



**BOROUGH OF ALPHA
LAND USE BOARD**

1001 East Boulevard
Alpha, New Jersey 08865

REGULAR MEETING AGENDA

Borough of Alpha Municipal Building
July 21, 2021, 7:00 PM
Virtual Meeting

1. CALL TO ORDER and PUBLIC NOTICE

2. ROLL CALL

Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Fritts,
Mr. Gable, Mr. Plimpton, Mr. Schwar.

3. APPROVAL OF MINUTES

March 17, 2021 Regular Meeting Minutes
April 21, 2021 Regular Meeting Minutes

4. RESOLUTIONS

➤ **RESOLUTION 2021-06**

**RESOLUTION FOR AMENDING PRELIMINARY SITE PLAN
APPROVAL FOR STANDARD STREET ALPHA PROPERTY, LLC.**

➤ **RESOLUTION 2021-07**

1603 SPRINGTOWN, LLC

5. ORDINANCES

➤ **ORDINANCE NO. 2021-06**

**BOROUGH OF ALPHA COUNTY OF WARREN, STATE OF NEW
JERSEY AN ORDINANCE PROHIBITING THE OPERATION OF ANY
CLASS OF A CANNABIS BUSINESS WITHIN ITS GEOGRAPHICAL
BOUNDARIES AND CREATING CHAPTER 170 OF THE CODE OF THE
BOROUGH OF ALPHA**

6. **OLD BUSINESS**

7. **NEW BUSINESS**

8. **PUBLIC COMMENT**

9. **NEXT MEETING:** August 18, 2021

10. **ADJOURNMENT**

BOROUGH OF ALPHA LAND USE BOARD

Application #:

Approved:

RESOLUTION 2021-06

FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION

REGARDING THE APPLICATION OF STANDARD STREET ALPHA PROPERTY, LLC. FOR AMENDED PRELIMINARY SITE PLAN APPROVAL AND FINAL SITE PLAN APPROVAL (WITHDRAWN) AND VARIANCE RELIEF FOR

BLOCK 98, LOT 1

The Land Use Board of the Borough of Alpha, in the County of Warren and State of New Jersey, upon motion of _____, seconded by _____, adopts the following findings of fact, conclusions and resolutions:

Findings of Fact:

1. Applicant, STANDARD STREET ALPHA PROPERTY, LLC. has filed this application for amended preliminary site plan approval and final site plan approval and variance relief as to property located at Block 102, Lot 6. The property is approximately 37 acres in size

and is presently in an agricultural use. It is bounded on the north by a paper street named “Standard Street” and residential uses along E. Vulcanite Ave; to the west by an abandoned freight rail line; to the south by Interstate Route 78 and the Pohatcong municipal border; and to the east by forested area and the quarry on Industrial Road.

2. The Applicant previously received preliminary major site plan and variance approval to construct two (2) warehouse buildings totaling 575,900 s.f. on Block 98 Lot 1 within the I-Industrial Zone of the Borough. The Applicant agreed to wait to apply for final major site plan approval until after the extension of Industrial Way and is now seeking final major site plan approval.

3. The amended application proposes 578 parking spaces (previously 576 parking spaces), loading docks, roof top solar systems and access routes. The project proposes to disturb an area greater than one (1) acre and will include more than 0.25 acres of new impervious cover. The applicant was previously granted variances from several of the bulk standards and seeks reapproval of same. The Applicant is proposing a building height of 43 ft. where a maximum of 35 ft. was proposed on the approved preliminary site plan and proposes lot coverage of 35.63% whereas under preliminary approval 35.60% was approved, as such both these changes warrant an amended site plan application. The 43 ft. height standard complies with a recently adopted ordinance by the Borough.

4. As a result of the application, the following variance relief is required:

a. §410-21 Area, Yard and Building Requirements – Maximum Lot Depth – Standard Street Variance Required – Applicant existing lot depth of 2,276.83 feet exceeds the maximum permitted lot depth of 400 feet. The Applicant is not proposing to alter the lot depth. This variance was approved under preliminary site plan approval.

b. §410-21 Area, Yard and Building Requirements – Maximum Lot Depth – Industrial Drive Variance Required – Applicant existing lot depth of 980+/- feet exceeds the maximum permitted lot depth of 400 feet. The Applicant is not proposing to alter the lot depth. This variance was approved under preliminary site plan approval.

c. §410-21 Area, Yard and Building Requirements – Maximum Lot Coverage Variance Required – Applicant proposes 2 buildings and additional accessory structures/uses that total 35.63% coverage whereas 30% is permitted. A variance is required up to 70.02% to include parking and driveways. This variance was previously approved under preliminary site plan approval for 35.60%.

d. §410-25.C Roof-mounted solar panels and solar panel arrays not exceeding a height of 12 inches from the existing roof surface of a peaked roof and not exceeding a height of four feet from the existing roof surface of a flat-roofed structure and not resulting in an overall height in excess of that permitted for the principal structure in the zone district in which the principal structure is located shall be a permitted accessory use in all zone districts.

5. On January 20, 2021, the Board entertained the application for completeness purposes. The applicant was represented by Michael Selvaggi, Esq. and the applicant's engineer, Christopher Nusser, P.E. was present. A motion made was made by Mayor Dunwell to grant temporary waivers for completeness purposes only based upon the recommendations of the engineer and to deem the application complete for both preliminary and final; motion seconded by Mr. Cartabona. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Fritts and Mr. Schwar. Nays: None.
Motion passes.

6. On April 21, 2021, it was noted that the applicant had provided appropriate Proof of Service and Publication of a Notice of Hearing and the board was found to have jurisdiction to proceed with the hearing.

7. The following witnesses were presented in support of the application: Christopher Nusser P.E.

8. The following exhibits were marked into evidence:

Exhibits A-1

Exhibit B-1 March 15, 2021 review correspondence of Board Engineer

9. Michael Selvaggi, Esq provided the Board with a brief overview of the status of the application. The prior approval had conditions, including the extension of Industrial Drive to provide access to Rt. 122 and Rt. 22, solar roof top panels and a few bulk variances. Since then, the Governing Body amended an ordinance increasing the height of the commercial buildings in this area. Responsive to that, the applicant has revised their plans to take advantage of this new building height. The applicant seeks approval for the amendment of the preliminary approval and sought final approval as well.

10. Sworn testimony under oath was received from Christopher Nusser, P.E. Mr. Nusser presented his qualifications to the Board and was accepted as an expert in his field.

Mr. Nusser had worked on the original plans submitted in 2019 presented the revised plans for consideration by the Board. In addition to the building height, they have made some changes to the road network. Access to building one is now revised to have all the truck traffic flowing in from one location and then in between the buildings into a one-way entrance. The entrance has also been slightly revised to line up the exit for the trucks to be more direct. This should provide for a better circulation of traffic. The stormwater was previously located below building number one and that has been relocated to the loading area. There are also some modifications to the landscaping on the north side of building two and the entrance. There are also two additional parking spaces.

11. With respect to bulk variances, none of the variances have changed in any way with the exception of the maximum lot coverage which was previously approved at 35.60% and the actual is 35.63% because of a rounding error.

12. Mr. Nusser addressed the issues raised in the March 15, 2021 report of the Board Engineer, Stanley J. Schrek, P.E., A.I.A., P.P. CME, LEED which was marked as Exhibit B-1. The applicant agreed to comply with all items set forth in Mr. Schrek's correspondence as clarified below:

VI. Technical Review

1. NJ Transit Review letter - Multiple issues remain as to the status of NJ Transit Review of the proposed crossing. The applicant must secure final approval from NJ Transit and satisfy the Board Engineer as to all issues raised in his report. Board members raised concerns regarding these open issues and the inability to grant final approval until the issues are resolved.

Site Plan Set Review

f. Site Plan – prior to construction of guiderails applicant shall provide detailed plans that specify length of end treatment and areas that require additional posts or embedment. Applicant agrees.

g. Site Plan – prior to construction of guiderails applicant shall provide engineer's report that reviews the warrants for each guiderail location. Applicant agrees.

Mayor Dunwell suggested signage regarding guiderails to avoid possible injury for anyone who may try to ride dirt bikes. Applicant has no issue with adding signage regarding f & g.

j. Site Plan – The applicant agreed to remove the driveway easement due to the conflict noted in the Board Engineer's report.

nn. Landscape Plan – The applicant feels as though any additional landscaping on the slope would not provide any benefit but can provide additional landscaping toward the middle area if necessary.

oo. Landscape Plan –the building is at an elevation of 311’ for finished floor where the residential district exists at about elevation 285’, thus the buildings will stand 69 feet above the homes.

n. Applicant shall obtain approval to weight restrict all surrounding public roads in Alpha due and post signage due to errant trucks that attempt to enter the site through adjacent local roads due likely conflicts with GPS and navigation aids. The applicant agreed to seek approval of weight restrictions around surrounding public roads in Alpha from the Borough Council, provide proof of the action from the Borough Council and will contribute towards the placement of appropriate signage as applicable.

13. The matter was opened to the public for comment and questions. Sworn testimony under oath was received from Mr. Rowland Dech, 611 Vulcanite Ave., Alpha NJ, Mr. Dech expressed concerns about the trees and that it will take 10 years to cover up the walls of the warehouse. He also has concerns about lighting and truck noise. Mr. Nusser stated that the lighting is facing east and west and not toward Mr. Dech’s house. He also pointed out that the plan covers any additional landscaping should there be an issue with lighting. He could not answer whether or not it will be a 24x7 operation. It was also stated there is no road or driveway along that north side where Mr. Dech’s house is situated. There was additional discussion regarding the developer lowering the base elevation which would lower the height of the building and if that can be done, why isn’t it being done in these plans. It would be less impact to the neighbors if the base elevation goes down, but the

building height remains the same. Mr. Nusser stated that the building is lowered by five feet from the original plan and that any discussions being had about this are conceptual and this is not what they are proposing at this time. Mr. Gruenberg pressed further and stated that if this is being discussed then why are they not proposing it. There was also discussion about the Borough taking any of the excess dirt should a developer decide to lower the base.

Mr. Dragotta stated that if there is any way to lower the base without disrupting the cost too much, why not lower it to help the quality of life. Mr. Nusser said he understands but he cannot commit to this now.

Mr. Selvaggi stated they cannot commit to a number or even commit to doing this it at this time. Mr. Selvaggi confirmed they are seeking preliminary approval with conditions this evening as the application has been presented. In light of the many open issues, the applicant withdrew its request for final approval.

14. Sworn testimony under oath was received from Jodie Smith, 1132 Fifth Ave. She asked Mr. Nusser to confirm that the emergency access is off Seventh Ave. Mr. Nusser confirmed that. She is concerned that the truck traffic is going to end up on Seventh Ave. Mr. Nusser stated that the way-finding should keep that from happening and by putting significant signage.

15. A motion was made by Mr. Fritts to close the public hearing. Motion seconded by Mr. Cartabona.

Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Fritts, Mr. Plimpton, and Mr. Schwar. Nays: None. Absent: Mr. Gable.

16. A motion was made by Mr. Schwar to approve the amended preliminary with variance relief. Motion seconded by Mayor

Dunwell. Roll Call: Ayes: Mr. Dragotta, Mr. Fey, Mr. Fritts, Mr. Plimpton, and Mr. Schwar.
Nays: Mr. Cartabona, Ms. Dalrymple, Mayor Dunwell. Absent: Mr. Gable. Motion passes.

Conclusions:

1. For the same reasons as set forth in the original approving resolution, the applicant has established the necessary “positive” and “negative” criteria for the granting of the requested variances pursuant to N.J.S.A. 40:55D-70(c). The only change in the variances previously granted was a mathematical rounding up area as to maximum coverage.

2. As to the site plan issues, the remaining site plan is fully conforming with the Borough’s ordinances with the granting of the variances, including the increased height standard, and the Board finds that amended preliminary site plan approval will be appropriate in light of the conditions imposed and the unique circumstances presented. The applicant withdrew it’s request for final site plan approval.

Resolution:

RESOLVED, that the Applicant, STANDARD STREET ALPHA PROPERTY, LLC. is granted amended preliminary site plan approval only together with the requested variance relief set forth above subject to the following conditions:

A. Compliance in all respects with the Board Engineer's review correspondence dated March 15, 2021, marked as Exhibit B-1 as clarified during the hearing.

B. Compliance in all respects with the prior resolution of approval granting preliminary site plan approval except as modified herein.

C. Applicant shall obtain any and all outside Governmental approvals including, but

not limited to Warren County Planning Board approval, New Jersey Transit approval/resolution of issues, New Jersey Department of Transportation and New Jersey Department of Environmental Protection approval, New Jersey Highlands Council approval, as applicable.

D. Applicant shall maintain a positive balance in the escrow account to insure continued review of the project and satisfaction of these conditions of approval by the Board and Borough's professionals.

BOROUGH OF ALPHA LAND USE BOARD

APPLICATION #

SECRETARY: Donna L. Messina

APPROVAL DATE: March 17, 2021

BLOCK: 98, **LOT:** 1

VOTE:

Ayes:

Nays: I certify that this is a true copy of a resolution adopted by the Land Use Board of the Borough of Alpha, Warren County, on July 21, 2021 , to memorialize the Land Use Board's action on March 17, 2021.

DONNA L. MESSINA, Secretary

Dated:

Eligible to vote: Mr. Dragotta, Mr. Fey, Mr. Fritts, Mr. Plimpton, and Mr. Schwar

BROUGH OF ALPHA LAND USE BOARD

Application #: 2020-001

Approved:

RESOLUTION 2021-07

**FINDINGS OF FACT, CONCLUSIONS AND RESOLUTION
REGARDING THE APPLICATION OF 1603 SPRINGTOWN, LLC FOR
PRELIMINARY SITE PLAN APPROVAL, FINAL SITE PLAN APPROVAL AND
VARIANCE RELIEF FOR BLOCK 97, LOT 10**

The Land Use Board of the Borough of Alpha, in the County of Warren and State of New Jersey, upon motion of _____, seconded by _____, adopts the following findings of fact, conclusions and resolutions:

Findings of Fact:

1. Applicant, 1603 SPRINGTOWN, LLC has filed this application for preliminary site plan approval, final site plan approval and variance relief as to property located at Block 97, Lot 10. The property is approximately 0.86 acres (37,519 sf.) in size and presently contains a vacant restaurant use. It is bounded on the west by a park; to the south by a vacant excavating and landscaping business and residential uses beyond that; to the north by business uses; and to the east across Springtown Road by residential uses.

2. The Applicant is seeking approval for a preliminary and final major site plan to construct a two-story office/retail building on Block 97 Lot 10 within the B-1 General Business Zone of the Borough. The application proposes 31 parking spaces (23 surface spaces and 8 interior spaces), a trash enclosure, sidewalk, signage, lighting and landscaping. The project proposes to disturb an area less than one (1) acre and will reduce the area of impervious cover. The two-story building is proposed to have a footprint of 6,000 sf. with 8,300 sf. of office and

retail space and 3,700 sf. of storage/garage space and is proposed to be constructed at the center of the property. The building is proposed to be surrounded on the front side and southern side by parking stalls with a proposed loading area to the rear of the building (along the western side of the building).

2. As a result of the application, the following variance relief is required:

a. §410-43.A Provision shall be made for at least two off-street parking spaces for each dwelling unit hereafter erected. For all other new buildings and uses, there shall be provided the number of parking spaces as set forth in the following schedule: 1 for each 200 square feet of retail merchandising or commercial floor area for banks, retail stores, shops or similar establishments; 1 for each 200 square feet of office area for business, professional and executive offices; and 1 for each 1,000 square feet of floor area for warehouses and storage buildings.

Variance Required – The required number of parking spaces is as follows: (8,300 sf. of office/retail space) x (1 space/200 sf.) = 41.5 spaces (3,700 sf. of storage/garage space) x (1 space/1,000 sf.) = 3.7 spaces Total parking stalls required = 41.5 + 3.7 = 45.2 or 46 spaces Applicant proposes 31 parking spaces (including 23 surface parking spaces and 8 parking spaces inside the building). If the proposed interior spaces are loading spaces not meant for passenger vehicles, they do not count as parking spaces. If so, a variance is required for proposing 23, not 31, parking spaces where 46 parking spaces are required.

5. On March 17, 2021, the Board entertained the application for completeness purposes. The applicant was represented by William Edleston, Esq. A motion was made by Mr. Schwar to deem application #2020-001 complete with the temporary waivers and permanent waiver as set forth in the review correspondence of the Board Engineer. Motion was seconded by Mr. Plimpton. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Ms. Dalrymple, Mayor Dunwell, Mr. Fey, Mr. Fritts, Mr. Plimpton, and Mr. Schwar. Nays: None. Absent: Mr. Gable.

The public hearing will be scheduled for the April 21, 2021 meeting.

6. On April 21, 2021, it was noted that the applicant had provided appropriate Proof of Service and Publication of a Notice of Hearing and the board was found to have jurisdiction to proceed with the hearing.

7. The following witnesses were presented in support of the application: David Cooper, Principal, Stephen Parker, P.E. and Mark Zgoda, Licensed Professional Architect.

7. The following exhibits were marked into evidence:

Exhibit B-1 March 15, 2021 review correspondence of Board Engineer

8. David Cooper provided sworn testimony under oath. He testified that his Security Company business has outgrown its current location within the Borough and he is interested in developing the old Charlie Brown restaurant site which remains vacant and somewhat unsightly. He proposed to erect a two story building with overhead garage doors facing the rear of the building so they are not visible from the road. Some of the offices may be rental spaces.

9. Sworn testimony under oath was next received from Stephen Parker, P.E. Mr. Parker provided his qualifications and he was accepted by the Board as an expert in his field.

Mr. Parker testified that the Old Charlie Brown site has had the building removed. The proposal is to construct a new building in the center of the property. The working aspect of the business will be behind the building with the front of the building aesthetically pleasing from an architectural standpoint. The site is substantially paved. There will be less impervious coverage and more landscaping than what is presently on site. The site plans submitted provide detailed information as to the proposal.

Mr. Parker reviewed Mr. Schrek's March 15, 2021, correspondence which was marked as Exhibit B-1. The applicant agreed to comply with all matters as set forth in his correspondence. Mr. Schrek believed that the applicant had adequately addressed the intensity of uses on site as set forth in his Planning Review and the lack of impact upon surrounding residential uses by the placement of the building to the center of the site and location of most activities behind the building. In fact, the relocation of the building to the center of the site eliminates the existing side yard setback violation of the previously existing Charlie Brown building.

Mr. Parker identified the number of required spaces as 46 parking stalls. The applicant is proposing 31 stalls, 23 parking stalls outside and ability for 16 banked parking stalls within the building. Based on the applicant's use and projected needs, the applicant doesn't expect the number of parking spaces required as the proposed use is not a typical office use. Mr. Schrek did not have an issue with what was proposed. Mr. Schrek confirmed that when equipment is used on site, the personal vehicles can be parked within the building. The result is less impervious coverage on site. The applicant agreed to provide a plan to provide additional banked parking spaces along the southerly border and one additional space to the easterly side of the adjacent row. With the banked parking spaces, parking would be 43 spaces as opposed to the 46 spaces provided.

As to site lighting levels, the applicant agreed to provide shielding of light fixtures and the applicant agreed to provide an as built lighting plan to the satisfaction of the Board Engineer as a condition of this issuance of any Certificate of Occupancy.

As to the need for fire aisles per Sec. 315010.B(2)(f){1}, the applicant presented an approved letter from the Chief of the Fire Department which satisfied the Board and the Borough Engineer that fire aisles were not required under the circumstances presented. Attorney Edleston

will forward the letter to the secretary, and she will forward it to the board. It was also stated that the applicant was not intending to have a sprinkler system for fire protection inside of the building. The applicant will comply with any and all construction code requirements including the provision of sprinklers to the extent required. There is a hydrant immediately in front of the site. There was also a question regarding the type of construction the building will be. Mr. Cooper stated it will be either wood or steel. If it is a steel structure it will have clapboard on the front of it. Mayor Dunwell stated that he is not opposed to giving a design waiver for this given all of the discussion. In the end, Mr. Schrek recommends that the board grant the waiver. As to stormwater runoff, it was confirmed that there is going to be a decrease in both the rate and volume of runoff because there will be a decrease in the amount of impervious coverage. It will continue with the same drainage pattern after the development as it was before the development. The applicant agreed to provide a turning radius analysis and to address the possibility of removing additional impervious surfaces to the satisfaction of the Borough Engineer.

10. The matter was opened to the public for questions. Jody Jankowski, 1666 Springtown Rd., Alpha – asked if they were to lease the building out, are there any exclusions as to who they would lease space/building to. Mr. Cooper was able to answer her questions and alleviate her concerns. He stated that his goal is to make this a professional office building, i.e., attorney office, accountant office, etc.

11. Sworn testimony was next provided by Mark Zgoda who provided his qualifications as a licensed Architect in the state of New Jersey, and he was accepted as an expert in his field.

12. Mr. Zgoda described the size, materials, and design of the building as depicted in his plans filed with the Board. The two story building will appear to be stately to draw people in

as tenants. A glass foyer provides natural light in an attractive scheme. The Board agreed that the proposed architectural design is attractive and a welcome improvement to the site. The lighting design is important in that the lighting does not spill on to the neighbors' yards. All lighting will be down lights. There is no directional lighting on the building at all and they will be dimmable as well. The garage doors are 10x10 in the rear of the building. There will be large windows for plenty of natural light. Mr. Cooper reconfirmed that he will most likely take up most of the second floor for his offices with one office for leasing. There will be two tenant spaces on the first floor, bringing this to a maximum of three tenant spaces.

13. The matter was opened to the public for comment and questions. None was received.

14. A Motion made by Mr. Cartabona to close the public hearing. Mayor Dunwell seconded the motion. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Mayor Dunwell, Mr. Frey, Mr. Fritts. Nays: None. Absent: Ms. Dalrymple, Mr. Gable, Mr. Plimpton.

15. A Motion was made by Mr. Cartabona to approve preliminary and final site plan approval with variance and design waiver relief subject to conditions. The motion was seconded by Mr. Dragotta. Roll Call: Ayes: Mr. Cartabona, Mr. Dragotta, Mayor Dunwell, Mr. Frey, Mr. Fritts. Nays: None. Absent: Ms. Dalrymple, Mr. Gable, Mr. Plimpton.

Conclusions:

1. The applicant has established the necessary "positive" and "negative" criteria for the granting of the requested variances pursuant to N.J.S.A. 40:55D-70(c)(2).

2. The Board finds that the c(2) variance as to parking benefit the community in that the grant of the approval represents a better zoning alternative for the property as parking is more than adequate for the proposed site and the anticipated future uses by the provision of banked

parking. A relaxation of the standard presents an opportunity for improved zoning and planning that will benefit the community in that there will be a reduction in impervious coverage and an improved development with an attractive building on a site that is presently unused for a lengthy period of time. See Kaufmann v. Planning Bd. For Warren Tp. 110 N.J. at 563.

3. The Board finds that the variance and design waivers can be granted without substantial detriment to the public good and won't substantially impair the intent and purpose of the zone plan and zoning ordinance. The relocation of building on site to the center provides a better alternative to the existing usage and reduces the impact upon the public. The Board found convincing the testimony of the applicant and his witnesses that any adjacent uses would be minimally impacted by the site which will not generate nuisance qualities.

4. As to the site plan issues, the remaining site plan is fully conforming with the Borough's ordinances with the granting of the variances, and the Board finds that preliminary and final site plan approval will be appropriate in light of the conditions imposed and the unique circumstances presented.

Resolution:

RESOLVED, that the Applicant, 1603 SPRINGTOWN, LLC is granted amended preliminary site plan approval only together with the requested variance relief set forth above subject to the following conditions:

A. Compliance in all respects with the Board Engineer's review correspondence dated March 15, 2021, marked as Exhibit B-1 as clarified during the hearing.

B. Applicant shall provide turning templates to the satisfaction of the Board

Engineer to address both site access suitability and the possible ability to reduce impervious coverage.

C. Applicant shall provide revised plans to address the provision of four additional banked parking spaces as set forth above.

D. Applicant shall provide an as built lighting plan to the satisfaction of the Borough Engineer as a condition of obtaining any certificate of occupancy.

E. Applicant shall obtain any and all outside Governmental approvals including, but not limited to Warren County Planning Board approval, New Jersey Department of Transportation and New Jersey Department of Environmental Protection approval, New Jersey Highlands Council approval, as applicable.

F. Applicant shall maintain a positive balance in the escrow account to insure continued review of the project and satisfaction of these conditions of approval by the Board and Borough's professionals.

BOROUGH OF ALPHA LAND USE BOARD

APPLICATION #

SECRETARY: Donna L. Messina

APPROVAL DATE: April 21, 2021

BLOCK: 97, **LOT:** 10

VOTE:

Ayes:

Nays:

I certify that this is a true copy of a resolution adopted by the Land Use Board of the Borough of Alpha, Warren County, on July 21, 2021, to memorialize the Land Use Board's action on April 21, 2021.

DONNA L. MESSINA, Secretary

Dated:

Eligible to vote: Mr. Cartabona, Mr. Dragotta, Mayor Dunwell, Mr. Frey, Mr. Fritts.

ORDINANCE NO. 2021-06
BOROUGH OF ALPHA
COUNTY OF WARREN, STATE OF NEW JERSEY
AN ORDINANCE PROHIBITING THE OPERATION OF ANY CLASS OF A
CANNABIS BUSINESS WITHIN ITS GEOGRAPHICAL BOUNDARIES AND
CREATING CHAPTER 170 OF THE CODE OF THE BOROUGH OF ALPHA

WHEREAS, in 2020 New Jersey voters approved Public Question No. 1, which amended the New Jersey Constitution to allow for the legalization of a controlled form of marijuana called “cannabis” for adults at least 21 years of age; and,

WHEREAS, on February 22, 2021, Governor Murphy signed into law P.L. 2021, c. 16, known as the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act” (the “Act”), which legalizes the recreational use of marijuana by adults 21 years of age or older, and establishes a comprehensive regulatory and licensing scheme for commercial recreational (adult use) cannabis operations, use and possession; and,

WHEREAS, the act establishes six marketplace classes of licensed businesses, including:

Class 1 Cannabis Cultivator licenses, for facilities involved in growing and cultivating cannabis;

Class 3 Cannabis Wholesaler licenses, for facilities involved in obtaining and selling cannabis items for later resale by other licensees;

Class 4 Cannabis Distributor licenses, for businesses involved in transporting cannabis plants in bulk sale from one licensed cultivator to another licensed cultivator, or cannabis items in bulk from any type of licensed cannabis business to the other;

Class 6 Cannabis Retailer license for locations at which cannabis items and related supplies are sold to consumers; and

Class 6 Cannabis Delivery License, for businesses providing courier services for consumer purchases that are fulfilled by a licensed cannabis retailer in order to make deliveries

of the purchased items to consumers, and which service would include the ability to consumers to make a purchase directly through the cannabis delivery system which would be presented by the delivery service for fulfillment by a retailer and then delivered to consumers.

WHEREAS, section 31a of the Act authorizes municipalities by ordinance to adopt regulations governing the number of cannabis establishments (defined in Section 3 of the Act as “a cannabis cultivator, a cannabis manufacturer, a cannabis wholesaler, or a cannabis retailer”), cannabis distributors or cannabis delivery services allowed to operate within their boundaries, as well as the location manner and times of operation of such establishment, distributors or delivery services, and establishing civil penalties for the violation of any such regulations; and

WHEREAS, section 31b of the Act authorizes municipalities by ordinance to prohibit the operation of any one or more classes of cannabis establishments, distributors, or delivery services anywhere in the municipality; and

WHEREAS, section 31b of the Act also stipulates, however, that any municipal regulation or prohibition must be adopted within 180 days of the effective date of the act (by August 22, 2021); and

WHEREAS, pursuant to section 31b of the Act, the failure to do so shall mean that for a period of five years thereafter the growing, cultivating, manufacturing, selling and reselling of cannabis and cannabis items shall be permitted uses in all industrial zones, and the retail selling of cannabis items to consumers shall be a conditional use in all commercial and retail zones; and,

WHEREAS, at the conclusion of the initial and any subsequent five-year period following a failure to enact local regulations or prohibitions, the municipality shall again have 180 days to adopt an ordinance regulating or prohibiting cannabis businesses, but any such

ordinance would be prospective only and would not apply to any cannabis business already operating within the municipality; and

WHEREAS, the Borough Council of the Borough of Alpha has determined that, due to present uncertainties regarding the potential future impacts that allowing one or more classes of cannabis businesses might have on New Jersey municipalities in general, and on the Borough of Alpha in particular, it is at this time necessary and appropriate, and in the best interests of the health, safety, and welfare of the Borough of Alpha's residents and members of the public who visit, travel or conduct business in the Borough of Alpha, to amend the Borough of Alpha's zoning regulations to prohibit all manners or forms of marijuana-related land use and development within the geographic boundaries of the Borough of Alpha; and

WHEREAS, officials from two prominent non-profit organizations that have been established for the purpose of advising New Jersey municipalities on legal matters such as have been presented by the Act (the New Jersey State League of Municipalities and the New Jersey Institute of Local Government Attorneys) have strongly urged that, due to the complexity and novelty of the Act; the many areas of municipal law that are or may be implicated in decisions as to whether or to what extent cannabis or medical cannabis should be permitted for land use purposes or otherwise regulated in any particular municipality; and the relatively short duration in which the Act would allow such decisions to be made before imposing an automatic authorization of such uses in specified zoning districts subject to unspecified conditions, the most prudent course of action for all municipalities, whether or not generally in favor of cannabis or medical cannabis land development and uses, would be to prohibit all such uses within the Act's 180-day period in order to ensure sufficient time to carefully review all aspects of the Act and its impacts.

NOW THEREFORE, BE IT ORDAINED, by the Borough Council of the Borough of Alpha, in the County of Warren, State of New Jersey, as follows:

1. Pursuant to section 31b of the New Jersey Regulatory, Enforcement Assistance, and Marketplace Modernization Act (P.L. 2021, c. 16), all cannabis establishments, cannabis distributors and/or cannabis delivery services are hereby prohibited from operating anywhere in the Borough of Alpha, except for the delivery of cannabis items and related supplies by a delivery service.
2. Section 410-34 of the Code of the Borough of Alpha is hereby amended by adding (k.) to the list of prohibited uses, stating the following: “All classes of cannabis establishments, cannabis distributors and/or cannabis delivery services as said terms are defined in section 3 of P.L. 2021, c. 16, but not the delivery of cannabis items and related supplies by a delivery service.”
3. Any article, section, paragraph, subsection, clause, or other provision of the Code of the Borough of Alpha inconsistent with the provisions of this Ordinance is hereby repealed to the extent of such inconsistency.
4. If any section, paragraph, subsection, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged, and the remainder of this Ordinance shall be deemed valid and effective.
5. This Ordinance shall take effect upon its passage and publication and filing with the Warren County Planning Board, and as otherwise provided for by law.