

BEATTIE PADOVANO, LLC

Daniel L. Steinhagen, Esq.

Attorney ID # 0816622005

200 Market Street, Suite 401

Montvale, New Jersey 07645

(201) 799-2149

dsteinhagen@beattielaw.com

Counsel for Plaintiff Hoboken for

Responsible Cannabis, Inc., an NJ Nonprofit

Corporation

HOBOKEN FOR RESPONSIBLE CANNABIS,
INC., AN NJ NONPROFIT CORPORATION

Plaintiff,

vs.

CITY OF HOBOKEN PLANNING BOARD and
BLUE VIOLETS, LLC,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO.

CIVIL ACTION

Plaintiffs Hoboken for Responsible Cannabis, Inc. an NJ Nonprofit Corporation, having a business address of P.O. Box 3022, Hoboken, New Jersey by way of Complaint in Lieu of Prerogative Writs against Defendants City of Hoboken Planning Board, having a business address of 94 Washington Street, Hoboken, New Jersey and Blue Violets, LLC, having a business address of 628 Washington Street, Hoboken, New Jersey, alleges as follows:

PREAMBLE

1. This action challenges the decision of the City of Hoboken Planning Board that granted conditional use and site plan approval to an adult-use cannabis retailer for a property that located in close proximity (i.e., less than 600 feet) to two schools. Startingly, the City of Hoboken Planning Board granted that approval after the City of Hoboken’s Governing Body adopted, and the City of Hoboken’s Mayor approved, an amendment to the City of Hoboken’s Zoning Ordinance that prohibited such businesses within 600 feet of any primary or secondary school without a conditional use variance that only the City’s zoning board of adjustment can

grant. The focus of this action, as more fully alleged below, relates to the so-called Time of Application rule under New Jersey's Municipal Land Use Law, *N.J.S.A. 40:55D-10.5*. The conditional use application in question was filed after the date when the limitation went into effect and was not even complete on the date of filing. However, the City of Hoboken Planning Board improperly applied the Time of Application Rule because the developer, Defendant Blue Violets, LLC, had made other applications to other agencies of the City of Hoboken before it filed its application for development with the City of Hoboken Planning Board.

A. *The Parties*

2. Plaintiff Hoboken for Responsible Cannabis, Inc., an NJ Nonprofit Corporation (referred to herein as "HRC") is a non-profit corporation formed by residents and taxpayers of the City of Hoboken, including its registered agent, Elizabeth Urtecho, who participated in the proceedings below, who are concerned about the manner in which the City of Hoboken and its subordinate agencies and boards is implementing the New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act, PL. 2021, c. 19 (the "NJCREAMM Act") and its land use ordinances adopted pursuant to the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.* (the "MLUL").

3. Defendant City of Hoboken Planning Board (the "Board") is the duly constituted and authorized planning board of the City of Hoboken. The Board is organized pursuant to Article II of the MLUL and has specific and definite powers as set forth in *N.J.S.A. 40:55D-25*, which include, but are not limited to review of applications for development for site plan, subdivision, and conditional uses, provided that the conditional uses do not violate the conditions of the use.

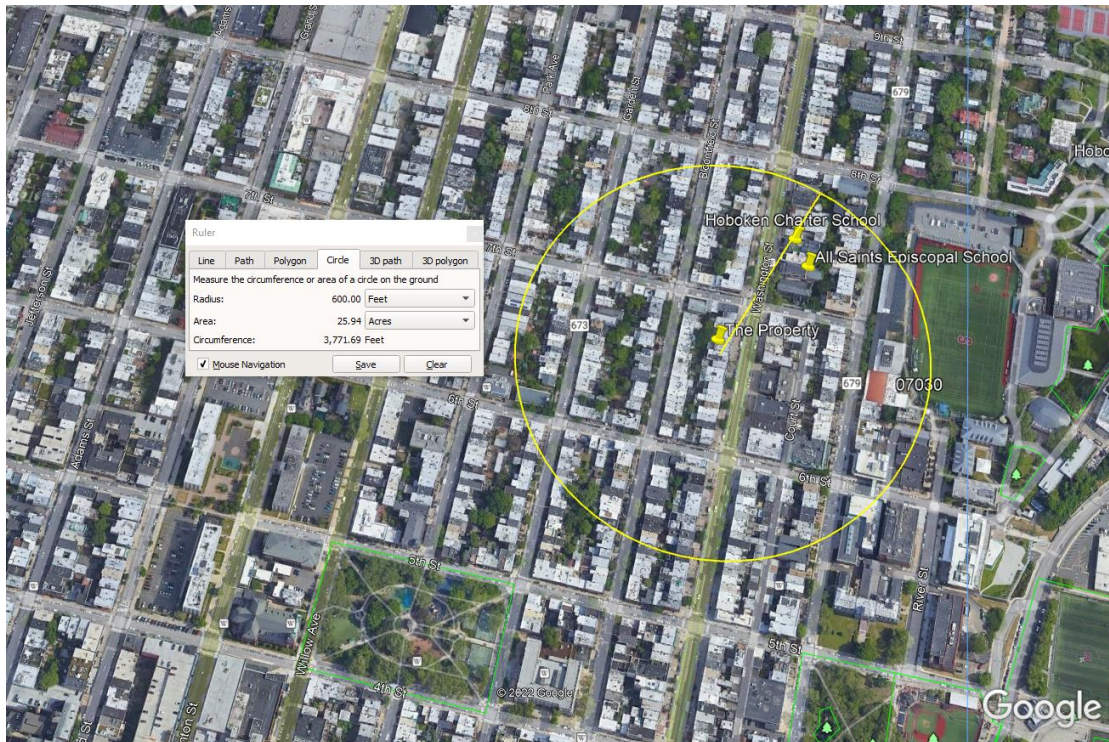
4. Defendant Blue Violets, LLC (“Blue Violets”) is a developer under the MLUL and filed an application for development with the Board concerning property located at 628 Washington Street, Hoboken, New Jersey (the “Property”).

B. The Property

5. The Property is improved with an existing, multi-tenanted, mixed-use building. There are two retail spaces on the ground floor of the Property with two floors of apartments located above the ground floor retail.

6. The Property is located in Hoboken’s C-2 Zone.

7. The Property is located within 600 feet of the Hoboken Charter School, located at 713 Washington Street, Hoboken, New Jersey and the All Saints Episcopal School, 707 Washington Street, Hoboken, New Jersey as shown on the map below:



C. The Zoning

8. The City of Hoboken implemented the NJCREAMM Act by adopting an amendment to its zoning ordinance, Chapter 196, to regulate retail cannabis business by, among other things, classifying them as conditionally permitted uses in the C-2 Zone.

9. The City of Hoboken's initial ordinance pursuant to the NJCREAMM Act, B-384, was adopted on August 18, 2021 and became effective shortly thereafter.

10. The ordinance contained standards for retail cannabis businesses that include, but are not limited to, a proximity restriction preventing cannabis businesses within 500 feet of another cannabis business, a prohibition against being located on the same block frontage as a primary or secondary school, hours of operation restrictions for cannabis business, that operation as a home occupation was not allowed, and that a retail cannabis business could not be housed in a movable or mobile structure.

11. Prior to the adoption of B-384, the City of Hoboken permitted medical-use cannabis retailers, but not adult-use retailers (as same were not lawful under New Jersey law).

12. When the City of Hoboken determined to permit medical-use cannabis retailers, it established a Cannabis Review Board pursuant to Chapter 36 of its ordinances, the purpose of which was to "serve as an advisory committee to the City of Hoboken" and make reports to the City's land use boards.

13. Hoboken's Cannabis Review Board does not exercise any powers delegated by the MLUL, including but not limited to site plan, subdivision, conditional use, or variance approval.

14. Later, on March 9, 2022, the City of Hoboken introduced an ordinance, which was classified as Ordinance B-446 (the “Ordinance”), to impose common-sense regulations to control the sale of cannabis products.

15. Specifically, the Ordinance imposes further location restrictions on the sale of cannabis products. Specifically, the Ordinance amends Section 196-33.1(I) of the City of Hoboken Zoning Ordinance to provide, as a condition of the conditional use, that no cannabis retailer “shall . . . be located within 600 feet in all directions of any primary or secondary school . . .”

16. The Ordinance further limits the total number of cannabis retailers, whether for adult-use or medical-use only, to a maximum of six.

17. The City Council referred the Ordinance to the Defendant Board, which reviewed the Ordinance on April 5, 2022, and found that the Ordinance was consistent with the City’s Master Plan.

18. The City Council conducted a second reading on the Ordinance and voted to adopt it on April 6, 2022.

19. The City of Hoboken’s Mayor, Ravinder Bhalla, approved the Ordinance on April 8, 2022.

20. The Ordinance went into effect on April 28, 2022.

D. The Application and Hearing

21. Blue Violets made application to the Cannabis Review Board on or about February 18, 2022.

22. The Cannabis Review Board endorsed Blue Violets’ project on April 21, 2022.

23. Blue Violets prepared and submitted an application for development for conditional use and minor site plan to the Board shortly thereafter (the “Application”).

24. The Application was signed by Blue Violets’ principal on April 29, 2022 (i.e., one day after the Ordinance went into effect).

25. Upon information and belief, Blue Violets submitted the Application on April 29, 2022.

26. The Application did not include items required by the City of Hoboken’s ordinances at the time of submission on April 29, 2022, including but not limited to a completed contribution disclosure form, flood plain administrator letter/certification, an executed community host agreement, a certification of real estate taxes, lighting plan, and signage details. The application submitted did not even identify a licensed attorney to represent Blue Violets.

27. Upon information and belief, some of the items referenced in the preceding paragraph were submitted on May 10, 2022.

28. On May 10, 2022, the Board’s subcommittee, consisting of its Chairman and two other members, voted to deem the Application incomplete because not all of the items required by the City’s ordinances had been provided.

29. On June 14, 2022, the Board’s subcommittee again voted to deem the application incomplete.

30. Prior to that meeting, a member of the public submitted a letter to the Board arguing that the Ordinance restricted the use of the Property and contesting its jurisdiction over the Application on the grounds that Blue Violets required a conditional use variance because the Property was within 600 feet of a school in violation of the restrictions imposed by the Ordinance.

31. Blue Violets did not appeal either the May 10, 2022 incompleteness determination or the June 14, 2022 incompleteness determination.

32. On July 7, 2022, the Board's subcommittee deemed the Application complete and scheduled the Application for a public hearing.

33. The Board considered the Application at a public hearing on September 15, 2022.

34. Blue Violets presented the testimony of three witnesses: its principal, an attorney from Cole Schotz, P.C., and a planner.

35. When members of the public sought to question Blue Violet's witnesses about the proximity of the Property to the All Saints Episcopal School and the Hoboken Charter School, and the fact that the Application violated one of the conditions of the conditional use as set forth in the Ordinance, Blue Violets' attorney repeatedly objected and the Board ruled these questions were irrelevant based upon the Time of Application Rule, *N.J.S.A. 40:55D-10.5* even though the Board made no formal determination about whether the Application was subject to the provisions of the Time of Application Rule.

36. Eventually, the Board requested advice from its attorney, given that there was a question about whether the Application was complete prior to the effective date of the Ordinance. The Board was advised as follows: "[F]or the Board's edification, substantial compliance with the submission requirements is enough."

37. Blue Violets argued that its application to the Cannabis Review Board triggered the Time of Application Rule even though its application to the Cannabis Review Board is not an application for development under the MLUL.

38. Instead, as defined by the MLUL, an "application for development" is "the application form and all accompanying documents required by ordinance for approval of a

subdivision plat, site plan, planned development, cluster development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 or 27 of P.L. 1975, c. 291 (C.40:55D-34 or C.40:55D-36).”

39. Despite this, Blue Violets argued, and the Board accepted, that the application to the Cannabis Review Board is part of the land use process because Section 196-33.1(M)(1) of the City of Hoboken Zoning Ordinance states, “Prior approval. A cannabis retailer, medical cannabis dispensary or cannabis delivery operator located within the City of Hoboken shall first obtain an endorsement from the Hoboken Cannabis Review Board.”

40. The Board improperly failed to consider the written submission of members of the public that asserted that the Board lacked jurisdiction to consider the Application, and instead inferred, without a formal vote, that the Time of Application rule exempted Blue Violets from compliance with the requirements contained in the Ordinance.

41. Even if the prior approval of the Cannabis Review Board is required prior to filing an application for development with the Board, this is a submission requirement, not part of an application for development.

42. Under New Jersey law, as described by the Supreme Court in *Dunbar Homes, Inc. v. Bd. of Adj. of the Twp. of Franklin*, 233 N.J. 546 (2018), the Time of Application Rule is only triggered upon the submission of a complete application for development that contains all of the items required by the municipal ordinance, and that an applicant/developer is only exempted from changes in the applicable zoning ordinances provided that it submits a complete application for development prior to the effective date of the ordinance.

43. Blue Violets’ application for development was not submitted prior to April 28, 2022.

44. Blue Violets' application for development that was filed on April 29, 2022 was not complete at the time of submission because it lacked all of the documents and materials required by the City of Hoboken's ordinances.

45. In fact, Blue Violets' application for development was not complete on either May 10, 2022 nor June 14, 2022 when the Board's subcommittee deemed the application for development incomplete.

46. Blue Violets' application for development violates the conditional use restriction imposed by the Ordinance in that it is within 600 feet of two primary schools.

47. Despite these failings, the Board improperly determined that the Time of Application Rule applied, that it had jurisdiction to consider the application for development (rather than the City of Hoboken Zoning Board of Adjustment pursuant to *N.J.S.A. 40:55D-70(d)(3)*), and that it was appropriate to approve the application for development.

48. The Board voted on September 15, 2022 to approve Blue Violets' application for development.

49. The Board memorialized its decision to approve Blue Violets' application for development in a written resolution adopted on October 13, 2022.

COUNT ONE

(Approval Void for Lack of Jurisdiction)

50. Plaintiff HRC repeats and realleges each and every allegation of the Preamble of the Complaint as if more fully set forth at length herein.

51. Because Blue Violets' application for development was not filed until after the effective date of the Ordinance and was not complete upon submission, the provisions of the

Ordinance regarding to the proximity of a cannabis business to a primary school apply to the review of the application for development.

52. By virtue of the Property's proximity to the All Saints Episcopal Day School and the Hoboken Charter School, Blue Violets' application for development violated a condition of the conditional use.

53. Only the City of Hoboken Board of Adjustment may consider an application for development seeking approval of a retail cannabis use that is within 600 feet of a primary school.

54. The Board lacked jurisdiction to consider Blue Violets' application for development.

55. The Board's conclusion that the Time of Application Rule precluded applicability of the Ordinance to Blue Violets' application for development was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff Hoboken for Responsible Cannabis, Inc., an NJ Nonprofit Corporation demands judgment against the Defendants, City of Hoboken Planning Board and Blue Violets, LLC as follows:

- A. Declaring that the decision of the City of Hoboken Planning Board was arbitrary, capricious and unreasonable for lack of jurisdiction;
- B. Invalidating the City of Hoboken Planning Board Resolution that memorializes its approval issued to Blue Violets, LLC; and
- C. Awarding costs of suit, attorney's fees and such other relief as the Court deems equitable and just.

COUNT TWO

(Approval Void Because Board Interfered with Right to Cross-Examine Witnesses in Violation of MLUL)

56. Plaintiff HRC repeats and realleges each and every allegation of the Preamble and Count One of the Complaint as if more fully set forth at length herein.

57. The Board did not make a ruling on the applicability of the Time of Application Rule to Blue Violets' application for development prior to the September 15, 2022 hearing.

58. Members of the public sought a ruling from the Board about applicability of the Time of Application Rule to Blue Violets' application for development at the outset of the September 15, 2022 hearing, but the Board did not make such a ruling.

59. Members of the public sought to question Blue Violets' witnesses about the proximity of the Property to the All Saints Episcopal Day School and the Hoboken Charter School, but were rebuffed based upon the objections of Blue Violets' attorney.

60. The Board prevented members of the public from asking probative and relevant questions about the jurisdiction of the Board to Blue Violets' witnesses.

61. For example, Blue Violets' planner testified that the Property was not within 600 feet of any school, but when members of the public sought to question the planner on the veracity of his statement, the Board refused to permit it, even though in addition to demonstrating the Board's lack of jurisdiction, such questions went to the credibility of the witness.

62. The Board interfered with the public's right to cross-examine the witnesses presented by Blue Violets.

63. The Board deprived members of the public of their statutory rights afforded by the MLUL and their due process rights secured by the New Jersey Constitution.

64. The hearing where the Board considered Blue Violets' application for development was conducted in violation of the MLUL.

65. The Board's approval of Blue Violets' application for development on September 15, 2022 was arbitrary, capricious and unreasonable.

WHEREFORE, Plaintiff Hoboken for Responsible Cannabis, Inc., an NJ Nonprofit Corporation demands judgment against the Defendants, City of Hoboken Planning Board and Blue Violets, LLC as follows:

- A. Declaring that the decision of the City of Hoboken Planning Board was arbitrary, capricious and unreasonable for lack of jurisdiction;
- B. Invalidating the City of Hoboken Planning Board Resolution that memorializes its approval issued to Blue Violets, LLC; and
- C. Awarding costs of suit, attorney's fees and such other relief as the Court deems equitable and just.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff Hoboken for
Responsible Cannabis, Inc., an NJ
Nonprofit Corporation

By: /s/ Daniel L. Steinhagen
Daniel L. Steinhagen, Esq.

Dated: October 21, 2022

CERTIFICATIONS

Pursuant to Rule 4:5-1, I hereby certify that the subject matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, and that no such other action or arbitration proceeding is contemplated.

I hereby further certify that there is no other party that should be joined in this action pursuant to Rule 4:28 or that is subject to joinder pursuant to Rule 4:29-1(b).

I hereby further certify that all necessary transcripts of the City of Hoboken Planning Board proceedings in this matter are in my possession.

I hereby further certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff Hoboken for
Responsible Cannabis, Inc., an NJ
Nonprofit Corporation

By: /s/ Daniel L. Steinhagen
Daniel L. Steinhagen, Esq.

Dated: October 21, 2022

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:5-1(c), Daniel L. Steinhagen, Esq. is hereby designated as trial counsel in this action.

BEATTIE PADOVANO, LLC
Attorneys for Plaintiff Hoboken for
Responsible Cannabis, Inc., an NJ
Nonprofit Corporation

By: /s/ Daniel L. Steinhagen
Daniel L. Steinhagen, Esq.

Dated: October 21, 2022