

## ***Preliminary Planning Report***

***Charles Latini Jr. PP, AICP***

***December 9, 2023***

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### **A. Introduction**

This Planning Report to Cranbury Township is issued in support of Breakwater Treatment & Wellness' ("Breakwater") Application for expansion of its current use within the Eight-A Corporate Center at 2 Corporate Center Drive. Breakwater operates a New Jersey medicinal cannabis license (Alternative Treatment Center) at that site. This limited, yet important Application, will enable Breakwater to continue operating the most effective and efficient facility possible as it delivers medicinal cannabis to patients throughout the region.

While COVID-19 presented many challenges for governmental, non-governmental and corporate entities, the creative adaptation New Jersey has witnessed across a multitude of sectors has been inspiring. Some of these adaptive measures have led to innovative protocols, such as this Application, where Breakwater seeks to continue utilizing one such adaptation to allow them to continue running their business in the most safe and efficient manner - for product and employee.

In order to produce medicinal cannabis, a cultivator must adhere to strict health and safety standards. To ensure that it can avoid such things as microbial contamination, yeast, mold, E. coli, salmonella, and other bacterial species, Breakwater endeavored to secure its facility by strengthening its protocols during COVID-19 outbreak by creating a temporary separate exterior protected point of entry which has evolved further into a *Decontamination Chamber* ("chamber"). The chamber started as a point of testing for COVID-19, but was adapted to also accommodate bio-security protocols. This significantly reduced foreign elements into the facility, with shoes, jackets, and clothing exchanged for medical scrubs after a high-pressure air bath. These contagion segregation measures occurred outside of the facility with controlled access into the cultivation facility only after sterilization.

Many cannabis cultivation facilities utilize similar protocols, however Breakwater's adaptation during the COVID-19 pandemic has created a superior decontamination process that adds enhanced protections for the facility and employees alike by keeping contaminants completely outside of the facility.

### **B. Property History and Background**

#### 1. Location:

Eight-A Corporate Center  
2 Corporate Drive  
Block 2, Lot 3.04

## 2. Existing Conditions:

The property is located within an industrial park subdivision previously approved as a 12.390 - acre multi-tenanted facility. The property fronts on South River Road and backs up on the NJ Turnpike.

The property has two 55,969 +/- SF structures on it, including;

- #2 and #4 Corporate Center Drive;
- Common tractor trailer loading area with 12 bays per building.
- Vehicular parking at the front and sides of each building

Breakwater operates out of

- 21,000 +/- Square feet
- Has access to 4 loading bays screened by the building and associated landscaping.
- Separate customer parking and pickup areas

## **C. Planning and Zoning Analysis**

### 1. Zoning

Light-Industrial Zone

### 2. Zoning Status: Preexisting Non-conforming Use

Breakwater was approved by Zoning Permit dated 4/29/2013 for growing and distribution of medical cannabis. It continues operation today with several additional permits such as one issued for CO2 containers. A Zoning permit for a temporary trailer, the subject of this Application, was granted in January, 2022 but has since expired.

### 3. Prior Zoning Board Application and Approval

In 2021, Cranbury Township adopted Ordinance No. 06-21-08 prohibiting all classes of cannabis establishments in the municipality. However, that Ordinance expressly states that it does not affect a licensed medical marijuana facility operating pursuant to New Jersey law, which is what Breakwater operates at the property. Therefore, the Ordinance created an exception for Breakwater's facility and operations. The Township Zoning Officer has opined that a Use Variance may be required for an expansion of Breakwater's facility with the proposed entrance trailer. Given the exception for existing cannabis facilities set forth in the Ordinance, a Use Variance, in our opinion, is not required. However, in the event a

Use Variance is found by the Zoning Board to be triggered by this Application, then Breakwater requests approval of same.

#### 4. Granting of this expansion of a non-conforming Use Variance

Variations to permit expansion of a non-conforming use falls under (N.J.S.A. 40:55D-70d(2)). Existing uses which predate new zoning ordinances are called “non-conforming uses” and are grandfathered as preexisting. Notwithstanding, non-conforming uses may not be expanded or extended without a variance. Any expansion of a nonconforming use requires a “d(2)” variance. The Supreme Court has explained the law regarding non- conforming uses as follows:

*[O]ur courts have held that an existing non-conforming use will be permitted to continue only if it is a continuance of substantially the same kind of use as that to which the premises were devoted at the time of the passage of the zoning ordinance. In that regard, non- conforming uses may not be enlarged as of right except where the change is so negligible or insubstantial that it does not warrant judicial or administrative interference. Where there is doubt as to whether an enlargement is substantial rather than insubstantial, the courts have consistently declared that it is to be resolved against the enlargement or change. Belleville v. Perrillo’s, 83 N.J. 309, 316 (1980).*

The granting of a d2 use variance for those land uses lawfully created yet nonconforming in accordance with local zoning is authorized pursuant to N.J.S.A. 40:55D-70d(2) “in particular cases and for special reasons.” This is the so-called positive criteria of a “d(2)” variance. Our courts have held that the promotion of the general welfare is the zoning purpose in the Municipal Land Use Law that most clearly amplifies the meaning of “special reasons.” *Burbridge v. Mine Hill Board of Adjustment*, 117 N.J. 376 (1990).

Granting use variances must weigh the “promotion of the general welfare” against the negative criteria. The negative criteria is the same for all variances. No variance may be granted unless the Board finds that it can be granted (a) without substantial detriment to the public good, and (b) it will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

The Board may, within its findings, propose reasonable conditions of the variance request to ameliorate any such impairment of any is found.

#### ***The Positive Criteria:***

This report is addressing how the project meets the positive and negative criteria to allow the Board to render a positive decision for Breakwater. We will also officially present our testimony at the Board Hearing which will be furthered upon presentation of the testimony of all the expert witnesses as well as Board discussion and public comment.

The Breakwater Application advances the following specific purposes and intent of the MLUL

in the following ways that supports the promotion of the general welfare, or "Special Reasons" are;

**a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;**

Approving this project will advance health, safety, and general welfare in that products which are produced at this facility, and benefit the needs of patients, are protected, cultivated, and manufactured within a completely secured facility.

**d. To ensure that the development of individual municipalities does not conflict with the development and general welfare of neighboring municipalities, the county and the State as a whole;**

The project itself does not conflict with the development or general welfare of neighboring municipalities, in fact the project advances statewide policy to deliver quality medicine. Allowing this project to incorporate additional safety provisions within this existing industrial zone is in keeping with this purpose.

**g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;**

The location of such a facility as Breakwater's within this industrial zone is in keeping with good planning practice and sound public policy.

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*L&G Analysis: The "D2" use variance will rely on the special reasons as positive criteria for relief. While the proposed use is not inherently beneficial, in our professional opinion the property is "particularly suited" for the proposed use when considering the findings above. The site's access to state roads, and regional transportation systems and lack of residential neighbors/zoning, all factor into satisfying the positive criteria.*

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***The Negative Criteria:***

The negative criteria involves an analysis surrounding the Township's planning and zoning and the granting of the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

*The project will be designed to enhance the purposes of the LI zone,*

A brief history section of the Master Plan writes; *"At the same time, in an effort to increase the tax base and generate funds for acquiring development rights and purchasing land for permanent open space to the west of the Village, Cranbury encouraged development of industrial, office, research and warehouse uses on the east side of Route 130. This area was especially suited for office-research and warehouse uses by virtue of its accessibility to Exit 8A of the New Jersey Turnpike. Tax revenues from this development helped subsidize the purchase of open space and the preservation of farmland to the west of Route 130. In addition, highway commercial uses were encouraged in a limited area along Route 130 to serve passing highway traffic and to meet regional needs. Design standards for office and warehouse development to ensure good quality development were also adopted and implemented."*

Within Chapter 2 Goals and Objectives, the master plan speaks of a secondary goal of the master plan itself. It states;

*"A secondary goal is to provide Cranbury with sufficient ratable base to sustain Cranbury's fiscal and community needs in the long term, but to focus such efforts on the Route 130 Corridor and areas east of Route 130."*

Specific goals that further delve into this include;

1. Land Use Goals (p. 2-3)
  - c. Route 130 Corridor
    - 1) Capitalize on economic opportunities from pass-by traffic on Route 130 to increase Cranbury's tax ratable base and improve the appearance of existing businesses along Route 130.
  - d. Areas East of Route 130
    - 1) Maintain a strong non-residential ratable base.
    - 2) Encourage a mix of uses in planned industrial parks and allow for limited accessory retail uses associated with warehouse/office uses.
2. Economic Development (p.2-5)
  - a. Promote nonresidential development that is consistent with the natural capacity of the land and the availability of water and infrastructure to ensure the economic well-being of the Township.
    - 1) Increase development intensities in industrial zones and lower minimum lot sizes to encourage both expansion and smaller warehouse-office opportunities.

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*L&G Analysis: The master plan extensively addresses industrial uses and their impacts. While it does not address cannabis directly, locating cannabis within such zones is consistent with best planning practices. In addition, cannabis is not a driver of large volumes of truck traffic. Loading and unloading is typically done through box trucks and delivery vans. While Breakwater does have a retail component within this industrial zone, the site has the ability to handle all activity at the site without*

*detriment to the zoning or the surrounding area.*

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**Cranbury Master Plan - Chapter 9. Economic Development - 2010**

The Township's Master Plan points to the Economic Underpinnings of the 1994 Master Plan as a reason why Cranbury has been successful, stating:

1. Take advantage of Cranbury's proximity to Exit 8A of the New Jersey Turnpike, to develop the area east of Route 130 with large-footprint warehouse office developments, attractively designed and with large expanses of open space similar to corporate office parks. (p.9-5)

Within Part C. Recommended Economic Development Strategies recommended in the 2010 Master Plan revolved around the following initiatives, which have application to cannabis:

2. Form a public-private partnership (representatives of businesses on Main Street and from government) to explore specific ways in which the downtown can be revitalized, a task which is beyond the scope of this Master Plan. (p.9-6)

**Cranbury 2019 Reexamination Report**

Objectives

4. Increase development intensities in industrial zones and lower minimum lot sizes to encourage both expansion and smaller warehouse-office opportunities.

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*L&G Analysis: The Master Plan addresses strategies to increase the tax base. Cannabis, recreational or otherwise, accomplishes this. Cannabis builds the ratable base by providing a relatively low intensity use as it relates to truck traffic with a highly performing business that generates additional tax revenue through the sale of product per state legislation.*

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**Master Plan Reexamination Report - 2019**

Does not address the use or zone.

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*L&G Analysis: While the re-examination report does not directly address the use, some of the public comments at the end of the plan addressed whether the dispensary portion of this use has a negative image on the town. There has been no evidence that this is the case, in fact, in many towns' dispensaries are a driving force of economic activity for struggling Downtown's while remaining a significant generator of revenue through taxation.*

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## **D. Planning Conclusions**

There are specific reasons for the Board to find that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance and that the proposed use variance does reconcile with the zoning ordinance's omission of the use from those permitted in the



Breakwater Treatment & Wellness

2 Corporate Drive  
Cranbury Township

zoning district. The use is not incompatible with the intent and purpose of the ordinance nor the master plan that sets the vision for the community on a whole.

This site is particularly suited, being separate and distinct from the Township's residential zones and the general nature of industrial parks being visited by only those with specific purpose in the park itself. The project satisfies the positive criteria, whereby on balance when one considers all the benefits that Breakwater has to offer the community and its patients. Seeing as though this request for addition is very specific to the use, it can easily be removed should a more traditional industrial tenant take over the space in the future.

A granting of the variance, particularly within a loading area is appropriate as it is relatively obscure. The positive aspects of the project substantially outweigh any potential negatives that may potentially arise through the small expansion of the use of the property.

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Questions, concerns, or comments can be submitted directly to this office at [cwl@latinigleitz.com](mailto:cwl@latinigleitz.com) or by phone at 212-203-5137.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Charles Latini Jr.', written over a faint L&G logo.

Charles Latini Jr, PP/AICP