

**LAND USE BOARD OF THE
BOROUGH OF ROCKAWAY
MORRIS COUNTY, NEW JERSEY**

June 1, 2021

PREMISES: BLOCK 24 LOT 12

347 East Main Street

CASE NO.: LUB-071

APPLICANT: Creating Better Days, LLC

RESOLUTION OF FINDING AND DETERMINATION

WHEREAS CREATING BETTER DAYS, LLC (the “applicant”) has applied to the Land Use Board of the Borough of Rockaway (the “Board”) for use variance relief and waiver of preliminary and final site plan approval to use approximately 635 SF in an existing store front space of a mixed use building at 347 East Main Street for retail sales and service of CBD (Cannabidoil) products, services and related merchandise, and

WHEREAS the Board did hold a hearing on said application on May 4, 2021 upon notice to all parties requiring notice of this application, all parties being given an opportunity to be heard, and

WHEREAS the Board considered the following documents/exhibits

1. Completed Borough of Rockaway Application for the Land Use Board filed December 3, 2020, signed by Patrick Simpson of Creating Better Days, LLC including Rider to Borough of Rockaway, Land Use Board, Application for Development;
2. Site Inspection Authorization Form, signed and dated November 12, 2020;
3. Affidavit of Ownership, signed and dated November 12, 2020;

4. Administrative Checklist;
5. Schedule "A" Checklist;
6. Schedule "A" Checklist "D" Variance;
7. Survey of property entitled "Map of Property 347 East Main Street, Lot 12, Block 24, Borough of Rockaway, Morris County, N.J." prepared by Alfred A. Stewart, PE, PLS of Stewart Surveying & Engineering, LLC dated August 3, 2018;
8. Parking Layout Sketch, undated and unsigned;
9. Morris County Planning Board Application for Land Development Review for 346 East Main Street, Block 24, Lot 12 in the Borough of Rockaway signed by Jason R. Rittie, Esq. and dated December 2, 2020;
10. Morris County Planning Board Application Site Plan Report for "347 East Main Street", File No. 2020-34-3-SP-0 dated January 5, 2021;
11. Engineering plan entitled "Site Layout Plan for 347 East Main Street Lot 12, Block 24" prepared by Alfred A. Stewart, Jr., PE, PLS of Stewart Surveying & Engineering, LLC dated March 10, 2021 consisting of one (1) sheet.
12. Architectural plan entitled "Existing Floor Plans and Photos, Existing Conditions, Creating Better Days LLC, 347 East Main Street, Borough of Rockaway, Morris County, New Jersey" prepared by Kenneth J. Fox, Architect of Fox Architectural Design PC dated February 22, 2021 consisting of one (1) sheet.
13. Planning Report of Topology dated April 29, 2021
14. Engineering report of Mott McDonald dated April 5, 2021., and

WHEREAS the Board has made the following factual findings:

- A. The applicant is represented in these proceedings by Mr. Jason R. Rittie, Esq. of Einhorn, Barbarito, Frost & Botwinick.
- B. The property is owned by Diamonds Bits and Blades, LLC and is improved with a two and one half story frame building. The structure has frontages on both East Main Street and US Highway 46. (a through lot)
- C. The elevation containing store frontages faces the Route 46 (Southerly) side. The building also includes two residential units. Superior Wire Works previously occupied space within the store front area and the applicant proposes to lease the now vacant space, to be occupied by the applicant.
- D. The lot is 7,857 square feet in size and lies in the GLI zone within the Borough of Rockaway. As such, retail sales are not permitted.
- E. The tax records disclose that the building was constructed sometime in or around 1958 and is now nonconforming in certain regards: Minimum Front Yard- 25' required and 8.3' proposed; Minimum Side Yard- 20' required and 15.2'/18.2'

proposed; Maximum Impervious Coverage- 50% permitted and 86.3% proposed. It is noted that all non-conformities are preexisting and unchanged by this application.

- F. The property is identified as Block 24 Lot 12.
- G. A managing member of the owner, Diamonds, Bits and Blades, LLC., Adam Trematore, described the off street parking as being located on the Southerly side and is provided for ten cars, including one handicapped space, there is no loading area. The available number of spaces meets the ordinance requirements.
- H. The property also has a “pole sign” adjacent to the Southeasterly corner of the building.
- I. The neighborhood is an assemblage of mixed uses: residential to the south and west; a vacant one story commercial building to the East; and to the North across East Main Street are single family homes, an auto body shop, and a dog day care center.
- J. A principal of the applicant, Patrick Simpson discussed his business model with the Board. The company has a store located on Spring Street in Newton, NJ, where the Company received a Community Service Award. The clientele are people searching for holistic care.
- K. The applicant offers consultation regarding the proper use of the CBD oil together (containing 0.3% or less THC) with the in store and online sale of the products. Typically 80% of the sales are in person and 20% are on line.
- L. The store hours are proposed to be seven days a week. Monday through Saturday 10am to 8pm. Sunday 10am to 6pm. In store employees will average one to two. The average number of customers is 15 to 30 per day, each customer stays no longer than 10 to 20 minutes.
- M. A loading dock is not needed, the product is small and arrives generally by USPS. Additionally, the applicant has its own off site warehouse and will bring products to the store in a personal vehicle. The only food items will be prepackaged
- N. Waste is limited and two trash cans will be sufficient.
- O. The applicant seeks to use the existing pole sign of sixteen (16) sf where fifteen (15) sf is permitted, which will be illuminated (backlit) but non –flashing. In addition, window and door signs are requested with lettering not larger than 6 inches high.
- P. The applicant’s engineer, Alfred Stewart, PE confirmed the parking spaces, describing them as four for the residential uses and four for retail plus one handicapped space. He also stated that additional parking could be maintained on the East Main Street side of the property. Mr. Stewart referred to his Site Layout Plan, which was marked into evidence as Exhibit A.

- Q. Mr. Stewart described exterior lighting available for the retail use and motion activated lighting for the residential uses.
- R. The engineer discussed a possible location for the trash containers beneath the porch steps on the East Main Street side.
- S. The testimony of the planning expert (Donna Holmqvist PP) established the mixed use nature of the neighborhood and offered an interpretive exhibit. (See Exhibit A2)
- T. The area surrounding and including the subject property includes a variety of residential and commercial uses in close proximity to one another. (Exhibit A3)
- U. The signage exhibit depicts the requested signs: door; window and pole sign. The signage is important as the building does not sit parallel to US Route 46 which is the business frontage. (Exhibit A4) The pole sign is located 9.3 feet from the row whereas 15 feet is required, this condition preexists. The signs will not be noticeable from the surrounding uses and there are several free standing signs in the area. The Garden Apartment complex, while nearby, is set back from the road and will not be impacted by the signage.
- V. The parking stalls at 18 feet in depth are appropriate due to the shallowness of the lot. The Planners review of the business model confirms that a loading zone is not needed.
- W. The purposes of zoning and planning will be advanced by a grant of this application in that the appearance of the property will be improved, the impervious coverage will be reduced and the aesthetics will be improved with landscaping. Purpose of Zoning: a. the appropriate use of the land; c. providing adequate light, air and open space; i. promote a desirable visual environment.
- X. The planner foresaw no harm to the public welfare and no detriment to the intent and purpose of the zone plan.

WHEREAS, the Land Use Board of the Borough of Rockaway has determined that the reasons submitted by the Applicant support a finding that variances can be granted pursuant to NJSA 40:55D- 70 (d) 1 for the following reasons:

1. The purposes of zoning are advanced.
2. The site is unique with frontages on two very busy roads.
3. Special reasons support the relief.
4. The public welfare will be advanced through the distribution of the product which is offered.
5. The site will be organized and cleaned up.

WHEREAS, The Land Use Board has determined that design waivers are appropriate for certain preexisting conditions: the parking spaces at

18' by 9' where 20' by 9' are required and the lack of an off street loading space, and

WHEREAS, a number of preexisting non-conforming conditions exist as to which the Board grants variance relief: front yard setback from US Route 46, minimum side yards, improved lot coverage, and height of the free standing sign (16 feet vs. 15 feet allowed) as to which the Board finds these to be preexisting and otherwise justified pursuant to a N.J.S.A. 40 :55D-70 (c) (2) analysis, and

WHEREAS, the Land Use Board has determined the relief can be granted without detriment to the public good and without impairment to the intent and purpose of the zone plan for the following reasons:

1. The use is consistent with and promotes several goals of the Master Plan.
2. The public welfare will not be negatively impacted as the use is compatible with the residential uses prevailing in the neighborhood.
3. The site will benefit from improvements by the owner in anticipation of this use.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Land Use Board of the Borough of Rockaway, County of Morris, and State of New Jersey that the variance relief requested by the Applicant is granted subject to the following conditions:

1. The Board grants a D1 use variance to allow the applicant to utilize 635 square feet in the existing commercial frontage for its business enterprise.
2. The applicant shall obtain any and all approvals required by the construction official to utilize the space.
3. The applicant and owner shall coordinate with the engineer and planner to remove the gravel area shown on the Site layout Plan leaving a section available to allow residential access to the street.
4. A landscape plan, to include but not limited to street trees along East Main Street, shall be presented to the engineer and planner for approval and shall be implemented.

5. Traffic stops shall be installed for the parking spaces.
6. The trash receptacles shall be relocated to the westerly side of the building under the elevated landing and screening shall be designed and approved by the engineer and planner.

CERTIFICATION

I, Colleen Reardon, hereby certify that the foregoing resolution is a true copy of the resolution regularly and duly adopted by the Land Use Board of the Borough of Rockaway at a duly called meeting of the Board of Adjustment held on June 1, 2021.

Colleen Reardon, Secretary