

**Zoning Board of Appeals
Lakeville, Massachusetts
Minutes of Meeting
August 19, 2021
Remote meeting**

On August 19, 2021, the Zoning Board held a remote meeting. It was called to order by Chairman Olivieri at 7:00 p.m. LakeCam was recording, and it was streaming on Facebook Live.

Members present:

John Olivieri, Jr., Chair; Jeffrey Youngquist, Vice-Chair; Gerald Noble, Vice-Clerk; Chris Carmichael, Member; Christopher Campeau, Associate; Christopher Sheedy, Associate

Others present:

Amy Kwesell, Town Counsel; Bob Forbes, Zenith Consulting Engineers; Joshua Lee Smith, attorney for the applicant; Bob Carr, Nature's Remedy; Harris Shain, Matt Leeth; Jushi MA

Agenda item #1

Mr. Olivieri read this item into the record. It was an explanation of how the provisions of Chapter 20 of the Acts of 2021 allowed the Board to continue to meet remotely.

Nature's Remedy/Jushi hearing – 310 Kenneth W. Welch Drive

Mr. Olivieri opened the Nature's Remedy/Jushi hearing at 7:00 p.m. and read the legal ad into the record. Atty. Joshua Lee Smith was presenting for the applicant. He advised Nature's Remedy is seeking two items. The first pertains to a request for approval from the Board to transfer or assign the right title and interest, with respect to the Special Permits that were granted by this Board as well as the Planning Board, in connection with this facility. The second item pertains to a modification with respect to an expansion of the facility, whereby the landlord had previously used an approximately 10,000 square foot space within the existing building for office use. Nature's Remedy is looking to utilize that space for office, breakroom, and a locker room. This is an accessory use to the existing marijuana use.

Atty. Smith then provided some background to these requests. The first pertains to the pending merger between Nature's Remedy and Jushi. The parties have yet to complete the merger. There are some State level as well as some local level approvals that need to be obtained in order for this merger to be completed. As a result of this merger, the surviving entity will be Jushi MA, Inc. The State level approval for a change of ownership and control was approved last week. Locally, they are requesting to transfer the rights with respect to what Nature's Remedy is holding today to Jushi, contingent upon the closing of the merger.

Regarding the modification to the Special Permit based on the expanded 10,000 square foot area, they met with the Lakeville Planning Board who unanimously approved the Site Plan subject to whatever potential conditions or changes may come from this meeting with the ZBA. In addition to that, they had some minor input with some items they wanted to be added to the plan. He noted that Bob Forbes from Zenith, who had updated the plan with these changes, was also on the call. He advised that they had also met with the Board of Selectmen and the two HCA's were assigned and transferred subject to the closing of the merger.

Mr. Forbes then asked if he could share his screen so he could update the Board on the plan. He displayed the entrance to the site, the Nature's Remedy portion of the building, and also the proposed 10,000 square foot office modification. Mr. Forbes advised that one of the issues discussed with the Planning Board was the parking situation. The site was originally approved with 67 total spaces for Nature's Remedy. One of the components of that was 20 spaces designated for a dispensary use. In this project, there is no dispensary proposed. It was also a condition of the Planning Board's approval that a dispensary would not be allowed by the Special Permit. He continued that although they have 67 approved spaces from last year, there are actually 68 spaces that are designated for the use of Nature's Remedy/Jushi. He then showed the location of those spaces. The painted lines did not exist in the circular area when it was surveyed, but they do now. That indicates there are a total of 19 spaces. That brings the total number of spaces available for the use of this project to 68 spaces.

Mr. Forbes said the next item was related to the Fire Chief. He drove his vehicle on a gravel fire access in the back of the building to make sure that it was adequate, but he also had the following conditions that he would like to see:

- The fire access road should be shown on the plan. Mr. Forbes said the revised plan reflects that.
- The fire access road must be maintained. This note was added to the plan.
- The access and egress doors should have proper signage for emergency use.

Mr. Forbes said the Planning Board also wanted all parking spaces to be identified and designated for Jushi use only.

Mr. Olivieri said they did have some correspondence that he would like to read into the record, regardless of if the issue had already been addressed. The August 10, 2021, memo from the Town Administrator questioned if the parking was adequate and recommended a full analysis of the facility's parking. The August 17, 2021, memo from the Planning Board recommended the following:

- The Special Permit will not allow a dispensary.
- The fire access lane is to be shown on the plan.
- A copy of the amended Site Plan will be referenced in the Special Permit.
- There will be signage or paint that will indicate parking spaces shown on the Site Plan that are designated for Nature's Remedy.
- Nature's Remedy egress access doors will be marked with signage for emergency response.

Mr. Olivieri said that he had spoken to Chief O'Brien earlier today, and he confirmed that was what they were looking for. Mr. Forbes said that the fire access road had been driven on within the last few days. His understanding from the Chief was that it be maintained in the condition that it is in now. Mr. Olivieri said they may want to condition that to make sure it is accessible to the Chief's liking and that it is kept open and accessible at all time. Atty. Smith said they would be amenable to that condition. He noted that included on the latest reiteration of the plan a notation was added to that effect.

Mr. Olivieri said they also have a letter from August 13, 2021, from the Fire Chief which he read into the record. He noted that they had addressed all the items except for the concern of the multiple fire alarm systems in the building. Atty. Smith advised that immediately after the Planning Board meeting, representatives from Nature's Remedy had reached out to the landlord, as well as others in the Town, and the Fire Chief in response to this letter. He believed this was discussed directly with the landlord. Mr. Carr added in their build out, they took out the existing alarm system and put in the latest in technology system in their area. It is not clear what is in the other areas but he knew the landlord has been working on it.

Mr. Olivieri also read the August 18, 2021, letter from the Conservation Commission. In general, they approved the project but required that no construction materials be stored in the wetland areas, and no work be performed in the 100-foot buffer zone. Mr. Olivieri stated it seems like most of the issues that were brought up at prior meetings have been addressed. The fire accessibility and the parking issues seem to be the biggest concerns. They will have 10,000 square feet of additional space, but there will be no additional employees. There will be no dispensary so there will be no more flow from a person or individual standpoint to that space. Atty. Smith said that was correct.

Atty. Kwesell asked for a clarification on the parking. The application states 25 spaces that were previously designated for other occupants becoming part of this, but the engineer said something about one extra spot. Atty. Smith said there is a net increase of one spot. There has been a slight reconfiguration of a few spaces in different areas from the last approval. The net change is it is going to result in a total of 68 spaces. In terms of the physical spaces at the site, nothing has changed but there has been a movement of a dumpster that caused a deviation in the number of spaces. If you look at the original plan from 2018, the Nature's Remedy spaces are on the easterly side of the building, and that is still the case. Since that time, some of the spaces have been reallocated for Nature's Remedy's use, and some to the landlord's use or another tenant's use. The vast majority of the spaces on the easterly side of the building are still for Nature's Remedy's use. The most updated count, based on Mr. Forbes and field work, is 68. Atty. Kwesell said the application does state 70. Atty. Smith said that he will correct that and say that it is 68 based on fieldwork. In the lease, Nature's Remedy is guaranteed 70 spaces but as far as tonight's plan that they are looking to have approved, they have 68 spaces that Nature's Remedy is comfortable having designated and allocated to its use. Those spaces that are designated on the plan will be marked physically on the ground by either spray paint or with signage as Nature's Remedy's exclusive spaces.

Atty. Kwesell asked Mr. Olivieri how the Board would like those spaces designated. Mr. Carmichael felt they still did not have enough parking. He would agree with the Selectmen in requesting a parking analysis of the site. Mr. Olivieri said that has been addressed. He remembered that they had an issue with this originally when there was to be a dispensary on site.

Now that is not the case and the employee count is not going to change, that puts them in a much better position. Mr. Noble noted that on the Site Plan they had received today, the 19 existing spaces that were just striped, were not marked as Nature's Remedy so could that be confirmed? Atty. Smith said that was correct. Mr. Noble would then like the Site Plan modified to indicate that.

Mr. Noble continued that he would prefer signage for those spaces. Atty. Smith said the Planning Board did mention some sort of designation. One member did not want to see multiple signs out there. If that was this Board's preference, maybe there could be a limited number of signs that could accomplish the same job. Mr. Noble understood that but said that a sign is more enforceable. Mr. Carmichael agreed as it was in an industrial area. He noted that in the winter time, if they are spray painted in a different color they won't be visible.

Atty. Kwesell said she had nothing additional, but she could run through the conditions. Mr. Olivieri asked if they were issuing a new Special Permit. Atty. Kwesell replied there is really no difference between a modification to a Special Permit or a new Special Permit because Chapter 40A, Section 9 does not allow for modifications to Special Permits. They are still required to go through the Chapter 40A, Section 11 notice requirements, publicizing, abutter notifications, etc. As they still have to go through all that, she thought that they issue them a modified Special Permit but the start date on that modified Special Permit starts when it is issued. Therefore, they have two years from when this Permit is issued, not the prior Permit. That was her opinion on how these modifications should go. She will take the existing Special Permit and modify it with some of these new conditions and outline the changes. They will still have to comply with all of the old conditions.

Atty Kwesell said the following were the new conditions:

- The fire lane must be maintained to the satisfaction of the Fire Department. Trees must be trimmed and the gravel must be drivable.
- The fire lane must be kept open and accessible at all times.
- The parking spaces will be marked by signage that says "Jushi use only".
- The emergency access doors will be clearly labeled.
- Tenant space on the building will be clearly marked.

Mr. Carmichael said that he would like to see that the alarms within the building would be changed and the alarms and beacons be on the outside be included in the Special Permit. Mr. Olivieri suggested that the fire alarm system needs to meet the Fire Chief's approval. Atty. Smith stated on that point it was in the interest of Nature's Remedy, given that it is a multi-tenanted building, that all of the fire alarm systems are up to code and that they can communicate back to the local Fire Department. However, Nature's Remedy can only do what it can do with respect to its own space. What the landlord and what the other tenants do with respect to their spaces and their systems is completely out of Nature's Remedy's control. A condition like that did not seem fair or reasonable as it is the landlord's ultimate responsibility to enforce it. He would be fine with the conditions being with respect to Nature's Remedy's space. Mr. Olivieri thought that was a fair point.

Atty. Kwesell said that she was not really sure what the Fire Chief is looking for. They might want to see exactly what it is. In her opinion when it comes to public safety, she recommends they do

what the Fire Department is requesting. Mr. Olivieri felt that to hold Nature's Remedy accountable for what another tenant may do is potentially problematic. Atty. Kwesell suggested prior to the issuance of a building permit the applicant has to meet with the Fire Department to see if they can do anything to satisfy the Fire Department's concern regarding alarms in the building. Atty. Smith said they would be okay with that as long as it was confined to Nature's Remedy and whatever good faith efforts they would need to make with respect to satisfying the Fire Chief regarding code compliance. He noted that he was not sure it was the Chief's intention that these become conditions in a zoning related Special Permit. If there was an issue with a fire systems code, the Fire Chief does not need a Special Permit for enforcement. Mr. Olivieri suggested the condition read the operator will comply with all applicable laws and codes and will work in a good faith effort with the Fire Chief. That says they will work themselves and with the building owner to do what they can, but it is not going to be tied to if they can't get another tenant to do something. Atty. Smith was okay with the intent of the suggestion.

Mr. Noble wanted to add that the parking spaces be noted as 68 spaces and that there will be no dispensary at the Site. He would also like the Site Plan to be modified to reflect that there are 19 spaces in the circular lot designated for Nature's Remedy. He asked if Jushi MA is the resulting entity, do the drawings and Special Permit need to reflect that new name or is it okay to go with Nature's Remedy. Atty. Kwesell said it was fine because they were putting in that they were approving the transfer if the Board approves to do that.

Mr. Olivieri asked if they needed two separate votes. Atty. Kwesell said they will be approving the transfer of all permits, contracts, and agreements from Nature's Remedy to Jushi MA and to approve modifications to the Special Permit as discussed. Mr. Olivieri clarified that included the conditions and those conditions need to be complied with, excluding the ongoing ones, before the Special Permit will be issued. Atty. Kwesell said that was correct, but prior to the building permit. Atty. Smith said with respect to prior to the issuance of the building permit that all the conditions need to be met, they are ready to use and occupy that space. Mr. Olivieri said he can rephrase to occupancy permit. Atty. Smith said it might take some time to get those signs out there. Mr. Olivieri said what they are looking to accomplish is that other than the signs and maintenance of the access roadway, they will be issued a temporary occupancy permit. They will get the final when the signs are in the ground. After further discussion, Mr. Olivieri asked if they thought three months was reasonable in order to get the signs done. Mr. Carr thought that was reasonable. Mr. Olivieri said they would change it from a temporary occupancy to the signs need to be in 90 days from occupancy.

Atty. Kwesell said the motion will be to approve the merger from Nature's Remedy to Jushi MA and to also transfer the existing Special Permit. The Special Permit will also be modified with regard to the extra 10,000 square feet of space and a reconfiguration of parking as conditioned by the Board.

Mr. Carmichael moved that motion. It was seconded by Mr. Youngquist.

Roll Call Vote: Mr. Carmichael-Aye, Mr. Youngquist-Aye, Mr. Noble-Aye, Mr. Campeau-Aye, Mr. Olivieri-Aye

Ms. Murray explained the timing of the filings, the appeal period, etc.

The hearing closed at 8:06.

Documents distributed for the hearing:

- Petition packet
- Legal ad
- Site Plan revised August 19, 2021
- Conservation Commission correspondence of August 18, 2021
- Fire Department correspondence of August 13, 2021
- Planning Board correspondence of August 17, 2021
- Town Administrator correspondence of August 10, 2021

Approve meeting minutes

Mr. Noble made a motion, seconded by Mr. Youngquist, to approve the meeting minutes from the July 15, 2021, meeting.

Roll Call Vote: Mr. Noble-Aye, Mr. Youngquist-Aye, Mr. Campeau-Aye, Mr. Sheedy-Aye, Mr. Olivieri-Aye, Mr. Carmichael-Abstain

Old Business – Sign bylaw update or discussion

Mr. Olivieri said that if anyone had any comments regarding the sign bylaw update to pass them along to Ms. Murray so she and he could put them altogether and forward them to the Planning Board.

New Business

There was no new business.

Adjourn

Mr. Carmichael made a motion, seconded by Mr. Youngquist, to adjourn the meeting.

Roll Call Vote: Mr. Carmichael-Aye, Mr. Noble-Aye, Mr. Youngquist-Aye, Mr. Campeau-Aye, Mr. Sheedy-Aye, Mr. Olivieri-Aye

Meeting adjourned at 8:08.