly situated within the Pikesville Commercial Revitalization District. Baltimore County, as reflected in its Master Plan 2020, recognizes the value of and importance in reinvesting and reanimating these formerly vibrant commercial areas, and as such, has created and adopted several policies geared toward that end:

1. Retain and attract quality retail, office, service, residential, entertainment, and institutional uses that create well balanced and economically vital mixed-use.

2. Improve the appearance and walkability of the [Commercial Revitalization] Districts.
3. Market Commercial Districts to potential businesses and patrons.

(Master Plan 2020, Economic Vitality, p. 137-141).

Had the matter been located outside of the Commercial Revitalization District, there would be no need or requirement for a hearing. Baltimore County permits medical cannabis dispensaries in the BL Zone by right. BCZR §4D-102(A)(1). The County Council, presumably to further the policies aiding commercial revitalization districts, required a special exception approval for medical cannabis dispensaries seeking to be located within BL-zoned areas within such districts. BCZR §4D-102(A)(2). The significance of the property's location within the Commercial Revitalization District gives rise to the need for the subject petition and hearing.

While the regulations governing medical cannabis facilities (Article 4D) do not expressly identify BCZR “Section 502 Special Exceptions,” the reference to “special exception” is well understood to trigger review under BCZR Section 502. Section 502, entitled, “Special Exceptions,” contains eleven subsections enumerated §502.1-§502.10 (with separate subsections designated as §502.5 and §502.5A). The only subsections within Section 502 applicable herein are §502.1, with its own nine factors for consideration, and §502.2, which concerns the imposition of conditions as “necessary or advisable for the protection of surrounding and neighboring properties.” BCZR §502.2. Under BZCR §502.1, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property’s zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

As noted above, the Petition concerns a medical cannabis dispensary, which the BCZR defines as a “person or entity licensed by the state that acquires, possesses, transfers, sells, dispenses, or distributes products containing medical cannabis and related supplies and products pursuant to COMAR 10.62.01 to 10.62.35.” BCZR §4D-101. To that end, Mr. Rebholz testified that the facility at issue would be strictly limited to dispensary operations and would not serve as a grower or processor of cannabis products.

Mr. Rebholz testified at length regarding the strict statutory and regulatory requirements. Seemingly, all facets of the business are heavily controlled and monitored, including: the registration of physicians who can provide cannabis recommendations to patients; the tracking of patients and their purchases to limit how much any patient can purchase per month; security matters; product handling; and dispensary agent registration, among other issues. See, e.g. Health Art. §§13-3301-3316; COMAR 10.62.01-10.62.35.

### **Decision**

A “special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys the presumption of validity.” Attar v. DMS Tollgate, LLC, 451 Md. 272, 286; 152 A.3d 765, 774 (2017) citing, Schultz v. Pritts, 291 Md. 1, 11; 432 A.2d 1319, 1325 (1981). A petitioner in a special exception case has both the burden of proof and burden of persuasion. Attar, 451 Md. at 286; 152 A.3d at 774. Petitioners must persuade the Board “by a

preponderance of evidence that the special exception will conform to all applicable requirements.”

Id., quoting People’s Counsel for Balt. Cty. v. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008). Therefore, though presumed valid, Petitioners in a contested case are required to present evidence to establish a *prima facie* case irrespective of the presumption. Id. Put another way, in Schultz v. Pritts, the Court of Appeals stated:

[T]he applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide.

291 Md. at 11; 432 A.2d at 1325. To overcome the presumption, Protestants need to present evidence that reveals that the adverse effects from the subject matter at issue in the special exception go “above and beyond those inherently associated with such use under the Schultz standard.” Attar, 451 Md. at 287; 152 A.3d at 774, citing, Schultz, 291 Md. at 15; 432 A.2d at 1327.

Therefore, Petitioners, in this *de novo* hearing, had the burden of proof to present sufficient evidence that the petition will meet the requirements set forth in BCZR §502.1. As stated earlier, BZCR §502.1 identifies nine factors for consideration before any special exception may be granted. It must appear that the use for which the special exception is requested will not violate or compromise any of the factors.

Protestants focused their arguments upon the parking, “unsafe conditions” and/or potential crime, and inconsistency with the Master Plan. See, e.g., Protestants’ Post-Hearing Memorandum,

at p. 2. Several of the BCZR §502.1 factors are not disputed and/or are not at issue. Particularly, factors:

- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; and
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

are not contested and can be quickly dispensed with from this discussion. The Board finds that, based on the evidence presented and/or inapplicability (as relevant) of D, E, F, H, and I, the proposed dispensary does not appear to violate or compromise those factors, leaving only four §502.1 factors for discussion.

Protestants though characterize their arguments in a manner that blurs the distinct lines that separate one factor from the next. In particular, Protestants identify the possibility of an increase in crime and raise onsite parking issues, as well as the on and off-site negative effects resulting from those issues. Rather than try to place the issues within an ill-fitting §502.1 category and/or address the same general topic over multiple §502.1 categories, Protestants' issues will be addressed with the understanding that multiple categories apply to the matters raised.

1. Potential for an Increase in Criminal Activity

The primary concern raised by Protestants was the possibility that those inclined to engage in criminal activity may be attracted to the dispensary, which may further result in an increase in criminal activity in the general area.

Mr. Rebholz provided comprehensive testimony that the proposed security measures address the concerns raised. For example, entry to and exit from the dispensary will be controlled. All employees of the dispensary are required to undergo a background check and then, once hired, have some security training. Some of those employees will actually function as security. Security will meet patients prior to the front door entrance. For entrance, patients are required to show to a camera a government-issued identification card that permits them to be onsite. Once the door is opened, the identification card will be checked by staff and confirm via state registry that the patient is presently registered to use medical cannabis. Once confirmed, a second door will open. The entryway system will only permit one of the two doors to be open, creating what Mr. Rebholz referred to as a “Man Trap.” The patient’s identity will be examined and verified a third time just prior to purchasing products. Once the transaction (limited to cash or debit cards) is complete, the patient will be escorted to the exit door, which is different from and not attached to the exterior entry door. Under no circumstances will onsite consumption of products be permitted.

The proposed dispensary will have numerous cameras on site, depicting the interior and exterior of the facility. The amount cash contained within the registers will be limited, with regular storing of the cash in an onsite vault. Similarly, the onsite storage of cannabis products will also be limited and stored in a vault. The vault is required to be made of high-grade materials and not touch any exterior walls. The vault will be equipped with a dual authentication process for access and not all employees will have access. Deliveries will be made via unmarked vehicles, which will also have transport manifests. The exterior lighting will be equipped with motion sensors. The interior, as can be expected, also will be equipped with motion detectors and an alarm system.

Numerous Protestants and their witnesses expressed general concerns that the presence of marijuana may result in an increase in crime. For example, Mr. Simon, Ms. Hodnett, Ms. John,



Ms. Barrett, and Mr. Lizano all presented testimony to this effect. The general public’s association between marijuana and crime is understandable. For nearly a century, marijuana has been criminalized and, more frequently than not, has been characterized in a negative light (e.g. “Reefer Madness”). These statements are not to serve as commentary on the complicated history of marijuana in the United States, but rather acknowledgement of the challenge presented by society’s evolution in its perception of marijuana and the medical uses for cannabis products in light of the generally, and sincerely, held beliefs about marijuana and the association of marijuana with negative societal effects.

This negative association implicit in such testimony is not evidence upon which the Board can find that Protestants effectively rebutted the presumption attendant to special exception uses. Protestants have not presented evidence upon which the Board may reasonably conclude that there is a reasonable likelihood or probability that medical cannabis dispensary operations at this subject location would cause an increase in criminal activity in the surrounding area. See, e.g., Lyon v. Campbell, 120 Md. App. 412, 437; 707 A.2d 850, 863 (1998), citing, Myers v. Bright, 327 Md. 395, 399; 609 A.2d 1182 (1992); Fowler v. Smith, 240 Md. 240, 247; 213 A.2d 549 (1965); Bethlehem Steel Co. v. Jones, 222 Md. 54, 58; 158 A.2d 621 (1960); Reeves Motor Co. v. Reeves, 204 Md. 576, 581; 105 A.2d 236 (1954).

A mere possibility or other speculative evidence is insufficient. Id. Even then, in this context, Protestants would have to present evidence that the risk in increased criminal activity in the surrounding area is greater with medical cannabis dispensary operations at this subject location than another BL-zoned property within the revitalization district. No evidence has been presented to support a finding that this location is particularly problematic for these operations.

Protestants attempted to introduce an academic article through the testimony of Mr. Simon. The article concerned statistics and/or other findings and opinions as to increased criminal activity within the general area in the vicinity of recreational marijuana establishments in Colorado. Upon objection by counsel for Petitioners, the Board ruled that the article and related testimony were inadmissible.

Mr. Simon, without expertise in the subject matter of the article, read the article and drew conclusions therefrom. Therefore, the testimony presented was a lay person's understanding and opinion about a possible expert witness' findings, conclusions and opinions. To be clear, this is not a criticism of Mr. Simon. To the contrary, it was more than evident that the subject matter of the article greatly assisted Mr. Simon in becoming more informed on the subject matter and in his advocacy. However, introducing such evidence in this manner presents numerous problems even with the more relaxed evidentiary rules utilized by the Board in these cases. Baltimore County Board of Appeal Rule 7(A) sets forth (as is relevant):

Any evidence which would be admissible under the general rules of evidence applicable in judicial proceedings in the State of Maryland shall be admissible in hearings before the county board of appeals. Proceedings before the board being administrative in nature, the board will not be bound by the technical rules of evidence but will apply such rules to the end that needful and proper evidence shall be most conveniently, inexpensively and speedily produced while preserving the substantial rights of the parties.

Protestants sought to use this evidence to establish that there was causation, or at least a correlation, with the increase in criminal activity in the area within the vicinity of one or more recreational marijuana facilities in Colorado. As such, from Protestants' perspective, it was reasonable to conclude that a similar result will be experienced in Pikesville.

First, for Protestants to introduce this evidence through Mr. Simon, cross examination for Petitioner would be limited to Mr. Simon's understanding of the article, rather than cross examination of the underlying findings, conclusions, opinions, methodologies, and potential biases within the article and of its authors. Relatedly, fairness dictates that the subject matter of the article presented would require either advance notice to the opposing party or a continuance to permit Petitioner time to review and investigate the article and decide whether an expert would be needed to rebut the opinions set forth in the article, though oddly directed to Mr. Simon. Important for this matter in particular, a continuance was not an option for Petitioner in light of state-mandated deadlines to achieve certain events in order to keep its license (which is what prompted the condensed schedule for post-hearing briefs and deliberation). Because the Board's Rules do not compel production of the article in advance of the hearing and a continuance was not a reasonable option, fundamental fairness requires this Board to exclude the article from evidence for this reason as well.

Second, the Board recognized basic, but important, differences that precluded equating the circumstances giving rise to the data, conclusions and opinions from an article to the matter at hand. The subject matter of the article concerned certain effects experienced in Colorado that were attributed to the presence of recreational marijuana facilities, not that of effects experienced more locally (i.e. application of the same or at least similar statutory and regulatory framework) that may be attributed to the operation of medical cannabis dispensaries or other such circumstances to where introduction of the evidence would actually be of help in resolving the issues in this matter.

Third, while hearsay evidence may be received by the Board, there must still be some circumstances that permit a conclusion of trustworthiness and/or reliability to be competent evidence for this Board. Parham v. Dep't of Labor, Licensing & Registration, 189 Md. App. 604,

618; 985 A.2d 147, 155 (2009) (“if [hearsay] is to be relied upon as the basis of an administrative decision, the hearsay ‘must be competent and have probative force.’”), citing, Kade v. Charles H. Hickey School, 80 Md.App. 721, 725; 566 A.2d 148 (1989). Here, there are multiple levels of hearsay at issue. Particularly, neither the parties, nor the Board, would have access to review the source materials or any other articles or studies cited by and/or relied upon that are referenced in the article Protestants sought to introduce and no one present for cross examination. In short, the article is essentially hearsay all the way down.<sup>1</sup>

Though Mr. Rebholz identified many of the required security features and ones Petitioners are otherwise undertaking, it was apparent that some improvements to the security plan would help address the concerns raised by the surrounding community and such improvements would be advisable to better protect the neighboring properties. Two aspects of the security plan stood out -- one is the lack of any onsite presence or other active monitoring of the premises at night time; the second concerns the plan to have one security guard present during the day. Mr. Rebholz’s testimony revealed that the guard will not only be greeting patients in the parking area, but also escorting patients inside. Moreover, there is likely to be a higher relative volume of cash transactions and cash on hand, no matter how secure internally, at the dispensary than other area businesses. The testimony revealed that, at certain points, there will be no exterior security presence for brief periods of time and, importantly, the patients are particularly vulnerable individuals. Testimony from Ms. John and Ms. Hodnot revealed that the adjacent residences at Pomona Park have a lot of senior citizens, some of whom are also vulnerable individuals.

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<sup>1</sup> Echoing the concept of infinite regress, e.g. “turtles all the way down.” See, e.g. Rapanos v. United States, 547 U.S. 715, 754; 126 S.Ct. 2208, 2233 (2006) (plurality opinion); see also, Hawking, Stephen, A Brief History of Time, Ch. 1. Our Picture of the Universe, (1988).

While a conclusion that the presence of medicinal cannabis will lead to increased crime is speculative, additional reasonable measures can be undertaken to decrease the attraction to and opportunity for criminal activity in and near the dispensary, which, in turn, will help protect residents at Pomona Park, the surrounding neighborhoods and businesses. Pursuant to the authority bestowed upon the Board in BCZR §502.2, the Board will impose conditions, identified in more detail below, related to the security plan.

Otherwise, the measures identified by Mr. Rebholz (and that required by law and/or regulation) and Mr. Kellman are sufficient to permit this Board to conclude that it does not appear that this dispensary will be more detrimental to the health, safety and/or general welfare in this location than elsewhere within the BL-zoned parts of the Pikesville Commercial Revitalization District. Therefore, Petitioners have met their burden on this point.

2. Insufficient Parking Spaces, Deficient Layout and Related Issues

Protestants assert two arguments that the Board will address under this factor: (1) there is an insufficient number of parking spaces; and (2) the insufficient parking and its limited layout create unsafe conditions for motorists and pedestrians.

Petitioners presented Mitchell Kellman, an expert in land use and zoning and notably, a former employee of the Baltimore County Office of Planning and Zoning, to discuss the factors under §502.1, which included testimony about the site's parking spaces and layout. It was Mr. Kellman's opinion that the proposal met each of the factors under §502.1. With respect to the parking, Mr. Kellman stated that the County requires thirty (30) parking spaces and this property (the entire property) provides for thirty-one spaces.

Mr. Kellman testified that the total area for the site amounted to 6,533 sq. ft., but only 3,713 sq. ft. of the total were within the special exception area. Baltimore County Zoning Regulation

§409.6 provides the number of parking spaces required based on the type of use. Section 409.6(a) classifies numerous uses and, as can be imagined, a medical cannabis dispensary is not specifically provided for by the regulation. Rather, the uses are more generic, first classifying the use under a wide umbrella, *e.g.* residential and lodging, commercial and service, etc. and then by type, *e.g.* hotel, bank, office, retail, etc.

Based on information provided by Mr. Rebholz, Mr. Kellman determined that 2,122 sq. ft. of the 3,713 sq. ft. within the special exception area would be used as office space and the remaining 1,591 sq. ft. was reserved as retail space. Under §409.6(a)(2), the minimum number of spaces required for office (general) use is 3.3/1000 sq. ft. of gross floor area and the minimum number of spaces required for retail use is 5/1000 sq. ft. of gross floor area. As such, Mr. Kellman concluded that only fifteen parking spaces (attributing eight for the office area, seven for the retail) were required.<sup>2</sup>

Bruce Doak, Protestants' expert with familiarity in the Baltimore County process regarding development plans, special exceptions and variances, disagreed. Mr. Doak never submitted or had approved a parking plan with a split use Mr. Doak believed that the dispensary should not be considered as office space, relying on BCZR §101.1, which defines office as “a building or portion of a building used for conducting the affairs of a business, profession, service, industry or government, including a medical office. The term ‘office’ does not include a bank, a post office, a veterinarian's office or an establishment where merchandise is stored on or sold from the premises.” It was Mr. Doak's opinion that the dispensary use was most like that of a pharmacy,

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<sup>2</sup> The calculation for the retail space actually computed to 7.0026 (3.3/1000 sq. ft., 2122 sq. ft.). Section 409.6(a) states “If the number of spaces calculated in accordance with this section results in a number containing a fraction, the required number of spaces shall be the next highest whole number.” Therefore, if the Board were to agree that the proper classification of use is the office/retail hybrid, as identified and proposed, it would require, based on Mr. Kellman's testimony, 16 spaces (eight for the office area and eight for the retail), not 15.

like CVS, which is considered retail. As such, Mr. Doak concluded that nineteen parking spaces were required.

Both Mr. Kellman and Mr. Doak have more than ample experience regarding development plans and other matters that concern the parking issues raised. Their collective testimony revealed that the County’s approach to classifying a use and therefore, calculation of parking spaces, may be wholly contingent upon which County employee one speaks to about a proposal.<sup>3</sup> In physics, the Observer Effect recognizes that phenomena are changed by the act of observation. In zoning, the classification of use and the number of parking spaces should not be so mutable based on the identity of the zoning office employee.

There are a couple options potentially applicable. The Board finds that Petitioners’ hybrid, as proposed, is not one of them. Though there may be office space present and an area from which the public is excluded, that does not render the use of the property as “office” for purposes of the parking regulations any more than the presence of any edible products would convert the use into a carry-out restaurant.<sup>4</sup> What matters is the principal use at issue. The Board considers Mr. Doak’s analogy to come the closest. The principal use for this dispensary is like a pharmacy, and therefore, is properly classified as retail.<sup>5</sup>

As noted by Petitioners, this location formerly was a dress shop and a 7-Eleven convenience store, the use, for purposes of BCZR §409.6, was also considered retail. The evidence

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<sup>3</sup> Compare testimony from Mr. Kellman (October 18, 2017, p. 195-203) with that of Mr. Doak (transcript for October 19, 2017 unavailable at time of this Opinion).

<sup>4</sup> BCZR §101.1 defines carry out restaurant as “An establishment whose principal business is the sale of ready-to-consume food and beverages to customers who order their food and beverages over the counter, by telephone or by fax machine and whose principal characteristic is that food and beverages are consumed off the premises.”

<sup>5</sup> It was suggested by Protestants during the hearing that the use could be considered a medical office. Under BCZR §101.1, a medical office requires treatment from one or more medical practitioners. The evidentiary record establishes that none of the dispensary employees will be medical practitioners, leaving aside the question of whether the dispensary can fairly be considered as a place for treatment.

of the history of this site reveals that it has only ever been for retail use. Moreover, the property was developed in the 1960s and the building and parking lot that exist today are that which were constructed originally.<sup>6</sup> (Petitioner’s Ex. No. 13). In the Baltimore County Zoning Commissioner’s Policy Manual (designated as an “Administrative Supplement to the Baltimore County Zoning Regulations), Section 409.1(g) states (as relevant):

If the property use is nonconforming with regard to parking and the use expands or changes, no credit will be given for the existing deficiency, even if the new requirement is less than the old one. The only exception to this would be that if the principal use has been determined to be non-conforming and the use doesn’t change, credit would be given for the parking existing at that time...

As noted, the use has not changed or expanded. The use is retail, as it has been, and therefore, the County Policy Manual suggests that credit be given for the parking that exists. This general principle is well established in Maryland law. For example, a change in zoning law or building code does not mandate that all existing buildings or structures, or those with substantial construction completed, come into conformity with the new law or code. See, e.g., Trip Assocs., Inc. v. Mayor & City Council of Baltimore, 392 Md. 563; 898 A.2d 449 (2006); Prince George’s Cty., Md. v. Sunrise Dev. Ltd. P’ship, 330 Md. 297; 623 A.2d 1296 (1993); Sizemore v. Town of Chesapeake Beach, 225 Md. App. 631, 648; 126 A.3d 225, 235 (2015); Town of Sykesville v. West Shore Commons, 110 Md.App. 300; 677 A.2d 102 (1996). In short, to require the parking come into conformity with the existing code, evidence of a change, intensification or expansion of use, or other circumstances warranting such a requirement, is necessary. No such change, intensification, expansion or other circumstances are present here.

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<sup>6</sup> To be clear, there are handicapped spots available, along with curb cuts which may not be original, but those accommodations do not consist of a change that warrants reconfiguration of the entire parking area apparently at that time of the accommodations (and there is no evidence as to when those accommodations were made) or, for that matter, today.



Protestants also raise the issue that the parking lot aisles/lanes and setbacks are deficient. More specifically, the parking lot aisle along Naylors Lane, which is at a 90 degree angle relative to the parking aisle/lane is only 18± feet (and at one point just over 15 feet) when 22 feet is required by BCZR §409.4(C). The parking spots facing Reisterstown Road presently provides only a setback of eight feet from the right of way, when ten feet is required. The parking spots along Naylors Lane appear to have zero setback and may even encroach on the right of way. BCZR §409.8(A)(4); see also, Petitioner's Exhibit No. 1. While initially proceeding with a proposal to keep parking conditions static, Petitioners, during the course of the hearing, submitted a revised plan illustrating that the parking facing Reisterstown Road could and would be moved back a couple of feet to provide the minimum setback required while at the same time still be compliant with the minimum space required by BCZR §409.4(C). Petitioner's Exhibit No. 14. To do so, Mr. Kellman testified all that is needed is to re-stripe the parking spaces and add landscaping, which the Board orders as part of this approval.

As to the deficiencies that cannot be so easily addressed, particularly the parking area facing and adjacent to Naylors Lane, in light of the finding that the use has not changed, Petitioner will not be required to have that parking area come into conformity at this time. Obviously, if the use changes, intensifies or expands, the non-conformity of the parking area may be revisited.

Protestants also identify the parking entrance/exit to and from Reisterstown Road as a potential hazard that, in their opinion, creates unsafe conditions for motorists and pedestrians. Protestants, via Mr. Jakubiak, contend that the width and length are insufficient and fail to comply with the State Highway Administration Access Manual requirements. The State Highway Administration conducted a field inspection earlier this year and determined that an entranceway consistent with the current guidelines is not required. Petitioner's Exhibit No. 11. As such, SHA

did not object to approval of the Petition. Id. Once again, Petitioners' revised plan reflects that the entranceway can and will be widened to twenty feet. Petitioners' Exhibit No. 14. The Board orders that the entranceway be widened as proposed by Petitioners. Given the existing conditions, the use, and deference to SHA's determination, the Board concludes that no modifications to the entranceway from Reisterstown Road beyond those set forth in Petitioners' Exhibit No. 14 are required at this time.

With the above in mind, the Board finds that Petitioners' revised plan (Exhibit No. 14) satisfies Petitioners' burden of proof to the extent that the parking spaces and lot issues contemplated fall under one or more of §502.1(A), (B), (C) and/or (G).

3. Commercial Revitalization District

Because BCZR §4D-102 requires a special exception for a medical cannabis dispensary within a BL Commercial Revitalization District, the Board concludes the County Council intended to engraft the policies supporting Commercial Revitalization District upon the analysis of the special exception factors. In other words, because this property is so situated, the Board is required to review whether the medical cannabis dispensary is inconsistent with the property's zoning classification, including specifically its location within a BL-Commercial Revitalization District property, and whether the proposal is inconsistent with the spirit and intent of the Zoning Regulations. BCZR §4D-102(A)(2), §502.1(G).

Baltimore County Master Plan 2020 recognizes the struggles certain former commercial hubs, typically located within the Baltimore Beltway, have with respect to maintaining existing retail business and attracting new business. As such, the County has established several policies and related actions to implement such policies. As noted, the County's requirement of a special exception for approval of a medical cannabis dispensary with a revitalization district indicates the

Council’s value judgment, that is, the dispensary must help revitalization efforts and not deter or hinder them.

The Master Plan, as one of its policies, seeks to have well-balanced and economically vital mixed uses within the revitalization districts. It recognizes the importance of the appearance of the businesses within the District, further noting that a “commercial center or corridor with attractive curb appeal and stable and desirable uses may encourage people to invest in the community.” As yet another policy, the Master Plan prioritizes improving the appearance and walkability of the Districts, which includes streetscape programs and beautification efforts.

Protestants take great pride in being Pikesville residents and as such, have embraced the Pikesville Commercial Revitalization District. Mr. Needle, in conjunction with the Friends of Pikesville, Inc., developed what appears to be a very well-thought out, forward-looking, and comprehensive plan for the District (the 100-page Pikesville Revitalization Plan was discussed in detail in his testimony, though not submitted into evidence). It is Mr. Needle’s, and other Protestants’ concerns, that the presence of the medical cannabis dispensary within the District would detract from attracting investment in the District and would otherwise cause the District to fall into disrepair, and that it may derail their Plan.

The Board finds that presence of a medical cannabis dispensary within the Pikesville Revitalization Commercial District is not inconsistent with the property’s zoning classification and is not inconsistent with the spirit and intent of the zoning regulations. First, the zoning regulations permit the existence of the dispensary by right in a BL zone. Therefore, the only matters for evaluation are its presence within the revitalization district and the zoning regulations.

The addition of the dispensary furthers the policy of having well-balanced and economically vital mixed uses. As it stands the property is vacant. Previously, the property had

been used for retail, with the last tenants being a dress shop and a convenience store. If the analysis is hyper-focused on the use as a medical cannabis dispensary, certainly, it is the first of its kind, but also the first in the area. Also, given the limited number of licenses, it is expected to result in additional people traveling to the District to avail themselves of the dispensary's services and perhaps other area businesses. If the focus is pulled back so that the operations are viewed more generally, as noted above, it is akin to a pharmacy. Obviously, the presence of a pharmacy within a revitalization district is not inconsistent with the purposes for the revitalization district. The revised proposal (Petitioners' Exhibit No. 14) addresses some of the existing non-conforming parking lot issues and in doing so, helps bring into conformity the landscaping and buffer area along Reisterstown Road. No variances are sought by Petitioners. Therefore, the Board finds that the Petition is not inconsistent with its location within the Pikesville Commercial Revitalization District and is also not inconsistent with the spirit and intent of the zoning regulations. At the same time, improved landscaping will help the appearance, walkability and other matters that will assist with beautification and revitalization efforts.

#### 4. Conditions Imposed

To help enhance the Pikesville Commercial Revitalization District and further the policies and goals in the Master Plan 2020, as well as allay certain concerns raised and improve upon the proposal, the Board imposes certain conditions to provide additional measures of protection for the surrounding area, properties and residents:

- a. Petitioners' revised proposal (Petitioners Exhibit No. 14) is approved and adopted, requiring, *inter alia*, Petitioners to restripe the parking lot for the parking area along Reisterstown Road which will create a ten-foot setback from the right of way for the creation of a landscaped buffer area.
- b. Within the ten-foot setback referenced in (a), Petitioners shall provide landscaping/streetscaping beyond the minimum County design requirements.

Petitioners shall further provide landscaping/streetscaping that enhances and ties into the surrounding area and any existing plans in place or underway for other landscaping/streetscaping along Reisterstown Road. The Board encourages Petitioners, Protestants, and others within the Revitalization District to work together on a plan that helps provide an attractive curb appeal, as well as enhance and beautify the general area. Petitioners are also directed to consult the Comprehensive Manual of Development Policies, with particular reference to Division VI, Section H “Crime Prevention Through Environmental Design” and utilize the principles set forth therein and other sections as necessary when designing the landscaped buffer area.

c. All signage and lighting shall conform to the Baltimore County Zoning Regulations. Petitioners’ sign shall not depict any logo or any content suggestive of the presence of cannabis products onsite or the consumption of cannabis.

d. Petitioners are required to provide a minimum of two trained security officers during hours of operation. Petitioners are also required to undertake proactive security measures when the dispensary is not open for business. Such measures, at the discretion of Petitioners, may consist of one and/or or some combination of: security/surveillance cameras with a person actively monitoring the surveillance video feed; randomly timed but multiple vehicular patrols of the property; the presence of security officers on site; and/or other such measures so that the dispensary is actively monitored outside of the hours of operation and particularly overnight.

e. In the event that recreational or “adult” use of cannabis becomes legal in Maryland and Petitioner(s) wish for this location to sell, provide, and/or furnish cannabis and/or cannabis products for recreational use or to permit recreational/adult consumption of cannabis and/or cannabis products onsite, the Petitioner(s) at that time shall be required to file a new Petition identifying the change(s) in use sought. Such Petition shall be the subject of a public hearing, requiring public notice consistent with the public notice requirements for this hearing, and at such public hearing, the Petitioner(s) at that time shall be required to satisfy the special exception requirements of BCZR Section 502 and/or as otherwise required by law at the time of the Petition.

f. Nothing in this Opinion and Order is intended to indicate any approval of the expansion of use to include the sale, provision, or furnishing of cannabis and/or cannabis products for recreational/adult use. Nothing in this Opinion and Order is intended to indicate any approval of the expansion of use to permit the recreational/adult consumption of cannabis and/or cannabis products onsite. Nothing in this Opinion and Order shall be interpreted in a manner that conveys any approval for this location to operate via special exception in any manner other than as a medical cannabis dispensary, with conditions, as ordered.

**Conclusion**

In light of all of the above, this Board finds that Petitioners have met their burden of proof to permit the subject property to operate, by special exception and subject to conditions, a medical cannabis dispensary.

**ORDER**

**THEREFORE, IT IS THIS** 25<sup>th</sup> day of January, 2018, by the  
Baltimore County Board of Appeals,

**ORDERED** that Petitioners’ Petition for Special Exception, as revised, be GRANTED,  
subject to the following conditions:

- a. Petitioners’ revised proposal (Petitioners Exhibit No. 14) is approved and adopted, requiring, *inter alia*, Petitioners to restripe the parking lot for the parking area along Reisterstown Road which will create a ten-foot setback from the right of way for the creation of a landscaped buffer area.
- b. Within the ten-foot setback referenced in (a), Petitioners shall provide landscaping/streetscaping beyond the minimum County design requirements. Petitioners shall further provide landscaping/streetscaping that enhances and ties into the surrounding area and any existing plans in place or underway for other landscaping/streetscaping along Reisterstown Road. The Board encourages Petitioners, Protestants, and others within the Revitalization District to work together on a plan that helps provide an attractive curb appeal, as well as enhance and beautify the general area. Petitioners are also directed to consult the Comprehensive Manual of Development Policies, with particular reference to Division VI, Section H “Crime Prevention Through Environmental Design” and utilize the principles set forth therein and other sections as necessary when designing the landscaped buffer area.
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the surveillance video feed; randomly timed but multiple vehicular patrols of the property; the presence of security officers on site; and/or other such measures so that the dispensary is actively monitored outside of the hours of operation and particularly overnight.

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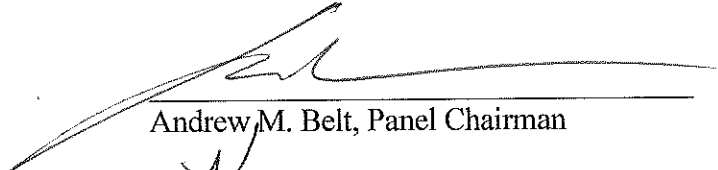
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**In the matter of: Temescal Wellness of Maryland, LLC.**

**Case No: 17-281-X**

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

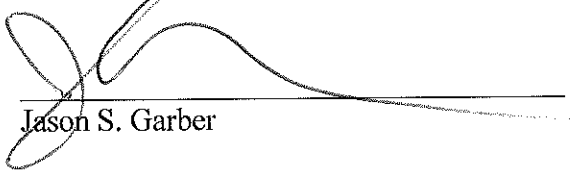
**BOARD OF APPEALS  
OF BALTIMORE COUNTY**



Andrew M. Belt, Panel Chairman



Kendra Randall Jolivet



Jason S. Garber





## Board of Appeals of Baltimore County

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January 25, 2018

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RE: In the Matter of: *Village Greenwood, LLC – Legal Owner*  
*Temescal Wellness of Maryland, LLC – Lessee*  
Case No.: 17-281-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

  
Krysundra "Sunny" Cannington  
Administrator

KLC/taz  
Enclosure  
Multiple Original Cover Letters

c: Richard S. Wolman/Village Greenwood, LLC  
Edward T. Rebholz, Jr./Temescal Wellness of Maryland, LLC  
The Pine Ridge Community Association  
Lawrence M. Stahl, Managing Administrative Law Judge  
Andrea Van Arsdale, Director/Department of Planning  
Arnold Jablon, Deputy Administrative Officer, and Director/PAI  
Nancy C. West, Assistant County Attorney/Office of Law  
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Ruth Hoffman  
Revanne Aronoff  
Pikesville Communities Corporation  
Eleven Slade Apartment Corporation  
Arnold Simon  
Linda Halpert  
Office of People's Counsel