



# City Of Attleboro, Massachusetts

**ZONING BOARD OF APPEALS**  
GOVERNMENT CENTER, 77 PARK STREET  
ATTLEBORO, MASSACHUSETTS 02703  
TEL 508.223.2222 FAX 508.222.3046

## MINUTES

OCTOBER 8, 2020

**In accordance with the provisions of Massachusetts General Laws, Chapter 40A, as amended, the Zoning Board of Appeals held a public meeting on Thursday, October 8, 2020, at 6:30 p.m. remotely via Zoom, relative to the following:**

Zoning Board Members Present: Chairwoman Cathy Merkle, Kathy Rautenstrauch, Kent Richards, and Sandra Varrieur

Zoning Board Members Absent: None

**The Board heard the continued public hearing relative to Case #5502, the application of Green River Cannabis Co., Inc. for a special permit pursuant to §17-9.0 SPECIAL PERMITS under §17-10.15 MARIJUANA BUSINESS USES to establish a Marijuana Retailer, the subject premises being located at 1815 County Street, more specifically Assessor 's plat #26, lot #278D, located in the Industrial zoning district .**

The Board read the form Z1 - Request to Continue a Public Hearing to December 10, 2020, received via email from attorney Constant Poholek relative to the special permit application of Green River Cannabis Co., Case #5502.

Kent Richards made a motion to continue the public hearing to November 12, 2020. Sandra Varrieur seconded the motion. All voted in favor to continue the public hearing to November 12, 2020.

Senior Land Use Planner Stephanie Davies stated that the petitioner has made no progress on the traffic study beyond taking some traffic counts that were taken in the summer. She expressed a great deal of frustration with the applicant, stating that she feels like a significant period of time has passed without anything being submitted to the Board in two months.

Speaking in favor of the application was attorney Constant Poholek of Green River Cannabis Co, Inc. who stated that as the application process has unfolded, many residents have come forth with concerns about the proposal. He stated that they are preparing a traffic study. He affirmed his understanding that the Board wants a full-blown traffic study, but noted that residents have cited concerns relative to traffic on Jennie Way and Read Street as well. He stated that they held off on their investigations because they wanted to collect good representative data, which was difficult to collect with the COVID shut down and schools being out of session. He stated that now that everything is coming back online, they are confident with moving ahead to obtain realistic count data starting in the first week of November. He stated that one of the abutters had raised serious concerns about the entrance on Venus Way and so they are also considering revising the plans and showing the entrance from County Street rather than Venus Way. He stated that they are looking to incorporate the sum total of the changes into their next revision.

Kent Richards asked when attorney Poholek feels the outstanding items will be completed and submitted to the Board and Planning staff.

Mr. Poholek replied by the meeting in December. He stated that they have an important upcoming meeting scheduled with the Police Chief and Planning staff to discuss the security plans and traffic concerns.

Director of Planning and Development Gary Ayrassian noted that it sounds like they are collecting data about the number of many customers who are travelling to other marijuana retailers.

Attorney Poholek replied correct.

Mr. Ayrassian countered that such a study does not constitute trip generation. He stated that it sounds like he is instead establishing daily numbers for the customers visiting local stores. He asked how that data is being collected.

Attorney Poholek replied that they have hired Crossman Engineering to count cars in these parking lots during peak hours on week days and weekends. He stated his understanding that counters will remain on site the entire day counting.

Ms. Davies questioned if there was a reason why this study has not begun yet.

Attorney Poholek replied that they are trying to combine the full-blown traffic study for County Street with this study, to ensure that they have accurate data.

Ms. Davies countered that it does not appear that any progress has been made.

Attorney Poholek objected and asserted that they have performed preliminary counts for some of the facilities to be studied.

Mr. Ayrassian asked how relocating the entrance from Venus Way to County Street will impact the overall site design and parking lot. He questioned whether separate curb cuts will be provided for the retail Cannabis shop versus the automobile shop.

Attorney Poholek stated that he does not have the plans before him, but that his understanding is that there will be sufficient spacing between the two entrances.

Mr. Ayrassian stated that the applicant needs to submit all of the materials a minimum of ten days in advance of the December public meeting so that the Board, Planning staff, and peer reviewer have sufficient time to review the materials and prepare their report.

Speaking in opposition to the application was Debra Fernstrom of 636 Read Street who stated her disappointment that the case will be deferred further, as it takes time from everyone's schedule to have to keep appearing before the Board. She stated that moving the entrance from Venus Way to County Street will be a detriment to the nearby residential neighborhood and that she does not want signage for the facility disrupting the area's suburban appeal. She stated that she felt the entrance on Venus y was a better approach, as it at least allowed for traffic to loop in the rear, rather than exacerbating existing traffic issues on County Street. She emphasized that this will be a shop operating on the border of Pawtucket, Rhode Island. She explained that she anticipates a lot of out-of-state traffic, since Rhode Island does not have marijuana retail stores. She argued that the Board should be calling the shots rather than the applicant. She noted that she forwarded to the Board information on traffic and crime area reports.

Mr. Ayrassian stated the staff would forward such information to its third party traffic peer reviewer to be included in their scope of work.

Ms. Fernstrom expressed concern that the data revealed a traffic “hot spot” at the corner of Read Street and County Street. She stated that her house is located right there and she frequently hears traffic altercations. She stated her opinion that the traffic will be significantly worse should this project be approved.

Mr. Ayrassian replied that the applicant is attempting to address the neighbors’ concerns by working on updated information, new information, and a revised that they plan to submit to the Board. He stated that the Board will judge whether concerns are adequately addressed. He noted that the traffic peer review report will not be ready for the Board’s December meeting and most likely by the January 2021 meeting.

Speaking in opposition was Scott Germadnik of 1797 County Street who stated that his house is the only residential neighbor within the radius for the public outreach meeting notification. He stated that he has concerns with the change in the location of the entrance to County Street and the potential for expanding of the existing parking lot. He stated that an expansion would result in increased light pollution and stormwater runoff. He requested that a forum be held between Green River Cannabis, the public, and the Police Chief to hold a dialogue regarding traffic safety concerns. He requested a count of the traffic plates to get an idea of how many of the patrons are from out of state.

Mr. Ayrassian stated that neither the Board nor the staff can comment on the relocation of the entrance to County Street or on the expansion of the parking lot, as these are nothing more than possible concepts that attorney Poholek floated tonight and spending time discussing matters that are not before the Board is a pointless. He stated that the applicant may hold a forum with residents if they so please regarding traffic safety concerns but the Police Chief will make his comments known through the Zoning Board and the public hearing process. He stated that regarding the comment about the traffic plate reader, traffic volume is traffic volume regardless of where it originates. He stated the source of traffic is irrelevant especially because the Board cannot control or preclude who shops where. He stated that the Board is going to evaluate traffic impacts which is the important matter at hand.

Mr. Germadnik countered that if more of the plates are from Rhode Island, it is likely they are passing his residence, which will negatively impact his home. He stated he is concerned with traffic that would not necessarily be traveling the road other than to access the site in question.

Mr. Ayrassian stated that 100% of the traffic impact will be evaluated, regardless of its origination.

Mr. Germadnik stated that he wishes Green River the best of luck, but that he thinks this is the wrong location for such a facility. He expressed concern with the potential stormwater impacts with increasing the parking lot.

Mr. Ayrassian noted that the current design is below the threshold to trigger the need for a stormwater management permit.

Mr. Germadnik asked if that is based on the retail area.

Mr. Ayrassian replied no, it is based on land disturbance.

Mr. Germadnik stated that he is interested in where the traffic comes from to see which areas will be most impacted. He stated that a lot of traffic is generated at the end of the day when businesses on Venus Way close and employees leave to go home. He stated that in visiting the Nova Farms facility on Extension Street, much of the overflow of cars just circle or line the streets waiting to access the site. He stated that this site does not have that luxury, which will result in a traffic hazard especially when business close and employee traffic mixes with vehicles going to the marijuana business.

Speaking in opposition was Lynn Ferreira of 30 Jennie Way who stated that this is her fourth time appearing before the Board to reiterate her same concerns. She stated that she has a serious concern with developer

thinking about changing the location of the entrance from Venus Way to County Street. She stated that the amount of traffic currently exiting onto County Street from the area's industrial locales is already a very real issue. She asked whether the applicant will have to begin the process anew if they revise the plans to reflect an entrance on County Street.

Mr. Ayrassian stated that the public hearing is already open, so a revised site plan and wouldn't require starting over. He stated that if some aspect or aspects of the revised plan requires relief from the Zoning Ordinance then that might result in a new publication advertisement. He noted that the updated information and new information will be presented to the Board and reviewed in the same manner as the original application.

There being no one else to speak, the public hearing was continued.

**The Board heard Case #5515, the application of Ruben Fernandes for a variance pursuant to §17-8.9 VARIANCES from the minimum front yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to install an above-ground pool, the subject premises being located at 23 Rondi Lee Terrace, more specifically Assessor's plat #55, lot #423, located in the Single Residence-B zoning district.**

Speaking in favor of the application was Ruben Fernandes of 23 Rondi Lee Terrace who stated that he is seeking a front yard setback variance to install an above-ground swimming pool. He explained that as his house is located on an oddly shaped lot on a cul-de-sac and that he does not have the necessary 30-feet of setback from Rondi Lee Terrace. He stated his desire to install a 20-foot diameter round pool. He noted that it could potentially be pushed a bit farther from the street but not much.

Mr. Ayrassian agreed that it is an oddly shaped lot.

Kent Richards asked if any deck or structure is proposed around the pool.

Mr. Fernandes replied that he intends to install a small deck and a set of stairs to access the pool.

Mr. Ayrassian asked where the deck will be located.

Mr. Fernandes described the proposed location.

Ms. Davies noted that its location will be within the front yard setback, which could change the extent of the variance depending upon the width of the deck. She stated that it might not affect the extent of the variance if it were installed between the pool and the house.

Mr. Ayrassian stated that if Mr. Fernandes wants to install a deck, he will need to submit a revised plan in scale and.

Mr. Fernandes sought to confirm that the deck has to also meet the 30-foot front yard setback requirement.

Mr. Ayrassian answered it depends. He stated that depending on the width of the deck and its location, it might not affect the variance or it might precipitate a greater variance. He told Mr. Fernandes that if the Board were to grant a 20-foot variance and the deck afterwards protrudes further into the front yard setback, he would either have to remove the deck or return to the Board with another variance application for the deck and no guarantee that the Board would grant it.

Mr. Fernandes stated that he was misinformed and had been told that the setback does not apply to a deck. He stated his preference is to revise the plan and address everything at once. He noted that the delivery of the pool is scheduled in March so he has time.

Mr. Ayrassian encouraged him to reach out to staff to help him with the revised plan.

There being no one else to speak, the public hearing was continued.

**The Board heard Case #5516, the application of Scott Jennison for a variance pursuant to §17-8.9 VARIANCES from the minimum rear yard setback requirement and from the minimum side yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to install an in-ground pool and a variance pursuant to §17-8.9 VARIANCES from the minimum rear yard setback requirement to construct a gazebo, the subject premises being located at 61 Pass Farm Road, more specifically Assessor's plat #218, lot #6 -A6, located in the Single Residence -D zoning district.**

Speaking in favor of the application was Scott Jennison who stated that he is applying for variances from both the rear and side yard setbacks. He stated his intent to install an in-ground pool and a gazebo. He stated that he has recently submitted a more detailed site plan that the pool company prepared to the Board that shows where the proposed pool would have to be located by adhering to the minimum setback requirements. He expressed concern that the corner of the proposed pool would be inches away from the existing staircase that comes down from the deck if he had to comply with the rear yard setback requirement. He stated that the situation would create a safety hazard. He said the variance would allow him to push the proposed pool away from the staircase. He stated that he is seeking a variance of five feet from the rear yard setback and two feet from the side yard setback for the pool.

Mr. Ayrassian sought to confirm that the deck shown on the site plan exists.

Mr. Jennison replied yes. He noted that his lot backs up to a vacant lot in Rehoboth that is too small to be constructed upon.

Mr. Ayrassian asked whether a fence will be installed around the pool.

Mr. Jennison answered yes.

Kent Richards pointed out that the application only requests a rear yard setback variance for the proposed pool.

Mr. Jennison replied that he received the updated plans from the pool company denoting the need for the additional side yard setback variance after he filed his variance application. Mr. Jennison formally requested to amend his application to include a variance of two feet from the minimum side yard setback requirement for the proposed pool. Kent Richards made a motion to allow Mr. Jennison to amend his application to include a variance of two feet from the minimum side yard setback requirement for the proposed pool. Sandra Varrieur seconded the motion. All voted in favor to allow Mr. Jennison to amend his application.

Mr. Ayrassian noted that the Mr. Jennison is also requesting a five foot rear yard setback variance to construct a gazebo.

Mr. Jennison affirmed that he is proposing to construct it parallel with the pool.

Mr. Ayrassian stated that he understands how the existing deck staircase creates a constraint to the pool, but questioned the necessity of a 15'x15' gazebo. He asked why a smaller gazebo could not be constructed in order to avoid the variance. He stated that the variance is requested based on a preference. He explained that when the Zoning Board considers variances, preference is not factored in. He stated that there needs to be a hardship associated with the lot's topography, soil, or lot configuration on which to base the need for a variance. He suggested that the gazebo could be designed smaller to meet the necessary setbacks.

Mr. Jennison stated his understanding that if a five foot setback is granted for the rear yard, that it would cover both the pool and the gazebo.

Mr. Ayrassian stated that that is not the case. He stated that each feature is considered separately. He stated that he understands that the pool is a significant financial investment and that it is not really seen unless standing right next to it, and needs to meet a minimum width for it to be enjoyable. He stated that this is not the case for the proposed gazebo. He again suggested that Mr. Jennison can reduce the size of the gazebo and avoid the request for a rear yard setback variance.

Mr. Jennison stated that he did not understand the Board's concern with the variance for the gazebo given their sentiments with the variance for the pool.

Kent Richards asked Mr. Jennison what hardship he faces with a smaller gazebo.

Mr. Jennison affirmed that there would be no hardship.

Sandra Varrieur questioned the width of the apron around the pool.

Mr. Jennison replied it would consist of a two foot wide border of pavers.

Sandra Varrieur agreed that without the variance, the pool would be too close to the stairs which would in turn create a hazard.

Mr. Jennison agreed that there would be a safety issue for people trying to walk around the pool. He sought clarification that if the Board granted the variances for the pool alone, he would need to meet the setbacks when constructing the gazebo.

Cathy Merkle replied yes.

Mr. Jennison stated that he understands the Board's point, but was hoping to keep the features symmetrical.

Speaking in opposition was Ed Donahue of 28 King Phillip Drive in Rehoboth who stated that his house abuts Mr. Jennison's rear property line. He stated that when he moved into his house 28 years ago, they looked at installing an in-ground pool and decided not to do so because they were told that the excavation would involve blasting too much ledge. He stated that when the subdivision was constructed behind his house, it required extensive blasting, so he imagined there would be similar issues associated with the excavation for the pool. He stated that in the course of constructing the subdivision, his above-ground pool has suffered damage and their well water pressure has gone down. He stated that he is concerned about damage to his house, well, septic system, and above-ground pool if there is significant blasting to construct the pool.

Mr. Ayrassian noted that Mr. Donahue's house is a fair distance away from Mr. Jennison's proposed pool. He asked where the well is located on this property.

Mr. Donahue replied about 50-feet from his house.

Mr. Ayrassian asked Mr. Jennison if he anticipates needing to blast to install the pool.

Mr. Jennison answered no.

Mr. Ayrassian added that he imagined that the subdivision developer's insurance company documented existing structural conditions before any blasting occurred in case any damage claims were made resulting from the blasting. He asked Mr. Donahue whether he experienced any damage or cracks.

Mr. Donahue answered that he had to replace two separate liners in his pool due to the blasting, but that the only damage in his home was pictures falling off the walls. He stated that when he was considering installing an in-ground pool, there were objections to the proposed blasting.

Mr. Ayrassian asked whether it was the town of Rehoboth that objected to the blasting.

Mr. Donahue replied that the cost of blasting would be significant and so he chose to put in an above-ground pool instead.

Mr. Ayrassian stated that choosing not to install an in-ground pool for financial considerations is a different argument than being told that one may not construct a pool. He reiterated that Mr. Jennison does not anticipate the need for any blasting.

Mr. Donahue questioned what will happen if blasting is needed.

Mr. Ayrassian stated that Mr. Jennison will have to obtain a blasting permit from the Fire Department, which involves an entirely separate set of rules.

Speaking in opposition was Pamela Donahue who stated that allowing Mr. Jennison to install an in-ground pool would result in damage to her property, house, and pool.

Mr. Ayrassian countered that Mr. Jennison is not seeking permission from the Board to install a pool but rather seeking a variance in order to install the pool closer to the property line. He stated that if the Board were to deny the variance, Mr. Jennison could still install the pool as long as it satisfied the minimum rear yard and side yard setback requirement.

Mr. Donahue asked how far away a pool typically needs to be from a rear and side property line.

Mr. Ayrassian stated 15-feet and that Mr. Jennison is requesting to reduce that distance to 10-feet.

There being no one else to speak, the public hearing was closed.

### **The Board then held a business meeting.**

**The Board read the emails from Blair Fish of Nova Farms, LLC, received September 15, 2020 and September 21, 2020, to Director of Planning and Development Gary Ayrassian requesting to again revise the floor plan location of their vault and also to alter their hours of operation at their 34 Extension Street cannabis facility.**

Mr. Fish appeared before the Board and stated that when their retail facility was the only portion operational, they needed more space so they permission from the Board and wound up switching their vault area to retail use. He stated that now that they have received their certificate of occupancy for manufacturing, they want to switch back the use of the vault to manufacturing as originally approved.

Mr. Ayrassian asked whether the access door from the retail side will be blocked off or remain.

Mr. Fish stated that the door will remain. He stated that they have two different licenses, one for retail and one for manufacturing, but that product can be moved and dispersed throughout the entire processing area without returning to retail.

Mr. Ayrassian sought to confirm that the change is really just a paper change and that no interior walls need to be relocated or torn down.

Mr. Fish said precisely.

Kent Richards stated that for the sake of clarity and transparency, he would like Mr. Fish to submit his proposal in writing in a formal letter addressed to the Board explaining the background and history of the vault area, outlining his proposed change for the vault, making note that the change is just a paper change and that no interior modifications need to be made to any walls or flooring, and the proposed change in business hours. He also asked staff to review the Council's original decision for the 34 Extension Street facility to see what hours of operation were approved.

Mr. Fish said that he would submit a letter as requested by the Board

The Board tabled this matter.

**The Board tabled the email and building elevations submitted by Russell G. Dion of Campanelli, received October 1, 2020, to Director of Planning and Development Gary Ayrassian, relative to the proposed color scheme for Renaissance Station South, located at 1 Wall Street (formerly 95 South Main Street), Case #5457A.**

Mr. Ayrassian noted that after sharing this correspondence with the Board, Mr. Dion reached out to make clear that all of the areas on the plans that show up as black would be red brick. He stated that he had asked Mr. Dion to appear before the Board with the actual color palettes and construction materials versus what was originally approved. He suggested that a face-to-face meeting is likely in order in this case. He stated that he is waiting to hear back.

**The Board tabled the email and plan from Geoff Lewis of Ajax Partners, received November 9, 2019, to Director of Planning and Development Gary Ayrassian, proposing minor alterations to the New England Sports Complex site access.**

**The Board tabled the letter from Director of Planning and Development Gary G. Ayrassian, dated October 8, 2019, to Planning Board Chairman Paul Danesi and Zoning Board of Appeals Chairwoman Catherine Merkle, regarding proposed changes to processes relative to public hearing legal advertisements.**

**The Board discussed Case #5516, the application of Scott Jennison for a variance pursuant to §17-8.9 VARIANCES from the minimum rear yard setback requirement and from the minimum side yard setback requirement pursuant to §17-4.9 TABLE OF DIMENSIONAL AND DENSITY REGULATIONS to install an in-ground pool and a variance pursuant to §17-8.9 VARIANCES from the minimum rear yard setback requirement to construct a gazebo, the subject premises being located at 61 Pass Farm Road, more specifically Assessor's plat #218, lot #6 -A6, located in the Single Residence -D zoning district.**

Kent Richards made a motion to grant a variance pursuant to §17-8.9 VARIANCES of five (5') feet from the minimum rear yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.5 ACCESSORY STRUCTURES accommodate the installation of an in-ground pool, as shown on the site plan. Kathy Rautenstrauch seconded the motion. A discussion followed. All voted in favor. Kent Richards made a motion to

grant a variance pursuant to §17-8.9 VARIANCES of two (2') feet from the minimum rear yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.5 ACCESSORY STRUCTURES accommodate the installation of an in-ground pool, as shown on the site plan. Kathy Rautenstrauch seconded the motion. A discussion followed. All voted in favor. Kent Richards made a motion to grant a variance pursuant to §17-8.9 VARIANCES of five (5') feet from the minimum rear yard setback requirement of fifteen (15') feet pursuant to the provisions of §17-4.5 ACCESSORY STRUCTURES accommodate the construction of a 15'x15' gazebo, as shown on the site plan. Kathy Rautenstrauch seconded the motion. A discussion followed. Only one Board member voted in favor so the motion to grant failed. The Board attached conditions, as it granted the relief for the aspects of the application.

The Board reviewed all remaining correspondence.

The Board tabled the pending minutes of November 14, 2019, December 12, 2019, January 9, 2020, February 20, 2020, May 21, 2020, June 25, 2020, July 9, 2020, August 13, 2020, and September 10, 2020.

The meeting adjourned at 8:30 p.m.