

**RESOLUTION OF FINDINGS AND CONCLUSIONS  
PLANNING BOARD OF THE  
BOROUGH OF WOODBURY HEIGHTS  
2023-09**

**WHEREAS**, Shiv Prasad, LLC has applied to the Planning Board of the Borough of Woodbury Heights for a conditional use variance and minor site plan approval, along with bulk variances and waivers to establish a licensed retail cannabis facility in an existing building; and

**WHEREAS**, the property in question is located on 30 Elm Avenue, Block 40, Lots 3 and 11.01 in a Highway Commercial zone; and

**WHEREAS**, the Borough of Woodbury Heights Planning Board has the right to exercise to the same extent and subject to the same restrictions, all the powers of the Zoning Board of Adjustment; and

**WHEREAS**, the Borough of Woodbury Heights Planning Board has had an opportunity to review the application for a conditional use variance and minor site plan approval, along with bulk variances and waivers and a hearing having been held thereon and proper notices having been served on all surrounding property owners as required by Statute; and

**WHEREAS**, the Borough of Woodbury Heights Planning Board has made the following factual findings:

1. Kristopher J. Berr, Esquire appeared on behalf of the applicant who he indicated would hereinafter be referred to as Blue Light Cannabis. The applicant is the owner of a parcel of property consisting of approximately one-half acre improved with a vacant building previously occupied by a bank. The applicant proposes converting the existing building into a 3,364 square foot licensed retail cannabis facility with associated site improvements. The facility is permitted as a conditional use in the Highway Commercial Zone with the Borough Ordinance listing 21 conditions which must be met. The applicant fails to meet two of the conditions and therefore requires a d(3) Use Variance.

2. The first condition not met is that the facility cannot be located within 1000 feet of any elementary school, middle school, high school, college or university, either public or private. The facility is located 955 feet from St. Margaret's School. The second condition is that signage must comply with the requirements of the Borough Land Use Regulations. The applicant is seeking to place a 24 square foot sign one-half foot from the

street set-back where signs are to be at least 10 feet from the street and not exceed 18.5 square feet.

3. The applicant presented testimony and exhibits addressing the d(3) variances, as well as waivers and bulk variances to be addressed as part of their site plan review and approval. They presented the testimony of Amanda Ostrowitz, a consultant who guides applicants through the process of establishing licensed cannabis facilities. She explained in detail how the business would operate on a day-to-day basis at this site. The applicant also presented the testimony of their engineer, Jay F. Sims, PE, PP, CME, who addressed the site plan details and the waivers and bulk variances. The applicant also presented the testimony of Traffic Engineer, Michael R. Brown, PE, PTOE, CME, who performed a traffic assessment and testified that there would be no significant increase in traffic based upon the Department of Transportation standards.

4. The Board considered review letters of January 23, 2023 and March 2, 2023 prepared by Planning Board Engineer, Mark R. Brunermer, PE, CME, as well as the review letter of February 28, 2023 prepared by Planning Board Planner, Tiffany A. Morrissey, PP, AICP.

The applicant also presented the following exhibits:

- Exhibit A1 A conditional license issued by the State of New Jersey for the applicant to operate the cannabis retail facility;
- Exhibit A2 A proposed first floor and second floor floor plan for the facility;
- Exhibit A3 A rendering of the site superimposed on an aerial photograph;
- Exhibit A4 A surrounding uses map.

5. The Board heard and considered the testimony of 12 members of the public, all of whom were opposed to the application. Their objections focused primarily on the proximity of the St. Margaret School, the impact upon children, as well as traffic and parking concerns. Much of the discussion among board members and professionals focused upon site suitability, including traffic, parking, circulation and impact upon the surrounding area and the St. Margaret's School.

6. The applicant's property and the adjoining Hollywood Diner are subject to a recorded cross-easement allowing for cross-access and parking whereby during peak hours customers of the Hollywood Diner can park in the cannabis facility. Since the

cannabis facility will be open daily from 9:00 a.m. to 10:00 p.m. there is a potential for significant parking, traffic and circulation difficulties which would have a negative impact on surrounding neighborhoods and St. Margaret's School.

7. Peter Celano, Esquire appeared on behalf of the Hollywood Diner indicating that the applicants had not made an effort to resolve or address any parking, circulation or traffic issues with the Hollywood Diner.

8. Counsel for the applicant, as well as the Board Professionals explained the standards to be applied to a d(3) variance including the positive and negative criteria. Based upon the factual findings set forth herein the Board determined that the proposed site is not suitable for the proposed use within 1000 feet of the St. Margaret's School. Proximity of the St. Margaret's School and the school activities in the surrounding neighborhood renders this site inappropriate for the proposed use, a condition which has not been alleviated by the applicant. The Board also finds that the applicant has failed to satisfy the negative criteria as the proposed d(3) variance cannot be granted without a substantial detriment to the public good. The Board finds that the negative impact upon the adjacent neighborhood will be substantial and that the proximity to the St. Margaret's School, as well as the significant difficulties with parking, traffic and circulation does substantially impair the intent and purpose of the zone plan and zoning ordinance.

9. Having made a determination to deny the d(3) variance, the Board did not address the variances and waivers associated with the site plan application.

**NOW, THEREFORE BE IT RESOLVED**, by the Planning Board of the Borough of Woodbury Heights that the application of Shiv Prasad, LLC for a conditional use variance and minor site plan approval, along with bulk variances and waivers to establish a licensed retail cannabis facility in an existing building is hereby denied.

Adopted at a regular meeting of the Borough of Woodbury Heights Planning Board on April 3, 2023.

**PLANNING BOARD OF THE BOROUGH  
OF WOODBURY HEIGHTS**

  
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**BRUCE FARRELL, CHAIRMAN**

ATTEST:

  
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**SHANNON ELTON, SECRETARY**

