

**FRANKLIN TOWNSHIP
ZONING BOARD OF ADJUSTMENT
RESOLUTION NO. ZB24-07**

WHEREAS, Mystic Botanical Farms, LLC has applied to the Zoning Board of Adjustment of the Township of Franklin for a use variance to permit the cultivation of cannabis, 2 uses on 1 lot (cannabis cultivation and single family residence) and 2 8-foot high security fences; and

WHEREAS, the property in question is located on Dutch Mill Road and known as Lot 35, Block 5801, on the tax map of Franklin Township, said property being in a PR-R (Pinelands Rural Residential) Zone; and

WHEREAS, the Zoning Board of Adjustment, after carefully considering the evidence presented has made the following factual findings and statements of reason:

1. All notices of the public meeting were properly served in compliance with New Jersey State Statute and the Franklin Township Land Use Ordinance and the application was deemed complete.

2. Leah A. Vassallo, Esquire appeared on behalf of the applicant and presented the testimony of William J. Peifer, owner of the parcel of property and minority shareholder of Mystic Botanical Farms, LLC, William L. Peifer of West Deptford, shareholder of Mystic Botanical Farms, LLC and James Wilt of Wenonah, shareholder of Mystic Botanical Farms, LLC.

3. The applicant presented a bifurcated application seeking only a use variance at this time and if granted, to proceed separately with Pinelands Certificate of Filing and site plan review and approval. The applicant also sought waiver of site plan. The applicant requires a use variance as the cultivation of cannabis is not a permitted use in the Pinelands Rural Residential district. The use is only permitted in Franklin Township industrial zones. Cannabis cultivation is regulated by New Jersey Statute and New Jersey Administrative Code, primarily N.J.A.C. 17:30-10.

4. The applicant presented a survey dated May 20, 2024, as well as a concept plan for the use variance dated February 28, 2024 and revised May 31, 2024. The applicant also presented a conditional license for Class I Cultivator issued by the State of New Jersey Cannabis Regulatory Commission with an expiration date of October 12, 2024. The property consists of approximately 18.5 acres, 1 acre which includes a single family residence with the remainder under farmland assessment. In addition to the single family dwelling, there are various wood and wire fences, horse pastures and a large wooded area. The applicant proposes outdoor cultivation of cannabis not to exceed an area of 10,000

square feet within an area secured by 2 8-foot high security fences. The applicant also proposes an 8 x 40-foot “business trailer”.

5. William J. Peifer, property owner, indicated that he has resided at the property since approximately 1960 and that it is utilized for agriculture, presently livestock. He indicated that it is difficult to make the agricultural use profitable and he is therefore in favor of this proposal, which would hopefully allow the property to become profitable. N.J.A.C. 17:30-10.1(a) states, “In no case shall a cannabis cultivator operate or be located on land that is valued, assessed, or taxed as an agricultural or horticultural use pursuant to the Farmland Assessment Act of 1964”. The applicant acknowledged that the property is not presently eligible for cannabis cultivation indicating that if they were approved they would apply to remove the property from Farmland Assessment.

6. James Wilt, one of the majority members of the LLC provided testimony regarding the proposed cultivation operation. Mr. Wilt is a veteran and an advocate for veterans who may benefit from the use of cannabis. He indicated that there would be up to 2 harvests per year, that he anticipated 2 employees in addition to the 2 owners and that the plants would be started from seeds planted on site. At peak harvest the tops of the plants would be harvested, packaged and transported to distributors or manufacturers. The applicant is proposing a freeze-dried process which would minimize odor. The remainder of the plants would be harvested, processed and disposed of as required by state regulations. Details were not provided regarding the proposed “business trailer”. N.J.A.C. 17:30-10.7(b) provides that, “A cannabis cultivator shall have at least the following storage areas, which must be segregated from each other”. The regulation then provides details. The cannabis would be transported by unmarked vans. The applicant indicated that they had a security plan which would comply with state regulations but did not provide details beyond providing fencing and continuous monitoring.

7. William L. Peifer is one of the majority members of the LLC and is employed on a full-time basis as an educator. Mr. Peifer provided testimony regarding the positive and negative criteria and reinforced his father’s testimony that this proposal would make the family farm profitable now and hopefully into the future. He also testified that he did not believe odor would be an issue based upon the direction of the winds and the proximity of the neighbors. The applicant took the position that the proposed use would support the goal of maintaining the rural and agricultural character of the Township of Franklin. However, it is acknowledged that the cultivation of cannabis is not recognized under the State of New Jersey Right to Farm Act. Mr. Peifer testified that based upon his discussion with his neighbors he was of the impression that they were not in opposition to the proposal.

8. 4 residents either adjacent to or in the immediate area of the property spoke during the public portion. One was in favor and 3 were opposed. 2 other Franklin Township residents spoke, 1 in favor and 1 opposed to the proposal. Others who spoke in

favor of the proposal were either family members of the applicant or residents of other municipalities, including Buena, Deptford, Wenonah and West Deptford.

9. The Board carefully considered the review letter of June 24, 2024 prepared by Zoning Board Engineer David S. Scheidegg which recites the fact that the applicant has the burden of proving both the positive and negative criteria. Following the applicant's full presentation and the public hearing, a motion was made and received a second to approve the application upon the condition that the applicant be required to apply for site plan review and approval which would also require Pinelands review and issuance of a Certificate of Filing. The motion received 4 yes votes and 2 no votes. Therefore, the application was denied by operation of law pursuant to N.J.S.A. 40:55D-70d and N.J.S.A. 40:55D-9a.

10. Those members voting "no" to the proposal determined that the applicant had not satisfied their obligation to prove the positive and negative criteria. Specifically,

1) The property is not particularly suited for the proposed use. The property is farmland assessed which prohibits the proposed use. The property includes a single family dwelling and the property is in a residential neighborhood with nearby residents.

2) The applicant failed to provide details regarding packaging, processing and storage, including what would specifically be involved with the freeze drying process. The applicant also failed to provide details regarding the exact layout of the "business trailer" and how various areas would be segregated and utilized.

3) Cultivation is permitted in industrial districts. The applicant did not present evidence that there are no areas in the industrial district available and suitable for cultivation.

4) The applicant failed to present the testimony of a professional planner to address the positive and negative criteria required.

5) Based upon testimony of nearby residents, the proposal will present a substantial detriment to the public good.

6) The proposal substantially impairs the intent and purpose of the master plan and zoning ordinance of the Township of Franklin as the cultivation of cannabis is not recognized as a permitted agricultural use in the zone.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Franklin this 1st day of October, 2024, confirming action

heretofore taken, that the application of Mystic Botanical Farms, LLC for a use variance to permit the cultivation of cannabis, 2 uses on 1 lot (cannabis cultivation and single family residence) and 2 8-foot high security fences is hereby denied.

**FRANKLIN TOWNSHIP
ZONING BOARD OF ADJUSTMENT**


JOHN GRAVENOR, Chairman

ATTEST:


CHRISTINA MULFORD, Secretary