

GENOVA BURNS LLC

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ST. PETER’S UNIVERISTY	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: HUDSON COUNTY
	:	
Plaintiff,	:	Docket No.: HUD-L-
	:	
v.	:	<u>Civil Action</u>
	:	
PLANNING BOARD OF THE CITY OF JERSEY CITY, and MEDUSA NJ, LLC.	:	
	:	COMPLAINT IN LIEU OF PREROGATIVE WRITS
Defendants.	:	
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Plaintiff St. Peter’s University, through its counsel, Genova Burns LLC, by way of Complaint in Lieu of Prerogative Writs against Defendants, Planning Board of the City of Jersey City (the “Planning Board”) and Medusa NJ, LLC (“Medusa”), alleges as follows:

PARTIES

1. Plaintiff, St. Peter’s University (hereinafter “Plaintiff” or “SPU”) is a private institution of higher education, with main offices located at 2641 Kennedy Boulevard, Jersey City, New Jersey 07306.

2. Defendant, Medusa NJ, LLC (hereinafter “Medusa”) is a New Jersey Limited Liability Corporation that is licensed to do business in the state of New Jersey, with a principal place of business at 759A Bergen Avenue, Jersey City, New Jersey 07306.

3. Defendant, Planning Board of the City of Jersey City (hereinafter, “Planning Board”) is a body corporate and politic organized under the laws of the State of New Jersey, and a duly constituted planning board pursuant to N.J.S.A. 40:55D-23 *et seq.* The Planning Board has its principal place of business located at 360 Martin Luther King Drive, Jersey City, New Jersey 07302.

FACTUAL BACKGROUND

A. St. Peter’s University and the Neighborhood

4. SPU, formerly known as St. Peter’s College, has pursued its goals of providing quality educational services in the City of Jersey City for over a century.

5. As such, SPU’s campus spans several buildings and lots in the area generally bound by Highland Avenue to the north, Montgomery Street to the south, Bergen Avenue to the east and West Side Avenue to the west.

6. With the popularity of the university increasing, SPU is now completing development of the new Ignatius Hall dormitory (hereinafter the “Dormitory”) which is located directly adjacent to the property owned by Medusa at 762 Montgomery Street, also designated as Block 14901, Lot 22 on the tax maps for the City of Jersey City (the “Property”).

7. Existing uses adjacent to the Dormitory include retail, a school, restaurants, non-profit and residential uses.

8. Among the adjacent retail uses is a clothing retail store operated by Defendant, Medusa and located at the Property.

B. Medusa’s Conditional Use Application

9. In March of 2022, Medusa submitted an application to the Planning Board for conditional use approval to convert the existing clothing retail store on the Property into a class

five (5) adult use Cannabis Establishment on the ground level, with a cannabis consumption area located in the basement (the “Application”).

10. Together with the Application, Medusa submitted certain reports which are required as part of the conditional use application, including a community impact plan.

11. Notice for Medusa’s Application was provided for the Planning Board’s March 28, 2022 hearing and the hearing on Medusa’s Application was continued at the Planning Board’s April 5, 2022 hearing.

C. The Board Failed to Apply the Conditions of the Conditional Use Standard

12. Among the conditions required to receive approval for a conditional use application from the Planning Board for a class 5 Cannabis Establishment is the condition that “[t]he main entry door of any Cannabis Establishment subject to a class 5 license shall be at least two hundred (200) feet from any school identified on the City’s Official Drug Free School and Park Zone Map, pursuant to Section 151-1 of the Jersey City Municipal Code and pursuant to regulations and definitions in N.J.S.A. 2C:35-7 et seq., and N.J.S.A. 2C:35-7.1 et seq.” See Jersey City’s Land Development Ordinance (“LDO”), chapter 345-60.5-4.D.

13. Chapter 345-60.5-4.D does not define the term “school” or say that the definitions set forth in the City’s Land Development Ordinance or those definitions set forth in N.J.S.A. 2C:35-7 et seq. and N.J.S.A. 3C:35-7.1 *et seq.* are to be used to modify the schools identified on the City’s Official Drug Free School and Park Zone Map, rather a condition of this use is that the main entry door of any Cannabis Establishment subject to a class 5 license not be within 200 feet of the schools *identified on that map*.

14. The City’s Official Drug Free School and Park Zone Map (the “DFSPZ Map”) Published by the City of Jersey City identifies two classes of properties: schools and parks.

Various buffer zones are depicted on the DFSPZ Map around these designated properties. A true copy of the DFSPZ Map is attached hereto as **Exhibit 1**.

15. Among the schools identified on the DFSPZ Map there are two sub-classes identified by corresponding colors and buffer zones: Pre K or K-12 Schools are marked in purple, and College or Universities are marked in light blue. Id.

16. As depicted on the DFSPZ Map, the SPU campus is identified on the map as school number 101, noted in the list of schools provided as a table on that map, and marked in light blue on the map, indicating that it is both a school and a college or university. Id.

17. As indicated on the DFSPZ Map, Medusa's Property is within the college buffer zone and is within 200 feet of the Dormitory. Id. In fact, it is only approximately 65 feet from SPU's Dormitory.

18. However, the Staff Memo prepared by the City's Planning Department, the testimony provided to the Planning Board and the Planning Board Resolution relied on a different map, entitled the "Cannabis Retailer Buffer Map" which was relied upon by the Planning Board in its determination of this case. A true copy of the Staff Memo with enclosed "Cannabis Retailer Buffer Map" is attached hereto as **Exhibit 2**. A true copy of the Planning Board's Resolution is attached hereto as **Exhibit 3**.

19. It is unclear whether the "Cannabis Retailer Buffer Map" correlates with the DFSPZ Map concerning the locations of primary or secondary schools, but the "Cannabis Retailer Buffer Map" does not include properties identified as colleges or universities on the DFSPZ Map and is not the map referenced in chapter 345-60.5-4.D of the LDO.

20. The issue of whether the Dormitory being within 200' feet of the Property's proposed storefront violates a condition of the proposed use was raised on several occasions by

SPU's counsel and discussed amongst the Planning Board Commissioner's and City Planning Staff at the hearing on Medusa's Application.

21. SPU's counsel specifically objected to the Planning Board's interpretation of "school" not to include colleges or universities identified on the DFSPZ Map.

22. While the Jersey City LDO defines the term "school" in chapter 354-6 to include "An institution of academic education which is designed, constructed or used for education of students up to and through the secondary level", the DFSPZ Map identifies colleges and universities on its list of schools and identifies SPU's campus on the map itself.

23. Despite hearing this objection, the Planning Board, on advice of its planning staff determined that the term school does not include a university and that therefore the immediate proximity of the Dormitory to the Property was not considered in the Planning Board's determination of whether Medusa met the conditional use standard.

24. It would be impossible for Medusa to relocate the main entrance to the Property's storefront outside of a 200' buffer from the SPU campus, inclusive of the Dormitory, as the entire Property falls within that buffer.

D. The Planning Board Failed to Consider the Negative Impact of the Project on Community Members, including SPU

25. As a part of Medusa's Application, Medusa was required to prepare a community impact plan "summarizing how the applicant intends to have a positive impact on the community in which the proposed cannabis establishment is to be located; which shall include an economic impact plan and a description of outreach activities." See Jersey City LDO at 345-60.5-4.D.

26. At the Planning Board hearing for Medusa's Application, the Board heard from SPU's counsel that the proposed community impact plan does not reflect any input from SPU.

A true copy of the community impact plan provided as part of the record presented to the Planning Board is attached hereto as **Exhibit 4**.

27. SPU's counsel explained the substantial negative impacts Medusa's Cannabis Establishment and Consumption Lounge would have on SPU, both to SPU's underage student population and the community as a whole.

28. Separate, but equally compelling objections were heard from counsel for Hudson Catholic High School, concerning the negative impact the proposed Cannabis Establishment and Consumption Lounge would have on the Hudson Catholic High School community and the Planning Board specifically heard objections pertaining to the Property's location within 200 feet of Hudson Catholic High School.

29. Despite hearing these objections, the Planning Board approved Medusa's Application by a 5-1 vote.

30. This approval was the eighth in a series of approvals the Planning Board granted to various cannabis establishments in the City of Jersey City that night.

31. The resolution memorializing the Planning Board's approval of Medusa's Application ("Resolution") was published on June 21, 2022.

COUNT ONE

(Arbitrary and Capricious- Failure to Consider the Conditional Use Standards - Failure to Apply 200 Foot Buffer)

32. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if set forth fully herein.

33. Chapter 245-60.5-4.D.2.a of the LDO sets forth as a condition of conditional use approval for a Class 5 Cannabis Establishment, that "[t]he main entry door of any Cannabis Establishment subject to a class 5 license shall be at least two hundred (200) feet from any school

identified on the City's Official Drug Free School and Park Zone Map, pursuant to Section 151-1 of the Jersey City Municipal Code and pursuant to regulations and definitions in N.J.S.A. 2C:35-7 et seq., and N.J.S.A. 2C:35-7.1 *et seq.*" (emphasis added).

34. The DFSPZ Map identifies SPU as a school.

35. SPU's Dormitory is within 200 feet of the main entry door to the Property as indicated on Medusa's proposed architectural and site plans.

36. The Planning Board was arbitrary and capricious in not applying the term "school" to SPU, despite SPU's identification on the DFSPZ Map.

37. The Planning Board failed to apply the conditional use criteria for a Class 5 Cannabis Establishment in a fair and equitable manner, despite being informed of Medusa's inability to meet this criterion.

38. Therefore, the Planning Board's approval was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- a. Declaring the Planning Board's approval of the Application unlawful, invalid, and void;
- b. Attorneys' fees, costs, and expenses; and
- c. Any such other relief the Court deems equitable and just.

COUNT TWO

(Arbitrary and Capricious – Failure to Consider the Conditional Use Standards – Community Impact Plan)

39. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if set forth fully herein.

40. Chapter 245-60.5-4.D.5.a of the City of Jersey City's LDO sets forth as a condition of conditional use approval for a Class 5 Cannabis Establishment, that an applicant must provide "a community impact plan summarizing how the applicant intends to have a positive impact on the community in which the proposed cannabis establishment is to be located; which shall include an economic impact plan and a description of outreach activities."

41. The community impact plan provided by Medusa reflects no input from SPU, which is a significant member of the community in which the proposed establishment is to be located, fails to account for any deleterious impacts the proposed class five Cannabis Establishment or cannabis consumption area would have on the community, including SPU's underage student population who will reside in the Dormitory adjacent to and within 65 feet of Medusa's Property.

42. The Planning Board should not have approved Medusa's application *pro forma* based on Medusa's insufficient community impact plan without considering the substantial negative impacts that would be caused by this development.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- d. Declaring the Planning Board's approval of the Application unlawful, invalid, and void;
- e. Attorneys' fees, costs, and expenses; and
- f. Any such other relief the Court deems equitable and just.

COUNT THREE

(Violation of N.J.S.A. 40:55D-24 - The Planning Board Exceeded its Statutory Powers)

43. Plaintiff repeats and realleges the allegations in the foregoing paragraphs as if set forth fully herein.

44. The powers of the Planning Board set forth in N.J.S.A. 40:55D-25 do not include the power to grant use variance relief.

45. Because the main entrance of Medusa's Property was within 200 feet of the Dormitory, and because the Dormitory is identified as a school on the DFSPZ Map, Medusa could not comply with the standards set forth in Chapter 245-60.5-4.D.5.a of the City of Jersey City's LDO and a use variance was required.

46. The Planning Board does not have jurisdiction to hear applications for use variances, and therefore the approval of the Application is void and of no further force and effect.

47. As such, the Planning Board's action in approving the Application was arbitrary, capricious and unreasonable, because it had no jurisdiction to grant approval for the Application without a use variance.

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

g. Declaring the Planning Board's approval of the Application unlawful, invalid, and void;

h. Attorneys' fees, costs, and expenses; and

i. Any such other relief the Court deems equitable and just.

DESIGNATION OF TRIAL COUNSEL

In accordance with Rule 4:25-4, Plaintiffs hereby designates Jennifer Borek, Esq. and as trial counsel in this action.

GENOVA BURNS LLC

By: s/Jennifer Borek
JENNIFER BOREK
*Attorneys for Plaintiff,
St. Peter's University.*

Dated: August 4, 2022

RULE 4:69-4 CERTIFICATION

In accordance with Rule 4:69-4 all necessary transcripts of local agency proceedings in this case have been ordered.

GENOVA BURNS LLC

By: s/Jennifer Borek
JENNIFER BOREK
*Attorneys for Plaintiff,
St. Peter's University.*

Dated: August 4, 2022

RULE 4:5-1 CERTIFICATION

I hereby certify that to the best of my knowledge, information, and belief, the within matter in controversy is not the subject of any other pending or contemplated court actions or arbitration proceedings.

I further certify that to the best of my knowledge, information, and belief, I am not aware of any non-parties who should be joined in the action.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

GENOVA BURNS LLC

By: *s/Jennifer Borek*
JENNIFER BOREK
Attorneys for Plaintiff,
St. Peter's University.

Dated: August 4, 2022