

**Tuesday February 26, 2019  
Medway Planning and Economic Development Board  
76 Oakland Street  
Medway, MA 02053**

<b>Members</b>	<b>Andy Rodenhiser</b>	<b>Bob Tucker</b>	<b>Tom Gay</b>	<b>Matt Hayes</b>	<b>Rich Di Iulio</b>
<b>Attendance</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>Absent with Notice</b>	<b>X</b>

**The meeting is being broadcast and recorded by Medway Cable Access.**

**ALSO PRESENT:**

Susy Affleck-Childs, Planning and Economic Development Coordinator  
Barbara Saint Andre, Director of Community and Economic Development  
Amy Sutherland, Recording Secretary

The Chairman opened the meeting at 7:00 p.m.

There were no Citizen Comments.

**PUBLIC HEARING CONTINUATION – 2 MARC ROAD:**

The Board is in receipt of the following: **(See Attached)**

- Public Hearing Continuation Notice
- Draft decision dated 2-14-19
- Review and comment letter dated 2-12-19 from Mike Lannan, Environmental Consultant with TechEnvironmental Engineering
- Email dated 2-19-19 from John Lally with requested decision revisions and attachments.
- Emails between Susy Affleck-Childs and Dan Merrikin
- Emails between Susy Affleck-Childs and Mike Lannan re: scope of his services
- Leigh Knowlton 2-26-19 Email #1
- Leigh Knowlton 2-26-19 Email #2 with attachments
- Dan Merrikin 2-26-19 email with decision edits

The Chairman opened the continued public hearing for 2 Marc Road.

Applicant Ellen Rosenfeld and project engineer Dan Merrikin were present.

Odor Consultant Michael Lannan from Tech Environmental, Inc. reviewed his letter dated February 12, 2019 with the Board. Mr. Lannan explained that the primary concerns raised by the Town are odor potential, the control approach, and likelihood of problematic odors. It is his opinion that there is insufficient information provided to approve the facility in relation to the Town's current odor criteria in the Zoning Bylaw. The facility has not proven that it can meet the Town Performance Standards' with respect to odor. The performance standards referenced are from a 1951 publication. They are outdated. The thresholds do include compounds that are prevalent from emissions from marijuana cultivation facilities. The existing performance

standards although outdated should not be ignored. The standards clearly reference that there be no “discernible” odor beyond the fence line of the subject property. Regulations that focuses on recognition exist and are enforceable.

Board members are in agreement that the odor standards need to be updated, but this is a separate issue since this application can only be held to the current standards.

Mr. Lannan explained that odor can be detected but until it is distinguished or identified directly, it is not discernible. One example used was the smell of “natural gas” which is discernible and the chemicals in natural gas can be smelled just as marijuana can be described as “skunk-like” is detectable. The regulations are based on a multiple of detections which represent recognition.

Dan Merrikin responded that the applicant is implementing additional mitigation measures now regarding the odor issue.

Ellen Rosenfeld communicated that she is invested in resolving the concerns. She has expended over \$50,000 working to resolve the noise and odor issues.

It is the recommendation of Tech Enviromental that the Town enforce the existing bylaw until such time as they are revised. It is not in the Town’s best interest to ignore and provide alternative conditions with the older policies still in effect. The information provided by the abutters exposes the Town to liability for nuisance claims.

The Board reviewed the Draft Decision as provided.

Page 13 of the Draft Decision was discussed. The applicant communicated that they have no issue with the inclusion of language about preparing a plan to mitigate any existing noise issues associated with the existing facility. This allows the applicant the opportunity to implement corrective measures.

Page 14 includes language about the sound measurements which will be conducted at all nearby residential property lines at locations representative of worst-case noise impact on residential property. This was language which abutter John Lally recommended be included.

Leigh Knowlton is concerned with how #4 on page 12 is written about the measurement. It is his opinion that the octave band conversion results are not consistent with the industry standards. He stated that the Town’s noise consultant used a different methodology which would allow for significantly more noise. Mr. Knowlton provided his results using a simplified conversion method.

The Board is satisfied with the method used by Consultant Ron Dempsey, Noise Control Engineering, LLC, since he is the professional in this field.

Page 15 was reviewed. There was language added that the Board may require the applicant to implement additional noise mitigation measures if the facility continues to be non-compliant with the Bylaw.

Under C. Odor Management section #1, Barbara Saint Andre noted that the word applicable should be removed since the Bylaw language speaks for itself.

The Findings section of the decision was reviewed.

**Findings:**

**On a motion made by Bob Tucker and seconded by Rich Di Iulio, the Board voted unanimously to approve the Findings as written with the inclusion of language regarding the Applicant's commitment to relocate the rooftop chiller to the ground.**

**Vote of the Board:**

**On a motion made by Bob Tucker and seconded by Rich Di Iulio, the Board voted unanimously to approve the Conditions as written for the Recreational Marijuana Establishment Special Permit for 2 Marc Road.**

**Close Hearing:**

**On a motion made by Bob Tucker and seconded by Rich Di Iulio, the Board voted unanimously to close the public hearing for 2 Marc Road.**

The signature page of the special permit decision was signed by Board members.

It was explained that the decision will be filed with the Town Clerk on Wednesday, February 27, 2019.

**ZONING BYLAW AMENDMENTS – MAY 2019 ANNUAL TOWN MEETING:**

The Board is in receipt of the following: **(See Attached)**

- Housekeeping
- Medical Marijuana
- Recreational Marijuana
- Site Plan Review
- Parking
- Accessory Uses and Structures

The Board was informed that the noted zoning bylaw amendments were submitted to the Board of Selectmen and Town Administrator's office on February 22, 2019 for the warrant for the May town meeting.

**ZBL Miscellaneous Housekeeping:**

This article is to amend the definition of buffer area and also add a definition for bus shelter. There is also a recommendation to delete the definition of "Building Inspector" in its entirety and change the words "Building Inspector" and "Inspector of Buildings" to "Building Commissioner or designee" wherever it appears in the bylaw.

The Board discussed concerns that this change doesn't cause issues anywhere else. Members also wanted to make sure to include "or designee" as some enforcement actions may not always be handled by the Building Commissioner.

**Section 8.9 Medical Marijuana Proposed Amendments:**

The amendment for this would include special permit requirements with the following inclusions:

- A comprehensive noise mitigation plan prepared by a qualified acoustical consultant (whose qualifications include Institute of Noise Control Engineering (INCE) board certification of equivalent experience),
- A comprehensive odor control, abatement and mitigation plan prepared by a certified environmental engineer or certified environmental professional with demonstrated experience in the area of marijuana odor mitigation.
- Add text that the Board may impose requirements for noise and odor mitigation measures and monitoring as a decision condition.

#### **Section 8.10 Recreational Marijuana Proposed Amendments:**

The amendment for this would include special permit requirements with the following inclusions:

- A comprehensive noise mitigation plan prepared by a qualified acoustical consultant (whose qualifications include Institute of Noise Control Engineering (INCE) board certification of equivalent experience),
- A comprehensive odor control, abatement and mitigation plan prepared by a certified environmental engineer or certified environmental professional with demonstrated experience in the area of marijuana odor mitigation.
- Add text that the Board may impose requirements for noise and odor mitigation measures and monitoring as a decision condition.

#### **Site Plan Review Amendments:**

This Section would amend portions of Section 3.5 the Zoning Bylaw, Site Plan Review, section d. the creation of a new parking area involving the addition of one to nine parking spaces. This section also included that the Building Commission shall review major and minor site plan applications and all associated submittals for compliance with the Zoning Bylaw. There was also an addition that in the site plan decision, the Board may require reasonable mitigation measures to offset adverse impacts of the development on the community.

Susy Affleck-Childs stated that she is concerned about the previously discussed idea of requiring site plan review for any change in tenancy. This has broader implications beyond the Planning and Economic Development Board that needed to be evaluated, discussed and vetted more fully. It was the consensus that this needs more discussion before this is put forth for the May Town Meeting.

#### **Proposed Amendments to Parking Section of ZBL Ted Brovitz (Oak Grove Zoning Consultant)**

This Article is to amend portions of Section 7.1.1 of the Zoning Bylaw, Off-Street parking and Loading. This section was a recommendation from Ted Brovitz who is the Consultant for the Oak Grove Zoning Task Force. The Special Types and Standards will include an option for valet parking by Special Permit. Valet parking would be allowed if the use is restaurant or entertainment. There would be a lease, recorded covenant, or other comparable legal instruments, executed and filed with the Town of Medway and Norfolk County Registry of Deeds, guaranteeing long term use of the off-site accessory parking area. This would need to be signed by both parties.

There would be the inclusion of the following definitions: Shared Parking, Structured Parking, Tandem Parking, Frontage Parking, and Valet Parking.

The Board does not have issues with valet parking, but it needs to be determined in the table of uses where this is allowed. The current Bylaw is silent on this. The Zoning Bylaw does not allow for parking of other tenant's patrons. It was suggested to have valet parking in the Central and Commercial Districts. There was a question asked if vacant land in a residential zone could be used for valet parking. Board members agreed that the valet parking lot needs to be located in the same zoning district as the business.

**Accessory uses and Incidental Accessory Objects:**

This Article is to amend the Zoning Bylaw, Section 6.3 Accessory Building and Structures by adding Paragraphs F., G., and H. The Board decided to revise Paragraph H so it would only apply to public bus passenger shelters.

**Zoning Bylaw Amendments Public Hearing Schedule for May 2019:**

The Members were in receipt of the following. (See Attached)

- Schedule for the May 2019 town meeting
- The public hearing will take place on March 26, 2019.

**APPROVAL OF MINUTES:**

**February 5, 2019 & February 19, 2019:**

**On a motion made by Rich Di Iulio and seconded by Bob Tucker, the Board voted unanimously to accept the minutes from the February 12, 2019 and February 19, 2019 meetings as presented.**

**CONSULTANT PROPOSAL:**

The Board is in receipt of the following:

- Consultant proposal dated 2-19-19 from Michael Lannan for revising Environmental Standards section of the Zoning Bylaw

The Board discussed how they would like to proceed with revising the current Environmental Standards in the Zoning Bylaw. There are no funds available in this fiscal year budget to utilize a consultant but there could be a request for special appropriation. It was presented that there should be some flexibility written into the standards since the Board cannot waive the bylaw. The Board could have the authority under a Special Permit to allow for flexibility. This flexibility could be applied to the environmental or lighting standards. Director of Planning and Economic Development, Barbara Saint Andre informed the Board that the current standards are not up to date and that research on this needs to be completed to look at this for a long-term implementation plan. The goal is to not lessen the environmental standards, but just make them current and up to date with current techniques for measurement. There was a suggestion to define the terms as part of this process.

**OTHER BUSINESS:**

**Medway Community Church:**

The members are in receipt of the following: (See Attached)

- Emails from Tom Gay dated February 25, 2019

Member Gay informed the Board that he met on site with representatives from Medway Community Church. The meeting specifically discussed the decision condition G.1 regarding the

buffer. The site was walked along the property line where fencing and buffering is required. The erosion control locations were noted. The temporary fence line will be 5 ft. outside permanent fence line. This will be installed without disturbing trees. The trees which will remain were marked. Things on site are progressing as planned and approved.

**Salmon:**

There was a question about the Salmon project and if the Black Walnut Trees were marked and identified. Susy Affleck-Childs informed the members that the Conservation Agent has been on site and the trees which were to remain were tagged. The applicant has posted a \$160,000 bond if there are any issues.

**FUTURE MEETINGS:**

- Tuesday, March 12 & 26, 2019

**ADJOURN:**

**On a motion made by Rich Di Iulio and seconded by Tom Gay, the Board voted unanimously to adjourn the meeting.**

The meeting was adjourned at 8:52 p.m.

Prepared by,



Amy Sutherland  
Recording Secretary

Reviewed and edited by,



Susan E. Affleck-Childs  
Planning and Economic Development Coordinator

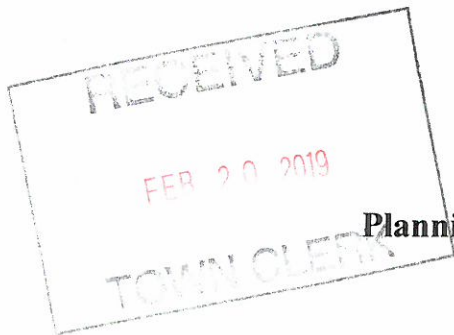


**February 26, 2019**  
**Medway Planning & Economic Development Board**  
**Meeting**

**2 Marc Road – Recreational Marijuana**  
**Special Permit Public Hearing**  
**Continuation**

- Public Hearing Continuation Notice
- Draft decision dated 2-14-19
- Review letter dated 2-12-19 from Mike Lannan, environmental consultant with TechEnvironmental Engineering
- Email dated 2-19-19 from John Lally with requested revisions and attachments
- Emails between Susy Affleck-Childs and Dan Merrikin
- Emails between Susy Affleck-Childs and Mike Lannan re: scope of his services

There is a lot here. Please read carefully.



**TOWN OF MEDWAY**  
**Planning & Economic Development Board**  
155 Village Street  
Medway, Massachusetts 02053

*Andy Rodenhiser, Chairman*  
*Robert K. Tucker, Vice-Chairman*  
*Thomas A. Gay, Clerk*  
*Matthew Hayes, P.E.*  
*Richard Di Iulio*

**MEMORANDUM**

February 20, 2019

TO: Maryjane White, Town Clerk  
Town of Medway Departments, Boards and Committees

FROM: Susy Affleck-Childs, Planning & Economic Development Coordinator

RE: **Public Hearing Continuation: 2 Marc Road – Adult Recreational Marijuana Special Permit**  
**CONTINUATION DATE: Tuesday, February 26, 2019 at 7:00 p.m.**  
**LOCATION: Medway Town Hall – 155 Village Street**

At its meeting on February 19, 2019, the Planning and Economic Development Board voted to continue the public hearing on the application of Ellen Realty Trust of Millis, MA for a special permit to operate an adult recreational marijuana cultivation and processing facility at 2 Marc Road to Tuesday, February 26, 2019 at 7:00 p.m. at Medway Town Hall.

The applicant's proposal pertains to the use of the existing two story, 60,000 sq. ft. industrial building at 2 Marc Road (Parcel 33-001) located on the north side of Marc Road in the East Industrial zoning district. The 6.93 acre property is owned by Ellen Realty Trust of Millis, MA. NOTE - A medical marijuana special permit, site plan, and groundwater protection special permit were previously approved for this property on June 28, 2016. The applicant now proposes to add cultivation, manufacturing, processing, and packaging of marijuana for adult recreational use and the delivery of such products off-site to retail marijuana establishments in other communities. A recreational marijuana retail facility is not proposed at this location.

The application and associated documents are on file with the Medway Town Clerk and at the office of the Planning and Economic Development Board at Medway Town Hall, 155 Village Street and may be reviewed during regular business hours. The materials are also posted at the Planning and Economic Development Board's web page at: <https://www.townofmedway.org/planning-economic-development-board/pages/current-development-applications>

**The Board will continue its deliberations and review a revised draft decision at the February 26<sup>th</sup> hearing.**

Please contact me if you have any questions. Thanks.





**TOWN OF MEDWAY**  
**Planning & Economic Development Board**  
155 Village Street  
Medway, Massachusetts 02053

*Andy Rodenhiser, Chairman  
Robert K. Tucker, Vice-Chairman  
Thomas A. Gay, Clerk  
Matthew J. Hayes, P.E.  
Richard Di Iulio*

REVISED DRAFT – February 14, 2019

***SPECIAL PERMIT DECISION***  
***Adult Recreational Marijuana Establishment***  
***Ellen Realty Trust – 2 Marc Road***  
***with Conditions***

**Decision Date:** \_\_\_\_\_

**Name/Address of Applicant:** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

**Name/Address of Property Owner:** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

**Location:** 2 Marc Road, 19 Jayar Road and 21 Jayar Road

**Assessors' Reference:** 33-001, 24-015 and 24-016

**Zoning District:** East Industrial

**I. PROJECT DESCRIPTION** – The Applicant seeks a Special Permit pursuant to subsection 8.10 of the Medway *Zoning Bylaw* to use a two story, 60,000 sq. ft. industrial facility at 2 Marc Road, and 19 & 21 Jayar Road (*Medway Assessors' Parcels 33-001, 24-015 and 24-016*) (collectively “2 Marc Road”) on the north side of Marc Road in the East Industrial zoning district for the cultivation, processing and manufacturing of marijuana for adult recreational use by CommCan, Inc. The property is already subject to a medical marijuana special permit issued June 28, 2016 by the Planning and Economic Development Board (“the Board”) and an approved site plan endorsed on July 26, 2016 (the “2016 Approval”). This proposal pertains to the fit-out of the second floor of the building to allow for the expanded operation to produce marijuana for adult recreational use. The current special permit application does not include the retail sales of medical or adult recreational marijuana.

**II. VOTE OF THE BOARD** – After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives and comments offered by the public, the Medway Planning and Economic Development Board, on \_\_\_\_\_, 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to \_\_\_\_\_ with **CONDITIONS** as specified herein a recreational marijuana establishment special permit for 2 Marc Road in Medway, MA.

The vote was \_\_\_\_\_ by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Richard Di Iulio	
Matthew Hayes	
Thomas A. Gay	
Andy Rodenhiser	
Robert Tucker	

**III. PROCEDURAL HISTORY**

- A. October 9, 2018 – Special permit application filed with the Board; filed with the Town Clerk on October 11, 2018.
- B. October 11, 2018 – Public hearing notice filed with the Town Clerk and posted at the Town of Medway web site.
- C. October 15, 2018 - Public hearing notice mailed to abutters by certified sent mail.
- D. October 29 and November 6, 2018 - Public hearing notice advertised in *Milford Daily News*.
- E. November 13, 2018 - Public hearing commenced. The public hearing was continued to November 27 and December 11, 2018 and to January 8, 22, 29 and February 12, 2019 when the hearing was closed and a decision rendered.

**IV. INDEX OF DOCUMENTS**

- A. The special permit application materials for the proposed use of the building at 2 Marc Road for an adult recreational marijuana establishment included the

following information that was provided to the Board at the time the application was filed:

1. *2 Marc Road Site Plan of Land in Medway, MA*, dated January 26, 2016, last revised July 18, 2016, prepared by Merrikin Engineering of Millis, MA – ENDORSED July 26, 2016.
  2. Sworn statement of ownership of CommCan, Inc. dated October 8, 2018.
  3. Special permit application submittal letter from Daniel J. Merrikin, P.E. dated October 9, 2018 as official representative of the Applicant.
  4. Policy and Procedures document titled *Transportation of Marijuana for CommCan*, received October 9, 2018.
  5. Floor plan of the CommCan facility, dated May 2, 2016 by Keenan & Kenney Architects, Ltd.
- B. During the course of the review, a variety of other materials were submitted to the Board by the Applicant, its representatives, Town staff, and the Town's consultants:
1. Results of Noise Study by Acentech, Inc. provided November 13, 2018.
  2. Noise Survey by Noise Control Engineering, LLC dated November 27, 2018.
  3. Host Community Agreement between CommCan and the Town of Medway dated May 16, 2016 and the associated amendment dated April 17, 2018.
  4. Email communications dated October 23, 2018 from the MA Cannabis Control Commission acknowledging receipt of CommCan's applications for recreational marijuana cultivation and product manufacturing licenses.
  5. Medical marijuana special permit decision dated June 28, 2016 and final site plan for 2 Marc Road endorsed by the Board on July 26, 2016.
  6. Gino Carlucci, PGC Associates, the Town's Consulting Planner – Special permit review letter dated November 7, 2018 and commentary throughout the public hearing process.
  7. Email dated January 16, 2019 from Ron Dempsey of Noise Control Engineering converting the existing and long-standing noise measurement standards from the *Zoning Bylaw* to the current, modern noise measurement standards.
  8. Marijuana Odor Control Plan Template for Denver, Colorado.
  9. *Cannabis-Related Odor Mitigation @1073 Main Street*, Millis, MA by GroThink, Oasis Spring, LLC, and Lynch Associates for the Millis Planning Board.
  10. Exelon expansion project site plan decision dated July 26, 2016.
  11. Letter from Michael Lannan, of TechEnvironmental dated 2-12-19
- C. Other Documentation
1. Mullins Rule Certification dated November 27, 2018 for Board member Andy Rodenhiser for the November 13, 2018 hearing.
  2. Mullins Rule Certification dated December 5, 2018 for Board member Robert Tucker for the November 27, 2018 hearing.
  3. Mullins Rule Certification dated December 5, 2018 for Board member Thomas Gay for the November 27, 2018 hearing.

**V. TESTIMONY** - In addition to the special permit application materials as submitted and provided during the course of our review, the Board heard and received verbal or written testimony from:

- Gino Carlucci, PGC Associates, the Town's Consulting Planner – commentary throughout the public hearing process.
- Ellen Rosenfeld, Applicant.
- Dan Merrikin, Legacy Engineering, project engineer for the Applicant.
- Andy Carballeria, Acentech Inc., acoustic sound consultant for the Applicant.
- Ron Dempsey, Noise Control Engineering LLC, acoustic sound consultant for the Town.
- Resident and abutter John Lally, 35 Coffee Street - Emails dated November 5, November 16, November 26, December 10, 2018 and January 22 and 29, 2019 about noise; Emails dated December 16 and 21, 2018 and January 22, 2019 about odor; and commentary throughout the public hearing process.
- Email communications dated December 10, 2018 between Planning and Economic Development Coordinator Susan Affleck-Childs and Ron Dempsey of Noise Control Engineering, LLC, the Town's noise engineering consultant.
- Email communication with attachments dated January 3, 2019 between Ron Dempsey of Noise Control Engineering and Andy Carballeira of Acentech.
- Email communication dated January 29, 2019 from Ron Dempsey of Noise Control Engineering, LLC in response to January 23, 2019 email from Leigh Knowlton.
- Emails dated December 17 and 27, 2018 between Susan Affleck-Childs and Ellen Rosenfeld about odor.
- Resident, Leany Oliveria, 402 Village Street.
- Resident Jane Studennie, address unknown.
- Resident Heidi Sia, 8 Main Street, emails dated January 10 and 22, 2019.
- Resident Phil Giangarra, 24 Green Valley Road.
- Resident Leigh Knowlton, 11 Green Valley Road, email dated January 22, 2019 with attachments, and January 23, 2019 with attachment.
- Resident Jeanette Gibson, 45 Coffee Street.
- Selectman Dennis Crowley.
- Town Administrator Michael Boynton.
- Email from attorney Susan Murray dated January 29, 2019.

**VI. FINDINGS**

The Planning and Economic Development Board, at its meeting on \_\_\_\_\_ 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to approve the following **FINDINGS** regarding the special permit application for adult recreational marijuana establishment for 2 Marc Road. The motion was approved by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

**FINDINGS from PUBLIC HEARING TESTIMONY**

- (1) CommCan, Inc., currently operates a medical marijuana cultivation and manufacturing business at 2 Marc Road as authorized by the Massachusetts Department of Public Health and pursuant to a medical marijuana special permit

issued by the Board on June 28, 2016. CommCan, Inc. is a tenant in the 2 Marc Road building owned by Ellen Realty Trust and will continue to operate that use at this location. The Applicant now seeks to secure a special permit pursuant to section 8.10 of the Medway *Zoning Bylaw* to also use the facility to grow and process marijuana for adult recreational use. Ellen Rosenfeld, Trustee of Ellen Realty Trust, is one of three owners and shareholders of CommCan, Inc.

(2) NOISE ISSUES

- A. Pursuant to Section 7.3.C.2. of the *Zoning Bylaw*, the “Maximum permissible sound pressure levels measured at the property line nearest to the noise source for noise radiated continuously from the noise source between 10 PM and 7 AM shall be as follows.”

Frequency Band (Cycles per Second)	Sound Pressure Level (Decibels 43 0.0002 Dyne/CM2)
2-72	69
75-150	54
150-300	47
300 - 600	41
600 – 1,200	37
1,200 – 2,400	34
2,400 - 4,800	31
4,800 – 10,000	28

“For noise levels between 7 A.M. and 10 P.M., and if the noise is not smooth and continuous, the following corrections shall be added to each of the decibel levels given above:

- Daytime operation only: +5
- Noise source operated at less than 20% of any 1-hour period: +5”

- B. In response to complaints to the Applicant about noise emanating from the existing marijuana production and processing operation, the Applicant retained sound consultant Acentech to evaluate the noise levels at the 2 Marc Road facility and recommend mitigation measures to address the noise produced by a large air-cooled chiller installed on the building’s roof which runs 24 hours a day, 7 days per week. Acentech conducted sound measurements at five locations on May 15, 2018 during the period of 12:00 am thru 2:00 am. Acentech found that the chiller did not result in conditions that violated the Massachusetts Department of Environmental Protection (DEP) Noise Policy but recommended mitigation measures to lessen emitted sound from the chiller, namely, the installation of noise control blankets on select components of the chiller. Those blankets were installed at the end of August 2018. Acentech concluded that the noise had been reduced by 7-10 dB (depending on the frequency being measured) following the installation of the blankets.
- C. In response to complaints to the Town about excessive noise emanating from the 2 Marc Road facility, the Town retained Noise Control Engineering, LLC

(NCE) to evaluate the noise levels at the 2 Marc Road property under the DEP Noise Policy. NCE conducted attended noise measurements on the night of October 31, 2018 at several locations approximating the property lines of the 2 Marc Road property; these are known as source measurements. NCE also conducted attended noise measures from the street in front of two nearby residences (14 Green Valley Road and 45 Coffee Street); these are referred to as residential receiver locations. Measurements were also taken at 18 Henry Street to determine a reasonable background noise level. At the approximated north, west and south property line positions around the facility, noise levels were within the 10dB of the background noise levels measured at 18 Henry Street. The measured noise levels at the subject property's boundaries with abutting residential properties were within allowable levels with respect to the Mass DEP Noise Policy and do not reach the level of noise pollution per those standards.

NCE did find there was a noticeable tonal noise originating from the southeast corner of the building, near the location of the building's emergency generator. The highest noise level on a property line was at the property line closest to that generator. However, because the abutter to the east is an industrial facility, the high tonal noise at this location does not come under the scope of the Mass DEP Noise Policy.

- D. Both professional sound consultants have agreed that the frequency band range form of noise measurement specified in the *Zoning Bylaw* is outdated. The consultants concur that noise measurements in accordance with the *Zoning Bylaw's* standards are neither ideal nor typical today. The Board acknowledges that frequency band ranges presently included in the *Zoning Bylaw* do not accurately reflect contemporary sound measurement standards and provide challenges to interpretation and enforcement of the applicable provisions of the *Zoning Bylaw*. The Board is willing to allow a conversion to more modern standards, but only as long as the conversion is more, not less restrictive.
- E. Although the DEP Noise Policy is often used as a maximum noise standard and the Applicant must comply with that Policy, the Board must look to the frequency band range noise standards included in the Section 7.3.C.2 of the *Zoning Bylaw* as it considers this application.

The Town asked NCE to convert the noise levels as measured by NCE to the standards in the *Zoning Bylaw*. NCE estimated an adjustment factor to be applied to their data, to facilitate comparison to the Medway *Zoning Bylaw*. The method used is based on the frequency span of the octave bands and is consistent with the conversion documented in the 1980 EPA document 905-R-80-117 *Noise Legislation Trends and Implications*. The table below shows the conversion of the *Bylaw's* frequency band noise standards to the modern octave band noise standards.

Octave Band Center Frequency (Hz)	Medway Zoning Bylaw Sound Pressure Level, (dB re 20 micro-Pa)
63	67
125	55
250	48
500	42
1000	38
2000	35
4000	32
8000	28

NCE's report and conversion data were reviewed by Acentech. Acentech provided an alternative conversion of the measurements and criteria which results in lower noise levels and partial compliance with the *Zoning Bylaw*. Both sound consultants concur that there is no way to directly convert the measurements between the two standards. However, their shared conclusion is that the measured sound levels on-site and near the facility's industrial property lines are in excess of the *Zoning Bylaw*, irrespective of how the data are viewed.

- F. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to excessively loud and irritating noise emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation.

### (3) ODOR ISSUES

- A. Pursuant to Section 7.3.D. of the *Zoning Bylaw*, "In all districts, no emissions of odorous gases or odoriferous matter in such quantities as to be discernible outside the property line shall be permitted. Any industrial process which may involve the creation and/or emission of any odors shall be provided with a secondary safeguard system. No objectionable odor greater than that caused by 0.001201 oz. per thousand cubic feet of hydrogen sulfide or any odor threshold as defined in Table III in Chapter 5 of Air Pollution Abatement Manual (copyright 1951 by manufacturing Chemists Assoc., Inc., Washington, DC) shall be permitted."
- B. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to offensive odors emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation. The Board

sought and received advice from Tech Environmental, Inc. in a letter dated February 12, 2019.

- (4) Hours of operation – As a marijuana growing facility, the establishment operates 24 hours a day/7 days a week. Occupancy of the facility by employees is generally limited to the hours of 7 am to 8 pm, Sunday – Saturday.

**RECREATIONAL MARIJUANA ESTABLISHMENT SPECIAL PERMIT  
FINDINGS (Sub-section 8.10 of the Zoning Bylaw)**

- (1) The recreational marijuana establishment will operate inside the existing medical marijuana cultivation and processing facility at 2 Marc Road, a permanent, standalone building with no doctor's offices or other uses. The site includes driveways, parking areas, utility systems, and stormwater management facilities.
- (2) None of the uses listed in Section 8.10 E. 4. of the *Zoning Bylaw* are located within 500 feet of the site of the proposed facility.
- (3) Smoking, burning and consumption of marijuana products on the premises is not allowed.
- (4) No drive-through service is proposed. It is not needed as a retail operation is not planned for the site nor does the *Zoning Bylaw* allow for a drive-through facility.
- (5) The proposed signage is in compliance with Section 8.10 E. of the *Zoning Bylaw*
- (6) The Applicant has previously provided the contact information for management staff and key holders of the facility.
- (7) As conditioned herein, the Board finds that the recreational marijuana establishment will not create a nuisance to abutters or to the surrounding area or create any hazard. Both the Applicant and the Town have contracted with noise consultants to monitor noise from the facility and both found the operation to be within DEP noise regulations. The Board is requiring the Applicant to prepare a noise mitigation plan for the Board's approval after consultation with its noise consultant and to implement suitable noise mitigation measures. Further, the Board is also requiring the Applicant to prepare an odor control plan for the Board's approval after consultation with its odor consultant and to implement suitable odor mitigation measures. The Building Inspector, in consultation with the Health Agent, and the Town's consultant(s), will confirm compliance with the noise and odor requirements of the *Zoning Bylaw* after the required noise and odor mitigation measures are installed.
- (8) The existing building meets the requirements for "openness of premises" since no activities within the building or displays of products are visible from the exterior of the building and the front of the building, which includes the primary entrance to the facility, is fully visible from the street. All operations are within the restricted building and there is no direct consumer access as no retail sales are allowed.



- (9) The special permit authorizes only the following adult recreational marijuana establishment activities: cultivation, manufacturing, processing and packaging of marijuana and marijuana products and the transport and delivery of such to other recreational marijuana establishments. Retail sales are not allowed.
- (10) As conditioned herein, copies of required licenses and permits issued by the Commonwealth will be provided upon approval by the Massachusetts Cannabis Control Commission. The recreational marijuana operation will be operated in strict compliance with Massachusetts Cannabis Control Commission regulations.
- (11) The Applicant, Ellen Realty Trust, is the owner of record of the subject property and building as shown on the Medway Assessor's records. Accordingly, the Applicant has the right to use the site for a registered marijuana establishment.
- (12) A sworn statement disclosing the owner's or other similarly situated individuals' interest in the registered marijuana establishment has been provided.
- (13) A certified list of all abutter and parties of interest was provided. The Planning and Economic Development office coordinated the production and mailing of the required public hearing notice for the Special Permit application.
- (14) No changes are needed or proposed to the 2016 approved site plan. A detailed floor plan of the premises showing the functional areas of the facility has been provided. Security measures including lighting, fencing, gates and alarms were previously reviewed and approved by the Police Chief during the 2016 Approval process.
- (15) A copy of the policies and procedures for the transfer, acquisition, or sale of adult recreational marijuana between approved marijuana establishments has been provided.
- (16) The required public hearing and review process for this special permit application has been followed.
- (17) The adult recreational marijuana establishment, as conditioned herein, has been designed to minimize any adverse visual or economic impacts on abutters and other parties in interest. No changes in the existing building or site are proposed other than additional measures to further mitigate noise and odor impacts.
- (18) As conditioned herein, the proposed facility will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations.
- (19) As conditioned herein, the Applicant has satisfied the conditions and requirements of this Section 8.10 and Section 3.4 of the *Zoning Bylaw*.
- (20) The Town of Medway and CommCan, Inc. entered into a Host Community Agreement in May 2016 for the medical marijuana operation. The HCA was amended in April 2018 in anticipation of this application for a recreational marijuana establishment.

**GENERAL SPECIAL PERMIT FINDINGS (Sub-section 3.4 of the Zoning Bylaw)**

- (1) *The proposed site is an appropriate location for the proposed use.*

Section 8.10 of the *Zoning Bylaw*, Recreational Marijuana, specifies that recreational marijuana establishments are allowed by special permit in the East and West Industrial Zoning Districts. The subject site at 2 Marc Road is located within the East Industrial and is therefore an eligible location. The site is not within 500 feet of any of the uses from which such facilities are prohibited (existing public or private school serving students in grades K-12). Pursuant to the 2016 Approval, there is already a medical marijuana cultivation and manufacturing facility on the site.

- (2) *Adequate and appropriate facilities will be provided for the operation of the proposed use.*

The recreational marijuana cultivation and manufacturing uses are being added to the previously approved use of the facility for medical marijuana cultivation and manufacturing as provided in the 2016 Approval. The current activities in the building will essentially remain unchanged; the only difference is that more product will be produced and processed for recreational purposes. No changes are proposed to the 2016 Approval. Due to that 2016 Approval, adequate and appropriate facilities have been provided for the operation of the facility.

- (3) *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians or the environment.*

The existing site contains suitable driveways, parking areas and stormwater management systems. Reasonable noise and odor mitigation measures are included as Conditions herein.

- (4) *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*

The proposed facility is expected to have 30 employees, and because the retail sale of marijuana products is not permitted, other traffic to the site will be minimal. The Industrial Park Road system is adequate to handle the traffic. The Applicant previously reconstructed Marc Road as part of the approval of the 2016 Approval so the roadway quality is excellent. Furthermore, the site's access is from Main Street/Route 109, a major east-west arterial roadway, so there is no traffic impact on local residential roadways.

- (5) *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site or operational attributes of the proposed use.*

The proposed marijuana production and processing uses are not detrimental to adjoining properties, however, the operation of the rooftop HVAC equipment periodically generates conspicuous noise of concern to some residential abutters and nearby neighbors. Noise evaluation reports were provided by consultants for the Applicant (Acentech) and the Town (Noise Control Engineering). Throughout

the permitting process, the Applicant has demonstrated a strong commitment to address and mitigate the noise issues as experienced by the residential abutters. The Applicant will supplement existing noise mitigation systems as part of the build-out of the second floor after a thorough evaluation process by sound and mechanical engineers to identify additional measures. As conditioned herein, the Board finds that suitable monitoring and mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to noise.

Testimony was also provided about offensive odors emanating from the existing facility. The Board has discussed the need for the Applicant to institute more aggressive odor control measures. The Applicant intends to supplement existing odor mitigation systems as part of the build-out of the second floor after the preparation of an odor mitigation plan. As conditioned herein, the Board finds that suitable mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to odors.

There is no outside storage of either materials or waste. While vegetation close to the building is limited by the State's security requirements for marijuana establishments, six trees have been planted around the parking lot and other low vegetation has been added as part of the 2016 Approval to improve aesthetics from the public way and nearby residences.

- (6) *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*

The proposed use is manufacturing and is therefore consistent with the character of the East Industrial Zoning District in which the subject property is located. This application proposes to produce marijuana for adult recreational use within the existing building which is currently limited to the production and processing of medical marijuana. This expansion of use was expected at the time the 2016 Approval. The Board finds that the proposed expanded use will not significantly alter the character of the East Industrial zoning district.

The Board heard testimony from residential abutters and neighbors about adverse noise and odor conditions emanating from the 2 Marc Road facility which are negatively impacting the enjoyment of their property and quality of life. The Applicant made repeated verbal commitments during the public hearing that she will address their concerns through reasonable noise and odor mitigation measures. The Board incorporates its findings under (5) above. The Applicant will be held to the environmental standards included in Section 7.3 of the *Zoning Bylaw*. As conditioned herein, the Board finds that reasonable measures will be taken such that this particular industrial use will not adversely affect the surrounding neighborhood.

- (7) *The proposed use is in harmony with the general purpose and intent of this Zoning Bylaw.*

The Recreational Marijuana section of the *Zoning Bylaw* (Section 8.10) was adopted by the Town in May 2018 with the specific intent of allowing the limited establishment of non-retail recreational marijuana establishments in Medway. The

stated purpose of Section 8.10 is to address possible adverse public health and safety consequences and impacts on the quality of life related to this type of facility by providing for them in an appropriate places and under strict conditions, therefore, it meets the purpose of the *Zoning Bylaw*.

- (8) *The proposed use is consistent with the goals of the Medway Master Plan.*

The existing facility and the expanded use of the facility is in compliance with Goals 1 and 6 of the Economic Development Goals and Objectives section of the Medway Master Plan as follows:

- Goal 1: Maximize the area's economic resources
- Goal 6: Attract new (and retain existing) businesses and increase the industrial/manufacturing base.

- (9) *The proposed use will not be detrimental to the public good.*

As a facility in compliance with state and local law, consistent with the goals of the *Medway Master Plan*, and as conditioned herein, the proposed use will not be detrimental to the public good.

**VIII. CONDITIONS** The *Special and General Conditions* included in this Decision shall assure that the Board's approval of this special permit is consistent with the *Zoning Bylaw* and that the comments of various Town boards and public officials have been adequately addressed, and that concerns of abutters and other town residents which were aired during the public hearing process have been carefully considered. These conditions are binding on the Applicant.

#### **SPECIFIC CONDITIONS OF APPROVAL**

- A. All standard requirements included in Section 8.10 Recreational Marijuana of the *Zoning Bylaw* apply to this special permit. These include but are not limited to:

1. Upon approval and prior to commencing operations on the property to cultivate and process marijuana for adult recreational use, the Applicant shall provide the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board with a copy of the applicable state adult recreational marijuana establishment licenses, permits, and approvals from the Massachusetts Cannabis Control Commission.
2. The Applicant shall provide an annual report of CommCan's operations to the Board and other Town officials no later than January 31<sup>st</sup> of each year, including a copy of all current state licenses and demonstrating continued compliance with the conditions of this special permit. Any change in ownership of CommCan, Inc. or change in management staff and key holders shall also be reported.
3. This special permit is not transferrable to another party. It shall remain exclusively with the Applicant, Ellen Realty Trust, as the owner of the premises and shall be considered to include the operation of the facility's tenant, CommCan, Inc.

4. Smoking, burning and consumption of marijuana or marijuana infused products on the premises is prohibited.

**B. Noise Management**

1. The Applicant shall install and maintain at all times effective noise reduction equipment. The Applicant will complete this through industry best practices and suitable noise abatement measures. The Applicant shall ensure proper maintenance of all noise abatement equipment to ensure maximum efficiency and effectiveness.
2. As indicated by the Applicant during the hearing, buildout of the second floor is expected to commence in the near future. As part of that effort, the Applicant has indicated that the existing rooftop chiller may be modified, replaced, retrofitted, or repositioned in some manner to address the noise concerns expressed by residents of property in proximity to the subject facility. The Applicant is in the process of investigating and evaluating these issues in order to develop a noise abatement and management plan to remedy the existing noise issues as part of that buildout. Within four months of the filing of this special permit decision with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a noise abatement and management plan prepared by a qualified acoustical consultant, (whose qualifications include Institute of Noise Control Engineering (INCE) board certification or equivalent experience) in conjunction with qualified mechanical engineers addressing the various mechanical equipment that may cause violation of the applicable provisions of Section 7.3 of the *Zoning Bylaw*.

The plan shall include the following elements:

- Estimated noise source levels for equipment
- Predicted propagation losses to the facility property lines and the residential receivers
- Estimated noise levels at the facility property lines and the residential receivers
- Estimated impacts of any proposed noise control measures.

The plan shall be provided to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its noise consultant for review and comment, at the Applicant's expense. The Applicant shall appear before the Board at a public meeting to review and discuss the proposed improvements and obtain approval from the Board of that plan. The Board may require the Applicant to modify the plan based on the recommendations of the Town's noise consultant.

3. Any new or altered mechanical equipment installed on the property shall be designed to comply with applicable regulations, including the provisions of Section 7.3 of the *Zoning Bylaw*.

**Commented [BSA1]:** Is this from NCE? I wonder why some say "estimated" rather than "predicted".

4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall provide the Building Inspector, Health Agent, and Board a noise study measuring ambient sound levels without the external mechanical equipment in operation and the sound at each of the property boundaries during full operating conditions. All sound measurements shall be conducted by a qualified acoustical consultant (INCE board certification or equivalent experience) in accordance with industry best practices confirming that external mechanical noises have been addressed to comply with the applicable provisions of the *Zoning Bylaw*.

The sound measurements will consist of:

- Attended night time noise measurements at the facility property line and the residential receivers OR/
- Unattended noise monitoring for a period of at least one week at the facility property line and the residential receivers

If the equipment is expected to produce higher noise levels at operating conditions other than full load, those conditions shall be measured as well.

At a minimum, sound measurements shall be conducted at all nearby residential property lines, at locations representative of worst-case noise impact on residential property. Measurements shall be taken at the nearest residential line to the north, south (behind the Coffee Street residents), and southwest (near 35 Coffee Street). Measurement instrumentation shall comply with class 1 in accordance with IEC 61678, and should be capable of measuring A-weighted and octave-band sound levels. The acoustic descriptor for reporting shall be the L90 sound level, to minimize the influence of transient sound. Sound level meters shall be provided with windscreens and their calibration shall be field-checked before and after the measurements. Measurements shall be conducted during periods of worst-case impacts, which is typically at night after midnight when ambient sound levels are lower. If possible, ambient conditions shall be measured for at least 10 minutes with the roof chiller turned off. If operational constraints make measuring ambient noise levels at the site impractical, said measurements shall be taken in a similar environment away from the facility. Measurements of operational conditions shall be taken and compared to the ambient noise levels and an analysis provided addressing the DEP Noise Policy and Section 7.3 of the *Zoning Bylaw*.

The Board may forward the noise study to the Town's noise consultant for peer review and comment, at the Applicant's expense. The Board may, at its discretion, require the Applicant to implement additional noise mitigation measures based on the outcome of the noise study.

5. Approximately six months after beginning operations under this Special Permit, the Applicant shall provide a supplemental noise study. ~~to be performed, measuring both ambient sound levels without the external mechanical equipment in operation and with the facility in full operation. These~~ measurements shall be carried out to the same standards and methods as the initial study.

**Commented [SA2]:** This language in this paragraph was provided by NCE, the Town's noise consultant

**Commented [SA3]:** The language in this paragraph was provided by Acentech, the Applicant's noise consultant.

**Commented [SA4]:** The Applicant suggests that the stricken through language be deleted completely.

**Commented [SA5]:** This language was suggested by NCE.

The intent of this second study is to assess the impact of seasonal changes. The scope and methods of the study shall be the same as in the initial study described above.

**Commented [SA6]:** Language in this paragraph was suggested by Applicant.

The Applicant shall submit that study to the Building Inspector, Health Agent and Board so as to determine continued compliance with the conditions set forth herein as to noise. The Board may forward the plan to the Town's noise consultant for review and comment, at the Applicant's expense, and may, at the Board's discretion, require the Applicant to implement additional noise mitigation measures based on the outcome of the noise study.

6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional mechanical engineer that there are no changes in the installed mechanical equipment which may impact the noise emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
7. The Building Inspector, in enforcing the conditions contained herein, may require the Applicant to provide additional noise studies by a qualified noise consultant and/or implement additional mitigation measures should legitimate concerns or complaints develop in the future about noise generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.

#### C. **Odor Management**

1. The Applicant is required to comply with the applicable provisions of Section 7.3.D of the *Zoning Bylaw* which requires no discernable odor outside the property line.
2. The Applicant shall install and maintain at all times effective odor control technology to remove odors from the facility's exhaust system. The Applicant will complete this through industry best practices and suitable building filtration systems including a secondary safeguard system as required by the *Zoning Bylaw*. The Applicant shall ensure proper maintenance of all odor migration equipment to ensure maximum efficiency and effectiveness.
3. Nearby residents have reported intermittent and varying odor impacts from the current operation of the facility. As recommended by Michael Lannan of TechEnvironmental, Inc., the Board's odor consultant, in his letter dated February 12, 2019, the Applicant, in preparation for building out the second floor of the existing building for expanded marijuana cultivation, shall complete the following before a building permit will be issued:
  - a. assess the performance of the facility's existing odor management systems by:

**Commented [SA7]:**  
This text provided by the Board's odor consultant.

- identifying the type and location of odorous emissions being discharged from the facility to the ambient air;
- estimating the uncontrolled maximum potential to emit recognition thresholds (RT) odor emissions; and
- modeling these emissions off-site with an EPA approved air quality dispersion modeling system such as AERMOD.

Any capture and control techniques and expected control efficiencies must be included. The “during operations” confirmation must occur when the facility and its odor generating activity is operating at its current regular maximum capacity for medical marijuana cultivation. The operational confirmation shall be a property line and neighborhood odor assessment, as well as confirmation of the uncontrolled emissions. The report and protocol of each compliance demonstration shall be provided to the Board, Building Inspector and Health Agent for review. The Board will forward the odor assessment to the Town’s odor consultant, at the Applicant’s expense, for peer review, comment and approval. This base-line assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation.

- b. provide a modeling demonstration of existing skunk-like (thiol) odors and floral (terpene odors) similar to the RT modeling noted in item a. above.
- c. supplement and/or modify the facility’s existing odor control systems including measures to capture emissions within the building and the installation of a secondary safeguard system. Within four months of the filing of this special permit with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a comprehensive odor control, abatement and mitigation plan, prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation. The plan shall address improvements needed to the facility’s odor control systems to comply with the *Zoning Bylaw*. The odor control, abatement and mitigation plan shall include those elements as contained in the Denver, Colorado odor control plan templates for marijuana cultivation and processing.
- d. The applicant shall provide the plan to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its odor control consultant, at the Applicant’s expense for review, comment, and recommendations. The Applicant shall appear before the Board to review and discuss the plan and obtain approval for the proposed improvements as specified in the plan. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town’s odor consultant.



4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall review the updated odor control system as installed with the Building Inspector and demonstrate that the measures specified in the odor control, abatement and mitigation plan including the secondary safeguard system have been implemented. The Applicant shall provide a certification made by a licensed engineer that the odor mitigation measures included in the plan have been installed. Additional odor mitigation measures may be required if determined to be required by the Building Inspector.
  5. Due to unknown circumstances and potentially unforeseen odorous impacts, in order to ensure that odorous emissions shall not be in such quantities that are offensive off-site and not in compliance with the *Zoning Bylaw*, the Applicant shall provide the Board, Building Inspector and Health Agent with an independent odor assessment six months after beginning the expanded use of the facility to cultivate and process marijuana for adult recreational use. The assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation and include the items specified in 3.a. and 3.b. above. Odor measurements shall be taken at times when the odor generating activity is occurring at regular operating capacity. The report shall include an action plan with recommendations to remediate odorous emissions which may be noticeable beyond the property line of the subject premises. The Board may refer the updated report to its odor consultant for review, comment and recommendations. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town's odor consultant.
  6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional engineer that there have been no changes in the mechanical equipment that has been installed to reduce the odor emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
  7. The Building Inspector, in enforcing the conditions herein, may require additional odor investigations and/or odor mitigation measures should legitimate concerns and complaints develop in the future about odor generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.
- D. The permit holder shall notify the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board in writing within forty-eight hours of the cessation of operation of the marijuana business or the expiration or termination of the license holder's certificates or registration with the Massachusetts Cannabis Control Commission.
- E. There shall be a valid Host Community Agreement in effect at all times during the operation of the marijuana establishment.

- F. Limitations - This special permit is limited to the operation of a recreational marijuana cultivation and processing facility at 2 Marc Road. This permit does not authorize operation of a retail outlet for the sale of adult recreational marijuana products or the operation of a testing facility on the premises.
- G. All applicable conditions of the previous site plan approval for the site and the 2016 Approval shall also apply to this special permit.

#### **GENERAL CONDITIONS OF APPROVAL**

- A. **Fees** - Prior to filing the special permit decision with the Town Clerk, the Applicant shall pay:
  - 1. the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering, planning, noise, odor or other consultants;
  - 2. an advance on fees for continued outside noise and odor consultants as approved by the Planning and Economic Development Board;
  - 3. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
- B. **Other Permits** – This special permit does not relieve the Applicant from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses and approvals. The Applicant or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
- C. **Recording** - Within thirty days of recording the Decision, the Applicant shall provide the Board and the Building Inspector with a receipt from the Norfolk County Registry of Deeds indicating that the Decision has been duly recorded, or supply another alternative verification that such recording has occurred.
- D. **Conflicts** –If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

**IX. APPEAL** – Appeals if any, from this Decision shall be made to a court of competent jurisdiction within twenty days of the date the Board files the Decision with the Town Clerk in accordance with the provisions of G. L. Chapter 40A, Section 17.

After the appeal period has expired and before this special permit takes effect, the Applicant must obtain a certified notice from the Town Clerk that no appeals have been made and provide such certification to the Board before the decision and certificate are recorded. Proof of recording the certificate of no appeal must be delivered to the Building Inspector and the Board.

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**Medway Planning and Economic Development Board  
Adult Recreational Marijuana SPECIAL PERMIT DECISION  
Ellen Realty Trust – 2 Marc Road**

\_\_\_\_\_ by the Medway Planning & Economic Development Board: \_\_\_\_\_

**AYE:**

**NAY:**

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**ATTEST:**

\_\_\_\_\_  
Susan E. Affleck-Childs  
Planning & Economic Development Coordinator

\_\_\_\_\_  
Date

**COPIES TO:** Michael Boynton, Town Administrator  
Dave D'Amico, DPS Director  
Bridget Graziano, Conservation Agent  
Donna Greenwood, Assessor  
Beth Hallal, Health Agent  
Jeff Lynch, Fire Chief  
Jack Mee, Building Inspector and Zoning Enforcement Officer  
Joanne Russo, Treasurer/Collector  
Barbara Saint Andre, Director of Community and Economic Development  
Jeff Watson, Police Department  
Ellen Rosenfeld, Ellen Realty Trust  
Dan Merrikin, Merrikin Engineering  
Steven Bouley, Tetra Tech  
Gino Carlucci, PGC Associates

February 12, 2019

Susan E. Affleck-Childs  
Planning and Economic Development Coordinator  
Town of Medway  
155 Village Street  
Medway, MA 02053

**Re: Reviewing Odor and Noise potential for Marijuana Growing Facility**

***Ref 4443***

Dear Ms. Affleck-Childs:

As discussed, there is the potential for both odor and noise from a marijuana growing facility. The primary concern raised by the Town of Medway (the Town), is the odor potential, the control approach, and the likelihood of problematic odors. Unfortunately, there is insufficient information provided to formally approve this facility at this time with respect to those odor criteria.

Furthermore, the facility has not proven that it can meet the Town Performance Standards<sup>1</sup> with respect to odor. The Performance Standards references the 1951 odor table that many cities, towns, and states referenced at one time or another. This table referenced in the Performance Standard is still included in many by-laws today.

Similarly, there is a noise Performance Standard that the proponent has suggested is outdated and therefore cannot be met. While we agree both the odor and noise performance standards are outdated, they can be met. The referenced odor thresholds do include compounds that are prevalent from, and relevant to, emissions from marijuana cultivation facilities. As such, these existing performance Standards should not be simply labelled “outdated” and ignored or modified.

Furthermore, the odor Performance Standards clearly references no “discernible” odor beyond the fenceline. In today’s terminology, “discernible” is analogous to “recognizable”. In other words, odor can be detected, but until it is distinguished or identified directly, it is not discernible. An example would be the “smell” of natural gas, and the chemicals that are added to natural gas so that a gas leak can be detected. The compounds included are similar to those from marijuana that are often described as skunk-like, but in a gas leak the concentrations are so low that the smell is really just detectable as “gas”, but really cannot be described as any particular smell. Today, most regulations are based on a multiple of detection to represent recognition (and not recognition directly), simply because it better normalizes how individual olfactory senses differ. That said, regulations that focuses on recognition exist and are enforceable.

Similarly, the noise Performance Standard does not reference today’s typical octave bands, but that does not mean that they are not enforceable. The ranges provided are open to some interpretation since at the

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<sup>1</sup> Town of Medway Zoning Bylaw, Section 7.3 (Environmental Standards), November 29, 2018.

time of adoption all noise measurements and calculations were performed by very rudimentary equipment and hand calculations. Individual frequencies had to be measured (or estimated) and then manually added together. The current octave bands have been standardized for measurement and analysis as one lump measurement and calculation for either 1/3 or whole (1/1) octave bands. The irony here is that with today's sound measurement equipment, complying with this old regulation can be done more precisely, since each frequency can be isolated and measured. As such, this ordinance, although cumbersome, is enforceable.

It is simply not in the Town's best interest to ignore or provide alternative conditions with these older policies still in effect. This is especially true if there have been noise or odor complaints. I have read through the complaints provided and do not find them to be excessively unreasonable. It is Tech Environmental's recommendation that the Town enforce these bylaws until such time as they are revised and approved at Town Meeting. Anything else, in a situation where complaints have been logged, and in our opinion from the information provided, not yet fully addressed, exposes the Town to liability for nuisance claims. One cannot simply set "goal posts" and then claim that they are outdated and allow them to be moved so that the public has greater exposure without their agreement.

Tech Environmental has been asked to provide some language for the decision with respect to an odor mitigation plan, but anything we provide at this point, must comply with the current Performance Standards. As such, there are three performance "hurdles" that must be met, and therefore if the Town elects to move forward with this permit approval prior to modifying the Performance Standards, Tech Environmental proposes the following three (3) odor conditions:

1. The Performance Standards requires no discernible odor at the fenceline. Performance shall be demonstrated in advance of construction and again during operation. Performance before construction, once design is completed, shall be completed by estimating uncontrolled maximum potential to emit recognition thresholds (RT) odor emissions and then modeling these emissions off-site with an EPA approved dispersion model (currently AERMOD). Any capture and control techniques and expected control efficiencies must be included. The "during operations" confirmation must occur after the facility has been running and is at maximum capacity. The operational confirmation shall be a fenceline and neighborhood odor assessment, as well as a conformation of the uncontrolled emissions. A protocol of each compliance demonstration shall be provided and approved by a representative of the Town.
2. Clearly, this facility has odor potential and therefore must demonstrate that it has "a secondary safeguard system" as required in the Performance Standards. Therefore the facility must not only capture emissions by including the operations within a building, but it must have further procedures to ensure capture within the building. Likewise, with respect to odor control, the facility must demonstrate that it has a primary and secondary "safeguard" with respect to odor control. There are a number of ways this can be done, and the approach is at the discretion of the project proponent. However, the secondary safeguard systems with respect to odor must be submitted to the Town, and approved by a Town representative, prior to receiving final occupancy approval for this permit.
3. Lastly, there are over 100+ compounds emitted from marijuana cultivation. Many of these compounds are listed in the table referenced in the current Performance Standards (Table III in Chapter 5 of Air Pollution Abatement Manual, 1951). Both the skunk-like (thiol) odors and the

floral (turpene) odors have limits. A modeling demonstration, similar to the RT demonstration shall be required both before construction and after full buildout and odor potential. A protocol for each shall also be required and can be combined with the protocol from condition #1 above.

Again, like with odor, Tech Environmental recommends that the Town fully enforce the noise Performance Standards until such time as they are revised. While Tech Environmental would never recommend the current Performance Standards today, they do exist and can be met, and therefore with obvious complaints, the only option is to keep to the ordinance for compliance determination. While it is okay to suggest a more conservative approach through more standard octave bands for a newly proposed project, in a situation with complaints, a proper noise mitigation plan must be explored that fully addresses the existing Performance Standards, or the Performance Standards should be changed prior to approval. The current approach to addressing noise complaints has been anecdotal at best. Tech Environmental understands the skepticism from the resident that talks about the sound being okay on the day it was explored, but then wonders how that would prove that it will always be okay? We share this skepticism, especially since the sound was explored when the ambient temperature was in the 40s and 50s. Typically peak HVAC demands (and peak noise potential) coincide with peak temperatures.

While it is common practice for proponents to propose alternative compliance strategies when Performance Standards are older and outdated, that does not relieve the facility from meeting the current standards. Instead, it suggests that by meeting the proposed approach, there will be no complaints and that the outdated Performance Standards will never come into question. Please note that in those situations, if someone does complain, it is the responsibility of the Town to require the facility to meet the actual Performance Standards, not the alternative to the standards alone. In this case, where there have been clear complaints, the Town and the facility must include the actual Performance Standards for compliance demonstration.

In conclusion, Tech Environmental does not recommend any approval of this facility until it has fully demonstrated compliance with the current Performance Standards as written, or the Performance Standards are rewritten and the facility complies with the new Performance Standards going forward.

If you have any questions about this review, please call me on my cell 781-718-9305 to discuss.

Sincerely,

**TECH ENVIRONMENTAL, INC.**



Michael T. Lannan, P.E.  
President

## Susan Affleck-Childs

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**From:** Mike Lannan <mlannan@techenv.com>  
**Sent:** Wednesday, February 20, 2019 12:48 PM  
**To:** Susan Affleck-Childs  
**Subject:** RE: 2 Marc Road - Medway

Susan-

Our company does not cater to one industry. We work across many industries. As a firm, we focus on all types of nuisance potentials, as they are interrelated. We can work for facilities, regulators, and neighborhood groups. As long as we are allowed to properly define the tolerance for nuisance, we can, and do, work on any side of a concern, and justify it to all. I actually chuckle when I see a comment like the one provided from the proponent about our experience with odor modeling for this type of industry, as if the industry is important. The industry is not relevant, the human reaction is what is relevant. I have solved odor problems with visual tank covers and no treatment, as in that case the tolerance for odor returned to normal once the public could not see the wastewater directly anymore from the bridge. I have solved HVAC noise problems with landscaping. Again, out of sight, out of mind. The opposite is true too. Multiple exposures will feed on each other, and affect each other..

Although I have include some comments on noise to date, I have mostly focused on odor, as you requested. I thought I could try to keep odor and noise separate, as desired and as I can on a new project when I look at tolerance needs from potential independent exposure of each, but after understanding the existing facility more, the current odor and noise complaints and exposure, and after reading the draft conditions, I cannot. You have existing exceedances of both noise and odor and historical complaints from both, therefore neighborhood nuisance tolerance cannot be differentiated independently as either noise or odor.

Noise and odor are not physical things, but human sensory reactions. In this situation, people have reacted to sound and olfactory exposure together. They have become sensitized via more than one sensory pathway. At this juncture, in your situation, they must be addressed together to do it right. This would not be the first time I fixed another noise consultants basic approach in this combined sensory approach. I can and will do it in a nice way, but if you do not allow me to address errors in your noise conditions to a sensitized neighborhood, I will need to step aside.

Not only will these noise conditions affect the tolerance for odor, but I cannot be involved in a project that is not as protective as the current local and state requirements, especially after confirmed complaints, and definitely after documented exceedances. I am so sorry to be so cut and dry, but our reputation is everything. I recently had a solid waste facility agree in principle to let me on-site as representative of a neighborhood group that has threatened to sue them over odor. He did this simply because he checked with other folks in the solid waste industry, and he was very satisfied with our reputation as a fair arbitrator of nuisance concerns.

I understand that this may be awkward for you and or the board to shift gears and put us in charge of both odor and noise concerns, but if this combined effort is not okay, I will simply provide an invoice for our services to date.

You can think about it a bit as I am logging off for a while today.  
Thanks.

-Mike

**Michael T. Lannan, P.E.**  
President

## TECH ENVIRONMENTAL

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**From:** Susan Affleck-Childs [mailto:sachilds@townofmedway.org]  
**Sent:** Wednesday, February 20, 2019 11:50 AM  
**To:** Mike Lannan <mlannan@techenv.com>  
**Subject:** RE: 2 Marc Road - Medway

Hi Mike,

Thanks for sending along your proposal.

Hope it works out for you to attend the meeting.

Thanks for your comments back on the noise section of the decision. However, at the present time, I am only authorized to have you advise the Board on the odor issues for this project, so we can't get any further into the noise matters with you.

Safe travels back from Florida.

**Susan E. Affleck-Childs**  
**Planning and Economic Development Coordinator**  
**Town of Medway**  
**155 Village Street**  
**Medway, MA 02053**  
**508-533-3291**

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**From:** Mike Lannan [mailto:[mlannan@techenv.com](mailto:mlannan@techenv.com)]  
**Sent:** Wednesday, February 20, 2019 11:41 AM  
**To:** Susan Affleck-Childs  
**Subject:** RE: 2 Marc Road - Medway

Susan-

See attached.

I will let you know about the 26<sup>th</sup>. My wife and I are driving back from Florida over a few days visiting folks along the way starting on Friday. We are scheduled to stay in Baltimore the night before. Assuming all goes as planned, then yes I can be in Medway by 7 PM, but I do not want to fully commit yet, and then back out.

I will know definitively by Sunday, so I can let you know Monday AM, first thing.

FYI...I did look at your conditions and the noise is a mess. One cannot use the MassDEP 10 dBA threshold, as a confirmation of compliance. It is very naïve and generic approach that does not apply in your particular circumstance. The approach is all wrong given the current complaints and the current performance standards. I think we can strike a lot of it though, and instill an "audible" alternative for now to get you to the new standards.

-Mike

**Michael T. Lannan, P.E.**  
President



## TECH ENVIRONMENTAL

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**From:** Susan Affleck-Childs [<mailto:sachilds@townofmedway.org>]  
**Sent:** Wednesday, February 20, 2019 10:57 AM  
**To:** Mike Lannan <[mlannan@techenv.com](mailto:mlannan@techenv.com)>  
**Subject:** RE: 2 Marc Road - Medway

Hi Mike,

I did not receive your proposal for services relating to revising the Town's environmental standards section of our zoning bylaw. Please send again! I can place that topic on the agenda for next week's meeting. Can you attend?

**Susan E. Affleck-Childs**  
**Planning and Economic Development Coordinator**  
**Town of Medway**  
**155 Village Street**  
**Medway, MA 02053**  
**508-533-3291**

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**From:** Mike Lannan [<mailto:mlannan@techenv.com>]  
**Sent:** Wednesday, February 20, 2019 10:51 AM  
**To:** Susan Affleck-Childs  
**Subject:** RE: 2 Marc Road - Medway

I am working this morning and off this afternoon. I will be working again tonight or tomorrow AM.

I will get you something either a little later this morning, or tomorrow AM...I am a little leery of their request, as stated. It typically is used to discredit this approach. I will address, but not fall for their "request" however. Did you get my scope of work? Having it approved, at least in principle, prior to my response to them would be helpful.

-Mike

**Michael T. Lannan, P.E.**  
President

## TECH ENVIRONMENTAL

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**From:** Susan Affleck-Childs [<mailto:sachilds@townofmedway.org>]  
**Sent:** Wednesday, February 20, 2019 10:31 AM  
**To:** Mike Lannan <[mlannan@techenv.com](mailto:mlannan@techenv.com)>  
**Subject:** 2 Marc Road - Medway

Hi Mike,

The applicant for the recreational marijuana special permit has reviewed the draft decision in which we included text about odor modeling/study. They have written us the following question.

*“We are trying to get our arms around the effort and associated cost for the odor modeling/study that Tech Environmental is advocating. Can they please provide some examples of where this approach has been used for Marijuana cultivation facilities in Massachusetts?”*

Can you provide an answer to their question? I would be glad to chat with you about this.

Per my email from yesterday, will you be able to attend next Tuesday’s hearing at 7 pm? The Planning Board would really appreciate you being present.

Thanks.

**Susan E. Affleck-Childs  
Planning and Economic Development Coordinator  
Town of Medway  
155 Village Street  
Medway, MA 02053  
508-533-3291**

## Susan Affleck-Childs

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**From:** Susan Affleck-Childs  
**Sent:** Friday, February 22, 2019 7:56 AM  
**To:** 'Daniel Merrikin'  
**Subject:** RE: DRAFT CommCan Decision 2 14 19 (v.2)

Hi,

Our odor consultant is on vacation and has not been able to respond to my inquiry to him.

Understand Ellen's perspective on not paying for 2 noise consultants.

**Susan E. Affleck-Childs**  
**Planning and Economic Development Coordinator**  
**Town of Medway**  
**155 Village Street**  
**Medway, MA 02053**  
**508-533-3291**

**From:** Daniel Merrikin [mailto:[dan@legacy-ce.com](mailto:dan@legacy-ce.com)]  
**Sent:** Thursday, February 21, 2019 7:26 PM  
**To:** Susan Affleck-Childs  
**Cc:** [ellen@rosenfeld-law.com](mailto:ellen@rosenfeld-law.com)  
**Subject:** Re: DRAFT CommCan Decision 2 14 19 (v.2)

Hi Susy,

Just following up on my email below. We have been working with an odor consultant from California who has worked on many cultivation facilities and who prepares odor control plans. He has never heard of a cultivation facility being required to provide the air modeling that you consultant is requesting and thinks it will be very expensive. Has your consultant provided any examples of cultivation facilities in Massachusetts who have performed the modeling/study that he is requesting?

Also looking for some feedback on Tech Environmental working on the noise issue. I have spoken to Ellen and she does not consent to paying for two peer review consultants working on the same issue.

Thanks

Dan

On Wed, Feb 20, 2019 at 8:43 AM Daniel Merrikin <[dan@legacy-ce.com](mailto:dan@legacy-ce.com)> wrote:

Susy,

Couple of questions regarding Tech Environmental:

- Mr. Lally brings up an interesting issue. We are wondering why there are now two peer review consultants weighing in on noise issues. While the Town can hire as many consultants as they'd like, the Applicant should not be funding two sets of consultants looking at the same issue. Can you help

me understand why they are getting involved with noise? Ellen should not have to pay for two consultants to do the same thing.

- We are trying to get our arms around the effort and associated cost for the odor modeling/study that Tech Environmental is advocating. Can they please provide some examples of where this approach has been used for Marijuana cultivation facilities in Massachusetts?

Thanks

Dan

*We've changed our name. As of January 1, 2019 Merrikin Engineering, LLP is now Legacy Engineering LLC.*

Daniel J. Merrikin, P.E.  
President



Legacy Engineering LLC  
730 Main Street  
Suite 2C  
Millis, MA 02054

[www.legacy-ce.com](http://www.legacy-ce.com)

[dan@legacy-ce.com](mailto:dan@legacy-ce.com)  
508-376-8883(c)  
508-868-8353(c)

On Fri, Feb 15, 2019 at 10:29 AM Susan Affleck-Childs <[sachilds@townofmedway.org](mailto:sachilds@townofmedway.org)> wrote:

Good morning,

See attached further revised draft decision plus the review letter we received from our odor consultant Michael Lannan of TechEnvironmental.

See you Tuesday night, 7 pm the Senior Center, 76 Oakland Street.

Best regards,

**Susan E. Affleck-Childs**

**Planning and Economic Development Coordinator**

**Town of Medway**

**155 Village Street**

**Medway, MA 02053**

**508-533-3291**

--

Dan

*We've changed our name. As of January 1, 2019 Merrikin Engineering, LLP is now Legacy Engineering LLC.*

Daniel J. Merrikin, P.E.  
President



Legacy Engineering LLC  
730 Main Street  
Suite 2C  
Millis, MA 02054

[www.legacy-ce.com](http://www.legacy-ce.com)

[dan@legacy-ce.com](mailto:dan@legacy-ce.com)

508-376-8883(c)

508-868-8353(c)

## Susan Affleck-Childs

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**From:** Lally, John - 0666 - MITLL <jlally@ll.mit.edu>  
**Sent:** Tuesday, February 19, 2019 7:50 AM  
**To:** Susan Affleck-Childs; ellen@rosenfeld-law.com  
**Cc:** LAKnowlton; John Lally  
**Subject:** DRAFT CommCan Decision 2 14 19 (v.2)  
**Attachments:** DRAFT CommCan Decision 2 14 19 (v.2)\_JLComments.doc;  
AerialView\_ResidentialWest\_WorstCase.PNG

Good morning Suzy,

Thank you for the updated draft decision. Please distribute this email and attachments to the Planning and Economic Development Board, and anyone else as you see fit, and please include them in the public record for the 2 Marc Rd Special Permit Application.

Ellen, please distribute this email and attachments as you see fit as well.

I've added comments to the draft and changed the watermark to clearly indicate I've done so. The comments boil down to three requests with associated questions. For convenience they're enumerated below with requests underlined for clarity:

- 1.) I respectfully request to please include a worst-case noise measurement along the private way that forms the west residential boundary. For your reference attached is an annotated aerial view.

The reason for this request:

The worst-case noise residential impact along the private way that abuts the industrial park is much, much worse than out on Coffee Street. This is the location I referred to in my email of 22Jan2019 that describes how detrimental the noise observed along the private way is to my family's property. It seems like it would be a glaring omission if a worst-case measurement along the private way is not included.

It's my understanding the applicant owns or controls land that abuts the private way and therefore has access to make this measurement. In the event access to my property is needed to make this measurement, I'll provide such access.

- 2.) Has TechEnvironmental or NCE peer reviewed all the language in the Noise Management section? If not, I respectfully request to please have all the language in the Noise Management section peer reviewed.
- 3.) In the Noise Management Section, Number 4, the 3rd paragraph begins: "At a minimum, sound measurements shall..." should that be: "Additionally, sound measurements shall..."

I think the intent is for the residential property line measurements to be in addition to facility property line measurements, correct?

As currently written, I wonder if it might be construed that the residential property line measurements can be used as a minimum alternative to the facility property line measurements.

Therefore, I respectfully request to please include language that clearly states residential property line measurements are in addition to facility property line measurements.

Respectfully Submitted,

John Lally  
35 Coffee Street  
Medway, MA 02053.



CommCan

Acom International

AKA  
MILARA  
BUILDING

MicroGroup

Vaccon Compa

Marc Rd

Marc Rd

Coffee St

Lee Ln

Google

LALLY PROPERTY

LALLY PROPERTY

PRIVATE WAY

COUNTY LAYOUT of 1936

LALLY PROPERTY





**TOWN OF MEDWAY**  
**Planning & Economic Development Board**  
155 Village Street  
Medway, Massachusetts 02053

*Andy Rodenhiser, Chairman*  
*Robert K. Tucker, Vice-Chairman*  
*Thomas A. Gay, Clerk*  
*Matthew J. Hayes, P.E.*  
*Richard Di Iulio*

REVISED DRAFT – February 14, 2019  
With John Lally comments dated February 20, 2019

***SPECIAL PERMIT DECISION***  
***Adult Recreational Marijuana Establishment***  
***Ellen Realty Trust – 2 Marc Road***  
***with Conditions***

***Decision Date:*** \_\_\_\_\_

***Name/Address of Applicant:*** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

***Name/Address of Property Owner:*** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

***Location:*** 2 Marc Road, 19 Jayar Road and 21 Jayar Road

***Assessors' Reference:*** 33-001, 24-015 and 24-016

***Zoning District:*** East Industrial

Telephone: 508-533-3291 Fax: 508-321-4987  
[planningboard@townofmedway.org](mailto:planningboard@townofmedway.org)

**I. PROJECT DESCRIPTION** – The Applicant seeks a Special Permit pursuant to subsection 8.10 of the Medway *Zoning Bylaw* to use a two story, 60,000 sq. ft. industrial facility at 2 Marc Road, and 19 & 21 Jayar Road (*Medway Assessors' Parcels 33-001, 24-015 and 24-016*) (collectively “2 Marc Road”) on the north side of Marc Road in the East Industrial zoning district for the cultivation, processing and manufacturing of marijuana for adult recreational use by CommCan, Inc. The property is already subject to a medical marijuana special permit issued June 28, 2016 by the Planning and Economic Development Board (“the Board”) and an approved site plan endorsed on July 26, 2016 (the “2016 Approval”). This proposal pertains to the fit-out of the second floor of the building to allow for the expanded operation to produce marijuana for adult recreational use. The current special permit application does not include the retail sales of medical or adult recreational marijuana.

**II. VOTE OF THE BOARD** – After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives and comments offered by the public, the Medway Planning and Economic Development Board, on \_\_\_\_\_, 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to \_\_\_\_\_ with CONDITIONS as specified herein a recreational marijuana establishment special permit for 2 Marc Road in Medway, MA.

The vote was \_\_\_\_\_ by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Richard Di Iulio	
Matthew Hayes	
Thomas A. Gay	
Andy Rodenhiser	
Robert Tucker	

### **III. PROCEDURAL HISTORY**

- A. October 9, 2018 – Special permit application filed with the Board; filed with the Town Clerk on October 11, 2018.
- B. October 11, 2018 – Public hearing notice filed with the Town Clerk and posted at the Town of Medway web site.
- C. October 15, 2018 - Public hearing notice mailed to abutters by certified sent mail.
- D. October 29 and November 6, 2018 - Public hearing notice advertised in *Milford Daily News*.
- E. November 13, 2018 - Public hearing commenced. The public hearing was continued to November 27 and December 11, 2018 and to January 8, 22, 29 and February 12, 2019 when the hearing was closed and a decision rendered.

### **IV. INDEX OF DOCUMENTS**

Commented [J1]: I take it this is a typo, the hearing is still open and a decision has yet to be rendered, correct?

- A. The special permit application materials for the proposed use of the building at 2 Marc Road for an adult recreational marijuana establishment included the following information that was provided to the Board at the time the application was filed:
1. *2 Marc Road Site Plan of Land in Medway, MA*, dated January 26, 2016, last revised July 18, 2016, prepared by Merrikin Engineering of Millis, MA – ENDORSED July 26, 2016.
  2. Sworn statement of ownership of CommCan, Inc. dated October 8, 2018.
  3. Special permit application submittal letter from Daniel J. Merrikin, P.E. dated October 9, 2018 as official representative of the Applicant.
  4. Policy and Procedures document titled *Transportation of Marijuana for CommCan*, received October 9, 2018.
  5. Floor plan of the CommCan facility, dated May 2, 2016 by Keenan & Kenney Architects, Ltd.
- B. During the course of the review, a variety of other materials were submitted to the Board by the Applicant, its representatives, Town staff, and the Town's consultants:
1. Results of Noise Study by Acentech, Inc. provided November 13, 2018.
  2. Noise Survey by Noise Control Engineering, LLC dated November 27, 2018.
  3. Host Community Agreement between CommCan and the Town of Medway dated May 16, 2016 and the associated amendment dated April 17, 2018.
  4. Email communications dated October 23, 2018 from the MA Cannabis Control Commission acknowledging receipt of CommCan's applications for recreational marijuana cultivation and product manufacturing licenses.
  5. Medical marijuana special permit decision dated June 28, 2016 and final site plan for 2 Marc Road endorsed by the Board on July 26, 2016.
  6. Gino Carlucci, PGC Associates, the Town's Consulting Planner – Special permit review letter dated November 7, 2018 and commentary throughout the public hearing process.
  7. Email dated January 16, 2019 from Ron Dempsey of Noise Control Engineering converting the existing and long-standing noise measurement standards from the *Zoning Bylaw* to the current, modern noise measurement standards.
  8. Marijuana Odor Control Plan Template for Denver, Colorado.
  9. *Cannabis-Related Odor Mitigation @1073 Main Street*, Millis, MA by GroThink, Oasis Spring, LLC, and Lynch Associates for the Millis Planning Board.
  10. Exelon expansion project site plan decision dated July 26, 2016.
  11. Letter from Michael Lannan, of TechEnvironmental dated 2-12-19
- C. Other Documentation
1. Mullins Rule Certification dated November 27, 2018 for Board member Andy Rodenhiser for the November 13, 2018 hearing.
  2. Mullins Rule Certification dated December 5, 2018 for Board member Robert Tucker for the November 27, 2018 hearing.
  3. Mullins Rule Certification dated December 5, 2018 for Board member Thomas Gay for the November 27, 2018 hearing.

**V. TESTIMONY** - In addition to the special permit application materials as submitted and provided during the course of our review, the Board heard and received verbal or written testimony from:

- Gino Carlucci, PGC Associates, the Town's Consulting Planner – commentary throughout the public hearing process.
- Ellen Rosenfeld, Applicant.
- Dan Merrikin, Legacy Engineering, project engineer for the Applicant.
- Andy Carballeria, Acentech Inc., acoustic sound consultant for the Applicant.
- Ron Dempsey, Noise Control Engineering LLC, acoustic sound consultant for the Town.
- Resident and abutter John Lally, 35 Coffee Street - Emails dated November 5, November 16, November 26, December 10, 2018 and January 22 and 29, 2019 about noise; Emails dated December 16 and 21, 2018 and January 22, 2019 about odor; and commentary throughout the public hearing process.
- Email communications dated December 10, 2018 between Planning and Economic Development Coordinator Susan Affleck-Childs and Ron Dempsey of Noise Control Engineering, LLC, the Town's noise engineering consultant.
- Email communication with attachments dated January 3, 2019 between Ron Dempsey of Noise Control Engineering and Andy Carballeira of Acentech.
- Email communication dated January 29, 2019 from Ron Dempsey of Noise Control Engineering, LLC in response to January 23, 2019 email from Leigh Knowlton.
- Emails dated December 17 and 27, 2018 between Susan Affleck-Childs and Ellen Rosenfeld about odor.
- Resident, Leany Oliveria, 402 Village Street.
- Resident Jane Studennie, address unknown.
- Resident Heidi Sia, 8 Main Street, emails dated January 10 and 22, 2019.
- Resident Phil Giangarra, 24 Green Valley Road.
- Resident Leigh Knowlton, 11 Green Valley Road, email dated January 22, 2019 with attachments, and January 23, 2019 with attachment.
- Resident Jeanette Gibson, 45 Coffee Street.
- Selectman Dennis Crowley.
- Town Administrator Michael Boynton.
- Email from attorney Susan Murray dated January 29, 2019.

**VI. FINDINGS**

The Planning and Economic Development Board, at its meeting on \_\_\_\_\_, 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to approve the following **FINDINGS** regarding the special permit application for adult recreational marijuana establishment for 2 Marc Road. The motion was approved by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

**FINDINGS from PUBLIC HEARING TESTIMONY**

- (1) CommCan, Inc., currently operates a medical marijuana cultivation and manufacturing business at 2 Marc Road as authorized by the Massachusetts Department of Public Health and pursuant to a medical marijuana special permit

issued by the Board on June 28, 2016. CommCan, Inc. is a tenant in the 2 Marc Road building owned by Ellen Realty Trust and will continue to operate that use at this location. The Applicant now seeks to secure a special permit pursuant to section 8.10 of the Medway *Zoning Bylaw* to also use the facility to grow and process marijuana for adult recreational use. Ellen Rosenfeld, Trustee of Ellen Realty Trust, is one of three owners and shareholders of CommCan, Inc.

(2) NOISE ISSUES

- A. Pursuant to Section 7.3.C.2. of the *Zoning Bylaw*, the “Maximum permissible sound pressure levels measured at the property line nearest to the noise source for noise radiated continuously from the noise source between 10 PM and 7 AM shall be as follows.”

Frequency Band (Cycles per Second)	Sound Pressure Level (Decibels 43 0.0002 Dyne/CM <sup>2</sup> )
2-72	69
75-150	54
150-300	47
300 - 600	41
600 – 1,200	37
1,200 – 2,400	34
2,400 - 4,800	31
4,800 – 10,000	28

“For noise levels between 7 A.M. and 10 P.M., and if the noise is not smooth and continuous, the following corrections shall be added to each of the decibel levels given above:

- Daytime operation only: +5
- Noise source operated at less than 20% of any 1-hour period: +5”

- B. In response to complaints to the Applicant about noise emanating from the existing marijuana production and processing operation, the Applicant retained sound consultant Acentech to evaluate the noise levels at the 2 Marc Road facility and recommend mitigation measures to address the noise produced by a large air-cooled chiller installed on the building’s roof which runs 24 hours a day, 7 days per week. Acentech conducted sound measurements at five locations on May 15, 2018 during the period of 12:00 am thru 2:00 am. Acentech found that the chiller did not result in conditions that violated the Massachusetts Department of Environmental Protection (DEP) Noise Policy but recommended mitigation measures to lessen emitted sound from the chiller, namely, the installation of noise control blankets on select components of the chiller. Those blankets were installed at the end of August 2018. Acentech concluded that the noise had been reduced by 7-10 dB (depending on the frequency being measured) following the installation of the blankets.

- C. In response to complaints to the Town about excessive noise emanating from the 2 Marc Road facility, the Town retained Noise Control Engineering, LLC

(NCE) to evaluate the noise levels at the 2 Marc Road property under the DEP Noise Policy. NCE conducted attended noise measurements on the night of October 31, 2018 at several locations approximating the property lines of the 2 Marc Road property; these are known as source measurements. NCE also conducted attended noise measures from the street in front of two nearby residences (14 Green Valley Road and 45 Coffee Street); these are referred to as residential receiver locations. Measurements were also taken at 18 Henry Street to determine a reasonable background noise level. At the approximated north, west and south property line positions around the facility, noise levels were within the 10dB of the background noise levels measured at 18 Henry Street. The measured noise levels at the subject property's boundaries with abutting residential properties were within allowable levels with respect to the Mass DEP Noise Policy and do not reach the level of noise pollution per those standards.

NCE did find there was a noticeable tonal noise originating from the southeast corner of the building, near the location of the building's emergency generator. The highest noise level on a property line was at the property line closest to that generator. However, because the abutter to the east is an industrial facility, the high tonal noise at this location does not come under the scope of the Mass DEP Noise Policy.

- D. Both professional sound consultants have agreed that the frequency band range form of noise measurement specified in the *Zoning Bylaw* is outdated. The consultants concur that noise measurements in accordance with the *Zoning Bylaw's* standards are neither ideal nor typical today. The Board acknowledges that frequency band ranges presently included in the *Zoning Bylaw* do not accurately reflect contemporary sound measurement standards and provide challenges to interpretation and enforcement of the applicable provisions of the *Zoning Bylaw*. The Board is willing to allow a conversion to more modern standards, but only as long as the conversion is more, not less restrictive.
- E. Although the DEP Noise Policy is often used as a maximum noise standard and the Applicant must comply with that Policy, the Board must look to the frequency band range noise standards included in the Section 7.3.C.2 of the *Zoning Bylaw* as it considers this application.

The Town asked NCE to convert the noise levels as measured by NCE to the standards in the *Zoning Bylaw*. NCE estimated an adjustment factor to be applied to their data, to facilitate comparison to the Medway *Zoning Bylaw*. The method used is based on the frequency span of the octave bands and is consistent with the conversion documented in the 1980 EPA document 905-R-80-117 *Noise Legislation Trends and Implications*. The table below shows the conversion of the *Bylaw's* frequency band noise standards to the modern octave band noise standards.

Octave Band Center Frequency (Hz)	Medway Zoning Bylaw Sound Pressure Level, (dB re 20 micro-Pa)
63	67
125	55
250	48
500	42
1000	38
2000	35
4000	32
8000	28

NCE's report and conversion data were reviewed by Acentech. Acentech provided an alternative conversion of the measurements and criteria which results in lower noise levels and partial compliance with the *Zoning Bylaw*. Both sound consultants concur that there is no way to directly convert the measurements between the two standards. However, their shared conclusion is that the measured sound levels on-site and near the facility's industrial property lines are in excess of the *Zoning Bylaw*, irrespective of how the data are viewed.

- F. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to excessively loud and irritating noise emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation.

### (3) ODOR ISSUES

- A. Pursuant to Section 7.3.D. of the *Zoning Bylaw*, "In all districts, no emissions of odorous gases or odoriferous matter in such quantities as to be discernible outside the property line shall be permitted. Any industrial process which may involve the creation and/or emission of any odors shall be provided with a secondary safeguard system. No objectionable odor greater than that caused by 0.001201 oz. per thousand cubic feet of hydrogen sulfide or any odor threshold as defined in Table III in Chapter 5 of Air Pollution Abatement Manual (copyright 1951 by manufacturing Chemists Assoc., Inc., Washington, DC) shall be permitted."
- B. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to offensive odors emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation. The Board

sought and received advice from Tech Environmental, Inc. in a letter dated February 12, 2019.

- (4) Hours of operation – As a marijuana growing facility, the establishment operates 24 hours a day/7 days a week. Occupancy of the facility by employees is generally limited to the hours of 7 am to 8 pm, Sunday – Saturday.

**RECREATIONAL MARIJUANA ESTABLISHMENT SPECIAL PERMIT**  
**FINDINGS (Sub-section 8.10 of the Zoning Bylaw)**

- (1) The recreational marijuana establishment will operate inside the existing medical marijuana cultivation and processing facility at 2 Marc Road, a permanent, standalone building with no doctor's offices or other uses. The site includes driveways, parking areas, utility systems, and stormwater management facilities.
- (2) None of the uses listed in Section 8.10 E. 4. of the *Zoning Bylaw* are located within 500 feet of the site of the proposed facility.
- (3) Smoking, burning and consumption of marijuana products on the premises is not allowed.
- (4) No drive-through service is proposed. It is not needed as a retail operation is not planned for the site nor does the *Zoning Bylaw* allow for a drive-through facility.
- (5) The proposed signage is in compliance with Section 8.10 E. of the *Zoning Bylaw*.
- (6) The Applicant has previously provided the contact information for management staff and key holders of the facility.
- (7) As conditioned herein, the Board finds that the recreational marijuana establishment will not create a nuisance to abutters or to the surrounding area or create any hazard. Both the Applicant and the Town have contracted with noise consultants to monitor noise from the facility and both found the operation to be within DEP noise regulations. The Board is requiring the Applicant to prepare a noise mitigation plan for the Board's approval after consultation with its noise consultant and to implement suitable noise mitigation measures. Further, the Board is also requiring the Applicant to prepare an odor control plan for the Board's approval after consultation with its odor consultant and to implement suitable odor mitigation measures. The Building Inspector, in consultation with the Health Agent, and the Town's consultant(s), will confirm compliance with the noise and odor requirements of the *Zoning Bylaw* after the required noise and odor mitigation measures are installed.
- (8) The existing building meets the requirements for "openness of premises" since no activities within the building or displays of products are visible from the exterior of the building and the front of the building, which includes the primary entrance to the facility, is fully visible from the street. All operations are within the restricted building and there is no direct consumer access as no retail sales are allowed.



- (9) The special permit authorizes only the following adult recreational marijuana establishment activities: cultivation, manufacturing, processing and packaging of marijuana and marijuana products and the transport and delivery of such to other recreational marijuana establishments. Retail sales are not allowed.
- (10) As conditioned herein, copies of required licenses and permits issued by the Commonwealth will be provided upon approval by the Massachusetts Cannabis Control Commission. The recreational marijuana operation will be operated in strict compliance with Massachusetts Cannabis Control Commission regulations.
- (11) The Applicant, Ellen Realty Trust, is the owner of record of the subject property and building as shown on the Medway Assessor's records. Accordingly, the Applicant has the right to use the site for a registered marijuana establishment.
- (12) A sworn statement disclosing the owner's or other similarly situated individuals' interest in the registered marijuana establishment has been provided.
- (13) A certified list of all abutter and parties of interest was provided. The Planning and Economic Development office coordinated the production and mailing of the required public hearing notice for the Special Permit application.
- (14) No changes are needed or proposed to the 2016 approved site plan. A detailed floor plan of the premises showing the functional areas of the facility has been provided. Security measures including lighting, fencing, gates and alarms were previously reviewed and approved by the Police Chief during the 2016 Approval process.
- (15) A copy of the policies and procedures for the transfer, acquisition, or sale of adult recreational marijuana between approved marijuana establishments has been provided.
- (16) The required public hearing and review process for this special permit application has been followed.
- (17) The adult recreational marijuana establishment, as conditioned herein, has been designed to minimize any adverse visual or economic impacts on abutters and other parties in interest. No changes in the existing building or site are proposed other than additional measures to further mitigate noise and odor impacts.
- (18) As conditioned herein, the proposed facility will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations.
- (19) As conditioned herein, the Applicant has satisfied the conditions and requirements of this Section 8.10 and Section 3.4 of the *Zoning Bylaw*.
- (20) The Town of Medway and CommCan, Inc. entered into a Host Community Agreement in May 2016 for the medical marijuana operation. The HCA was amended in April 2018 in anticipation of this application for a recreational marijuana establishment.

**GENERAL SPECIAL PERMIT FINDINGS (Sub-section 3.4 of the Zoning Bylaw)**

- (1) *The proposed site is an appropriate location for the proposed use.*

Section 8.10 of the *Zoning Bylaw*, Recreational Marijuana, specifies that recreational marijuana establishments are allowed by special permit in the East and West Industrial Zoning Districts. The subject site at 2 Marc Road is located within the East Industrial and is therefore an eligible location. The site is not within 500 feet of any of the uses from which such facilities are prohibited (existing public or private school serving students in grades K-12). Pursuant to the 2016 Approval, there is already a medical marijuana cultivation and manufacturing facility on the site.

- (2) *Adequate and appropriate facilities will be provided for the operation of the proposed use.*

The recreational marijuana cultivation and manufacturing uses are being added to the previously approved use of the facility for medical marijuana cultivation and manufacturing as provided in the 2016 Approval. The current activities in the building will essentially remain unchanged; the only difference is that more product will be produced and processed for recreational purposes. No changes are proposed to the 2016 Approval. Due to that 2016 Approval, adequate and appropriate facilities have been provided for the operation of the facility.

- (3) *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians or the environment.*

The existing site contains suitable driveways, parking areas and stormwater management systems. Reasonable noise and odor mitigation measures are included as Conditions herein.

- (4) *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*

The proposed facility is expected to have 30 employees, and because the retail sale of marijuana products is not permitted, other traffic to the site will be minimal. The Industrial Park Road system is adequate to handle the traffic. The Applicant previously reconstructed Marc Road as part of the approval of the 2016 Approval so the roadway quality is excellent. Furthermore, the site's access is from Main Street/Route 109, a major east-west arterial roadway, so there is no traffic impact on local residential roadways.

- (5) *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site or operational attributes of the proposed use.*

The proposed marijuana production and processing uses are not detrimental to adjoining properties, however, the operation of the rooftop HVAC equipment periodically generates conspicuous noise of concern to some residential abutters and nearby neighbors. Noise evaluation reports were provided by consultants for the Applicant (Acentech) and the Town (Noise Control Engineering). Throughout

the permitting process, the Applicant has demonstrated a strong commitment to address and mitigate the noise issues as experienced by the residential abutters. The Applicant will supplement existing noise mitigation systems as part of the build-out of the second floor after a thorough evaluation process by sound and mechanical engineers to identify additional measures. As conditioned herein, the Board finds that suitable monitoring and mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to noise.

Testimony was also provided about offensive odors emanating from the existing facility. The Board has discussed the need for the Applicant to institute more aggressive odor control measures. The Applicant intends to supplement existing odor mitigation systems as part of the build-out of the second floor after the preparation of an odor mitigation plan. As conditioned herein, the Board finds that suitable mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to odors.

There is no outside storage of either materials or waste. While vegetation close to the building is limited by the State's security requirements for marijuana establishments, six trees have been planted around the parking lot and other low vegetation has been added as part of the 2016 Approval to improve aesthetics from the public way and nearby residences.

- (6) *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*

The proposed use is manufacturing and is therefore consistent with the character of the East Industrial Zoning District in which the subject property is located. This application proposes to produce marijuana for adult recreational use within the existing building which is currently limited to the production and processing of medical marijuana. This expansion of use was expected at the time the 2016 Approval. The Board finds that the proposed expanded use will not significantly alter the character of the East Industrial zoning district.

The Board heard testimony from residential abutters and neighbors about adverse noise and odor conditions emanating from the 2 Marc Road facility which are negatively impacting the enjoyment of their property and quality of life. The Applicant made repeated verbal commitments during the public hearing that she will address their concerns through reasonable noise and odor mitigation measures. The Board incorporates its findings under (5) above. The Applicant will be held to the environmental standards included in Section 7.3 of the *Zoning Bylaw*. As conditioned herein, the Board finds that reasonable measures will be taken such that this particular industrial use will not adversely affect the surrounding neighborhood.

- (7) *The proposed use is in harmony with the general purpose and intent of this Zoning Bylaw.*

The Recreational Marijuana section of the *Zoning Bylaw* (Section 8.10) was adopted by the Town in May 2018 with the specific intent of allowing the limited establishment of non-retail recreational marijuana establishments in Medway. The

stated purpose of Section 8.10 is to address possible adverse public health and safety consequences and impacts on the quality of life related to this type of facility by providing for them in an appropriate places and under strict conditions, therefore, it meets the purpose of the *Zoning Bylaw*.

- (8) *The proposed use is consistent with the goals of the Medway Master Plan.*

The existing facility and the expanded use of the facility is in compliance with Goals 1 and 6 of the Economic Development Goals and Objectives section of the Medway Master Plan as follows:

- Goal 1: Maximize the area's economic resources
- Goal 6: Attract new (and retain existing) businesses and increase the industrial/manufacturing base.

- (9) *The proposed use will not be detrimental to the public good.*

As a facility in compliance with state and local law, consistent with the goals of the *Medway Master Plan*, and as conditioned herein, the proposed use will not be detrimental to the public good.

**VIII. CONDITIONS** The *Special and General Conditions* included in this Decision shall assure that the Board's approval of this special permit is consistent with the *Zoning Bylaw* and that the comments of various Town boards and public officials have been adequately addressed, and that concerns of abutters and other town residents which were aired during the public hearing process have been carefully considered. These conditions are binding on the Applicant.

#### **SPECIFIC CONDITIONS OF APPROVAL**

- A. All standard requirements included in Section 8.10 Recreational Marijuana of the *Zoning Bylaw* apply to this special permit. These include but are not limited to:
1. Upon approval and prior to commencing operations on the property to cultivate and process marijuana for adult recreational use, the Applicant shall provide the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board with a copy of the applicable state adult recreational marijuana establishment licenses, permits, and approvals from the Massachusetts Cannabis Control Commission.
  2. The Applicant shall provide an annual report of CommCan's operations to the Board and other Town officials no later than January 31<sup>st</sup> of each year, including a copy of all current state licenses and demonstrating continued compliance with the conditions of this special permit. Any change in ownership of CommCan, Inc. or change in management staff and key holders shall also be reported.
  3. This special permit is not transferrable to another party. It shall remain exclusively with the Applicant, Ellen Realty Trust, as the owner of the premises and shall be considered to include the operation of the facility's tenant, CommCan, Inc.

4. Smoking, burning and consumption of marijuana or marijuana infused products on the premises is prohibited.

B. **Noise Management**

1. The Applicant shall install and maintain at all times effective noise reduction equipment. The Applicant will complete this through industry best practices and suitable noise abatement measures. The Applicant shall ensure proper maintenance of all noise abatement equipment to ensure maximum efficiency and effectiveness.
2. As indicated by the Applicant during the hearing, buildout of the second floor is expected to commence in the near future. As part of that effort, the Applicant has indicated that the existing rooftop chiller may be modified, replaced, retrofitted, or repositioned in some manner to address the noise concerns expressed by residents of property in proximity to the subject facility. The Applicant is in the process of investigating and evaluating these issues in order to develop a noise abatement and management plan to remedy the existing noise issues as part of that buildout. Within four months of the filing of this special permit decision with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a noise abatement and management plan prepared by a qualified acoustical consultant, (whose qualifications include Institute of Noise Control Engineering (INCE) board certification or equivalent experience) in conjunction with qualified mechanical engineers addressing the various mechanical equipment that may cause violation of the applicable provisions of Section 7.3 of the *Zoning Bylaw*.

The plan shall include the following elements:

- Estimated noise source levels for equipment
- Predicted propagation losses to the facility property lines and the residential receivers
- Estimated noise levels at the facility property lines and the residential receivers
- Estimated impacts of any proposed noise control measures.

The plan shall be provided to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its noise consultant for review and comment, at the Applicant's expense. The Applicant shall appear before the Board at a public meeting to review and discuss the proposed improvements and obtain approval from the Board of that plan. The Board may require the Applicant to modify the plan based on the recommendations of the Town's noise consultant.

3. Any new or altered mechanical equipment installed on the property shall be designed to comply with applicable regulations, including the provisions of Section 7.3 of the *Zoning Bylaw*.

**Commented [J2]:** Has TechEnvironmental or NCE peer reviewed all the language in the Noise Management section? If not, I respectfully request to please have all the language in the Noise Management section peer reviewed.

**Commented [BSA3]:** Is this from NCE? I wonder why some say "estimated" rather than "predicted".

4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall provide the Building Inspector, Health Agent, and Board a noise study measuring ambient sound levels without the external mechanical equipment in operation and the sound at each of the property boundaries during full operating conditions. All sound measurements shall be conducted by a qualified acoustical consultant (INCE board certification or equivalent experience) in accordance with industry best practices confirming that external mechanical noises have been addressed to comply with the applicable provisions of the *Zoning Bylaw*.

The sound measurements will consist of:

- Attended night time noise measurements at the facility property line and the residential receivers OR/
- Unattended noise monitoring for a period of at least one week at the facility property line and the residential receivers

If the equipment is expected to produce higher noise levels at operating conditions other than full load, those conditions shall be measured as well.

At a minimum, sound measurements shall be conducted at all nearby residential property lines, at locations representative of worst-case noise impact on residential property. Measurements shall be taken at the nearest residential line to the north, south (behind the Coffee Street residents), and southwest (near 35 Coffee Street). Measurement instrumentation shall comply with class 1 in accordance with IEC 61678, and should be capable of measuring A-weighted and octave-band sound levels. The acoustic descriptor for reporting shall be the L90 sound level, to minimize the influence of transient sound. Sound level meters shall be provided with windscreens and their calibration shall be field-checked before and after the measurements. Measurements shall be conducted during periods of worst-case impacts, which is typically at night after midnight when ambient sound levels are lower. If possible, ambient conditions shall be measured for at least 10 minutes with the roof chiller turned off. If operational constraints make measuring ambient noise levels at the site impractical, said measurements shall be taken in a similar environment away from the facility. Measurements of operational conditions shall be taken and compared to the ambient noise levels and an analysis provided addressing the DEP Noise Policy and Section 7.3 of the *Zoning Bylaw*.

The Board may forward the noise study to the Town's noise consultant for peer review and comment, at the Applicant's expense. The Board may, at its discretion, require the Applicant to implement additional noise mitigation measures based on the outcome of the noise study.

5. Approximately six months after beginning operations under this Special Permit, the Applicant shall provide a supplemental noise study. ~~to be performed, measuring both ambient sound levels without the external mechanical equipment in operation and with the facility in full operation.~~ These measurements shall be carried out to the same standards and methods as the initial study.

**Commented [SA4]:** This language in this paragraph was provided by NCE, the Town's noise consultant

**Commented [SA5]:** The language in this paragraph was provided by Acentech, the Applicant's noise consultant.

**Commented [J6]:** Should "At a minimum" be "Additionally" so it reads: "Additionally, sound measurements shall..."

I think the intent is for the residential property line measurements to be in addition to facility property line measurements, correct?

As currently written, I wonder if it might be construed that the residential property line measurements can be used as a minimum alternative to the facility property line measurements.

Therefore, I respectfully request to please include language that clearly states residential property line measurements are in addition to facility property line measurements.

**Commented [J7]:** I respectfully request to please include a worst-case noise measurement along the private way that forms the west residential boundary. For your reference attached to the accompanying email is an annotated aerial view.

The reason for this request:

The worst-case noise residential impact along the private way that abuts the industrial park is much, much worse than out on Coffee Street. This is the location I referred to in my email of 22Jan2019 that describes how detrimental the noise observed along the private way is to my family's property. It seems like it would be a glaring omission if a worst-case measurement along the private way is not included.

It's my understanding the applicant owns or controls land that abuts the private way and therefore has access to make this measurement. In the event access to my property is needed to make this measurement, I'll provide such access.

**Commented [SA8]:** The Applicant suggests that the stricken through language be deleted completely.

**Commented [SA9]:** This language was suggested by NCE.

The intent of this second study is to assess the impact of seasonal changes. The scope and methods of the study shall be the same as in the initial study described above.

Commented [SA10]: Language in this paragraph was suggested by Applicant.

The Applicant shall submit that study to the Building Inspector, Health Agent and Board so as to determine continued compliance with the conditions set forth herein as to noise. The Board may forward the plan to the Town's noise consultant for review and comment, at the Applicant's expense, and may, at the Board's discretion, require the Applicant to implement additional noise mitigation measures based on the outcome of the noise study.

6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional mechanical engineer that there are no changes in the installed mechanical equipment which may impact the noise emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
7. The Building Inspector, in enforcing the conditions contained herein, may require the Applicant to provide additional noise studies by a qualified noise consultant and/or implement additional mitigation measures should legitimate concerns or complaints develop in the future about noise generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.

C. **Odor Management**

1. The Applicant is required to comply with the applicable provisions of Section 7.3.D of the *Zoning Bylaw* which requires no discernable odor outside the property line.
2. The Applicant shall install and maintain at all times effective odor control technology to remove odors from the facility's exhaust system. The Applicant will complete this through industry best practices and suitable building filtration systems including a secondary safeguard system as required by the *Zoning Bylaw*. The Applicant shall ensure proper maintenance of all odor migration equipment to ensure maximum efficiency and effectiveness.
3. Nearby residents have reported intermittent and varying odor impacts from the current operation of the facility. As recommended by Michael Lannan of TechEnvironmental, Inc., the Board's odor consultant, in his letter dated February 12, 2019, the Applicant, in preparation for building out the second floor of the existing building for expanded marijuana cultivation, shall complete the following before a building permit will be issued:
  - a. assess the performance of the facility's existing odor management systems by:

Commented [SA11]: This text provided by the Board's odor consultant.

- identifying the type and location of odorous emissions being discharged from the facility to the ambient air;
- estimating the uncontrolled maximum potential to emit recognition thresholds (RT) odor emissions; and
- modeling these emissions off-site with an EPA approved air quality dispersion modeling system such as AERMOD.

Any capture and control techniques and expected control efficiencies must be included. The “during operations” confirmation must occur when the facility and its odor generating activity is operating at its current regular maximum capacity for medical marijuana cultivation. The operational confirmation shall be a property line and neighborhood odor assessment, as well as confirmation of the uncontrolled emissions. The report and protocol of each compliance demonstration shall be provided to the Board, Building Inspector and Health Agent for review. The Board will forward the odor assessment to the Town’s odor consultant, at the Applicant’s expense, for peer review, comment and approval. This base-line assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation.

- b. provide a modeling demonstration of existing skunk-like (thiol) odors and floral (terpene odors) similar to the RT modeling noted in item a. above.
- c. supplement and/or modify the facility’s existing odor control systems including measures to capture emissions within the building and the installation of a secondary safeguard system. Within four months of the filing of this special permit with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a comprehensive odor control, abatement and mitigation plan, prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation. The plan shall address improvements needed to the facility’s odor control systems to comply with the *Zoning Bylaw*. The odor control, abatement and mitigation plan shall include those elements as contained in the Denver, Colorado odor control plan templates for marijuana cultivation and processing.
- d. The applicant shall provide the plan to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its odor control consultant, at the Applicant’s expense for review, comment, and recommendations. The Applicant shall appear before the Board to review and discuss the plan and obtain approval for the proposed improvements as specified in the plan. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town’s odor consultant.



4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall review the updated odor control system as installed with the Building Inspector and demonstrate that the measures specified in the odor control, abatement and mitigation plan including the secondary safeguard system have been implemented. The Applicant shall provide a certification made by a licensed engineer that the odor mitigation measures included in the plan have been installed. Additional odor mitigation measures may be required if determined to be required by the Building Inspector.
  5. Due to unknown circumstances and potentially unforeseen odorous impacts, in order to ensure that odorous emissions shall not be in such quantities that are offensive off-site and not in compliance with the *Zoning Bylaw*, the Applicant shall provide the Board, Building Inspector and Health Agent with an independent odor assessment six months after beginning the expanded use of the facility to cultivate and process marijuana for adult recreational use. The assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation and include the items specified in 3.a. and 3.b. above. Odor measurements shall be taken at times when the odor generating activity is occurring at regular operating capacity. The report shall include an action plan with recommendations to remediate odorous emissions which may be noticeable beyond the property line of the subject premises. The Board may refer the updated report to its odor consultant for review, comment and recommendations. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town's odor consultant.
  6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional engineer that there have been no changes in the mechanical equipment that has been installed to reduce the odor emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
  7. The Building Inspector, in enforcing the conditions herein, may require additional odor investigations and/or odor mitigation measures should legitimate concerns and complaints develop in the future about odor generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.
- D. The permit holder shall notify the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board in writing within forty-eight hours of the cessation of operation of the marijuana business or the expiration or termination of the license holder's certificates or registration with the Massachusetts Cannabis Control Commission.
- E. There shall be a valid Host Community Agreement in effect at all times during the operation of the marijuana establishment.

- F. Limitations - This special permit is limited to the operation of a recreational marijuana cultivation and processing facility at 2 Marc Road. This permit does not authorize operation of a retail outlet for the sale of adult recreational marijuana products or the operation of a testing facility on the premises.
- G. All applicable conditions of the previous site plan approval for the site and the 2016 Approval shall also apply to this special permit.

#### **GENERAL CONDITIONS OF APPROVAL**

- A. **Fees** - Prior to filing the special permit decision with the Town Clerk, the Applicant shall pay:
  - 1. the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering, planning, noise, odor or other consultants;
  - 2. an advance on fees for continued outside noise and odor consultants as approved by the Planning and Economic Development Board;
  - 3. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
- B. **Other Permits** – This special permit does not relieve the Applicant from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses and approvals. The Applicant or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
- C. **Recording** - Within thirty days of recording the Decision, the Applicant shall provide the Board and the Building Inspector with a receipt from the Norfolk County Registry of Deeds indicating that the Decision has been duly recorded, or supply another alternative verification that such recording has occurred.
- D. **Conflicts** – If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

**IX. APPEAL** – Appeals if any, from this Decision shall be made to a court of competent jurisdiction within twenty days of the date the Board files the Decision with the Town Clerk in accordance with the provisions of G. L. Chapter 40A, Section 17.

After the appeal period has expired and before this special permit takes effect, the Applicant must obtain a certified notice from the Town Clerk that no appeals have been made and provide such certification to the Board before the decision and certificate are recorded. Proof of recording the certificate of no appeal must be delivered to the Building Inspector and the Board.

###

**Medway Planning and Economic Development Board  
Adult Recreational Marijuana SPECIAL PERMIT DECISION  
Ellen Realty Trust – 2 Marc Road**

\_\_\_\_\_ by the Medway Planning & Economic Development Board: \_\_\_\_\_

**AYE:**

**NAY:**

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**ATTEST:**

\_\_\_\_\_  
Susan E. Affleck-Childs  
Planning & Economic Development Coordinator

\_\_\_\_\_  
Date

**COPIES TO:** Michael Boynton, Town Administrator  
Dave D'Amico, DPS Director  
Bridget Graziano, Conservation Agent  
Donna Greenwood, Assessor  
Beth Hallal, Health Agent  
Jeff Lynch, Fire Chief  
Jack Mee, Building Inspector and Zoning Enforcement Officer  
Joanne Russo, Treasurer/Collector  
Barbara Saint Andre, Director of Community and Economic Development  
Jeff Watson, Police Department  
Ellen Rosenfeld, Ellen Realty Trust  
Dan Merrikin, Merrikin Engineering  
Steven Bouley, Tetra Tech  
Gino Carlucci, PGC Associates

## Susan Affleck-Childs

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**From:** Daniel Merrikin <dan@legacy-ce.com>  
**Sent:** Tuesday, February 26, 2019 11:09 AM  
**To:** Susan Affleck-Childs  
**Cc:** Rosenfeld, Ellen; Michael Boynton  
**Subject:** 2 Marc Road  
**Attachments:** DRAFT CommCan Decision 2 26 19.doc

Hi Susy,

As discussed, attached is a revised draft decision. As you know, the applicant is extremely frustrated by the length of time that has been devoted to some of these issues and the associated consultant costs. The Board's various consultants are advocating for spending a lot more time and a lot more dollars to do more prospective study and analysis. All that money and time would be better spent actually solving the problem.

After much consideration, the applicant now advocates for a simpler, faster and more streamlined approach. It is important to recognize that this is not a prospective condition, but is rather an existing facility. The issues at hand are compliance issues and are not related to any newly proposed use of the property.

The applicant deserves the opportunity to implement corrective measures without having to spend tens of thousands of dollars and many months on prospective studies and peer reviews on what various consultants think these corrective measures will do. Our approach is outlined as follows:

- Provide design plans for specific mechanical system improvements to address noise and odor issues for issuance of a building permit;
- Implement the corrective measures;
- Post-installation verification.

We are proposing to eliminate what will undoubtedly end-up being a very costly and time-consuming process of providing elaborate studies that then need to be peer reviewed before the corrective measures can be implemented. This process would only delay the resolution of these matters.

It will be in everyone's best interests if we simply move forward with implementation as soon as possible rather than dragging this out any longer.

Dan

[We've changed our name. As of January 1, 2019 Merrikin Engineering, LLP is now Legacy Engineering LLC.](#)

Daniel J. Merrikin, P.E.  
President



Legacy Engineering LLC

730 Main Street  
Suite 2C  
Millis, MA 02054

[www.legacy-ce.com](http://www.legacy-ce.com)

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508-376-8883(c)

508-868-8353(c)



**TOWN OF MEDWAY**  
**Planning & Economic Development Board**  
155 Village Street  
Medway, Massachusetts 02053

*Andy Rodenhiser, Chairman  
Robert K. Tucker, Vice-Chairman  
Thomas A. Gay, Clerk  
Matthew J. Hayes, P.E.  
Richard Di Iulio*

REVISED DRAFT – February 26, 2019

NOTE - Dan Merrikin's recently offered edits are shown in purple

**SPECIAL PERMIT DECISION**  
**Adult Recreational Marijuana Establishment**  
**Ellen Realty Trust – 2 Marc Road**  
**with Conditions**

**Decision Date:** \_\_\_\_\_

**Name/Address of Applicant:** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

**Name/Address of Property Owner:** Ellen Realty Trust  
730 Main Street, Suite 2A  
Millis, MA 02054

**Location:** 2 Marc Road, 19 Jayar Road and 21 Jayar Road

**Assessors' Reference:** 33-001, 24-015 and 24-016

**Zoning District:** East Industrial

**I. PROJECT DESCRIPTION** – The Applicant seeks a Special Permit pursuant to subsection 8.10 of the Medway Zoning Bylaw to use a two story, 60,000 sq. ft. industrial facility at 2 Marc Road, and 19 & 21 Jayar Road (*Medway Assessors' Parcels 33-001, 24-015 and 24-016*) (collectively “2 Marc Road”) on the north side of Marc Road in the East Industrial zoning district for the cultivation, processing and manufacturing of marijuana for adult recreational use by CommCan, Inc. The property is already subject to a medical marijuana special permit issued June 28, 2016 by the Planning and Economic Development Board (“the Board”) and an approved site plan endorsed on July 26, 2016 (the “2016 Approval”). This proposal pertains to the fit-out of the second floor of the building to allow for the expanded operation to produce marijuana for adult recreational use. The current special permit application does not include the retail sales of medical or adult recreational marijuana.

**II. VOTE OF THE BOARD** – After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives and comments offered by the public, the Medway Planning and Economic Development Board, on \_\_\_\_\_, 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to \_\_\_\_\_ with CONDITIONS as specified herein a recreational marijuana establishment special permit for 2 Marc Road in Medway, MA.

The vote was \_\_\_\_\_ by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

**Planning & Economic Development Board Member** **Vote**

Richard Di Iulio  
Matthew Hayes  
Thomas A. Gay  
Andy Rodenhiser  
Robert Tucker

**III. PROCEDURAL HISTORY**

- A. October 9, 2018 – Special permit application filed with the Board; filed with the Town Clerk on October 11, 2018.
- B. October 11, 2018 – Public hearing notice filed with the Town Clerk and posted at the Town of Medway web site.
- C. October 15, 2018 - Public hearing notice mailed to abutters by certified sent mail.
- D. October 29 and November 6, 2018 - Public hearing notice advertised in *Milford Daily News*.
- E. November 13, 2018 - Public hearing commenced. The public hearing was continued to November 27 and December 11, 2018 and to January 8, 22, 29 and February 12, 2019 when the hearing was closed and a decision rendered.

**IV. INDEX OF DOCUMENTS**

- A. The special permit application materials for the proposed use of the building at 2 Marc Road for an adult recreational marijuana establishment included the following information that was provided to the Board at the time the application was filed:

1. 2 Marc Road Site Plan of Land in Medway, MA, dated January 26, 2016, last revised July 18, 2016, prepared by Merrikin Engineering of Millis, MA – ENDORSED July 26, 2016.
2. Sworn statement of ownership of CommCan, Inc. dated October 8, 2018.
3. Special permit application submittal letter from Daniel J. Merrikin, P.E. dated October 9, 2018 as official representative of the Applicant.
4. Policy and Procedures document titled *Transportation of Marijuana for CommCan*, received October 9, 2018.
5. Floor plan of the CommCan facility, dated May 2, 2016 by Keenan & Kenney Architects, Ltd.

B. During the course of the review, a variety of other materials were submitted to the Board by the Applicant, its representatives, Town staff, and the Town's consultants:

1. Results of Noise Study by Acentech, Inc. provided November 13, 2018.
2. Noise Survey by Noise Control Engineering, LLC dated November 27, 2018.
3. Host Community Agreement between CommCan and the Town of Medway dated May 16, 2016 and the associated amendment dated April 17, 2018.
4. Email communications dated October 23, 2018 from the MA Cannabis Control Commission acknowledging receipt of CommCan's applications for recreational marijuana cultivation and product manufacturing licenses.
5. Medical marijuana special permit decision dated June 28, 2016 and final site plan for 2 Marc Road endorsed by the Board on July 26, 2016.
6. Gino Carlucci, PGC Associates, the Town's Consulting Planner – Special permit review letter dated November 7, 2018 and commentary throughout the public hearing process.
7. Email dated January 16, 2019 from Ron Dempsey of Noise Control Engineering converting the existing and long-standing noise measurement standards from the *Zoning Bylaw* to the current, modern noise measurement standards.
8. Marijuana Odor Control Plan Template for Denver, Colorado.
9. *Cannabis-Related Odor Mitigation @1073 Main Street*, Millis, MA by GroThink, Oasis Spring, LLC, and Lynch Associates for the Millis Planning Board.
10. Exelon expansion project site plan decision dated July 26, 2016.
11. Letter from Michael Lannan, of TechEnvironmental dated 2-12-19

C. Other Documentation

1. Mullins Rule Certification dated November 27, 2018 for Board member Andy Rodenhiser for the November 13, 2018 hearing.
2. Mullins Rule Certification dated December 5, 2018 for Board member Robert Tucker for the November 27, 2018 hearing.
3. Mullins Rule Certification dated December 5, 2018 for Board member Thomas Gay for the November 27, 2018 hearing.

V. **TESTIMONY** - In addition to the special permit application materials as submitted and provided during the course of our review, the Board heard and received verbal or written testimony from:



- Gino Carlucci, PGC Associates, the Town’s Consulting Planner – commentary throughout the public hearing process.
- Ellen Rosenfeld, Applicant.
- Dan Merrikin, Legacy Engineering, project engineer for the Applicant.
- Andy Carballeria, Acentech Inc., acoustic sound consultant for the Applicant.
- Ron Dempsey, Noise Control Engineering LLC, acoustic sound consultant for the Town.
- Resident and abutter John Lally, 35 Coffee Street - Emails dated November 5, November 16, November 26, December 10, 2018 and January 22 and 29, 2019 about noise; Emails dated December 16 and 21, 2018 and January 22, 2019 about odor; and commentary throughout the public hearing process.
- Email communications dated December 10, 2018 between Planning and Economic Development Coordinator Susan Affleck-Childs and Ron Dempsey of Noise Control Engineering, LLC, the Town’s noise engineering consultant.
- Email communication with attachments dated January 3, 2019 between Ron Dempsey of Noise Control Engineering and Andy Carballeira of Acentech.
- Email communication dated January 29, 2019 from Ron Dempsey of Noise Control Engineering, LLC in response to January 23, 2019 email from Leigh Knowlton.
- Emails dated December 17 and 27, 2018 between Susan Affleck-Childs and Ellen Rosenfeld about odor.
- Resident, Leany Oliveria, 402 Village Street.
- Resident Jane Studennie, address unknown.
- Resident Heidi Sia, 8 Main Street, emails dated January 10 and 22, 2019.
- Resident Phil Giangarra, 24 Green Valley Road.
- Resident Leigh Knowlton, 11 Green Valley Road, email dated January 22, 2019 with attachments, and January 23, 2019 with attachment.
- Resident Jeanette Gibson, 45 Coffee Street.
- Selectman Dennis Crowley.
- Town Administrator Michael Boynton.
- Email from attorney Susan Murray dated January 29, 2019.

## **VI. FINDINGS**

The Planning and Economic Development Board, at its meeting on \_\_\_\_\_ 2019, on a motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_, voted to approve the following **FINDINGS** regarding the special permit application for adult recreational marijuana establishment for 2 Marc Road. The motion was approved by a vote of \_\_\_\_\_ in favor and \_\_\_\_\_ opposed.

### **FINDINGS from PUBLIC HEARING TESTIMONY**

- (1) CommCan, Inc., currently operates a medical marijuana cultivation and manufacturing business at 2 Marc Road as authorized by the Massachusetts Department of Public Health and pursuant to a medical marijuana special permit issued by the Board on June 28, 2016. CommCan, Inc. is a tenant in the 2 Marc Road building owned by Ellen Realty Trust and will continue to operate that use at this location. The Applicant now seeks to secure a special permit pursuant to

section 8.10 of the Medway *Zoning Bylaw* to also use the facility to grow and process marijuana for adult recreational use. Ellen Rosenfeld, Trustee of Ellen Realty Trust, is one of three owners and shareholders of CommCan, Inc.

(2) NOISE ISSUES

- A. Pursuant to Section 7.3.C.2. of the *Zoning Bylaw*, the “Maximum permissible sound pressure levels measured at the property line nearest to the noise source for noise radiated continuously from the noise source between 10 PM and 7 AM shall be as follows.”

Frequency Band (Cycles per Second)	Sound Pressure Level (Decibels 43 0.0002 Dyne/CM <sup>2</sup> )
2-72	69
75-150	54
150-300	47
300 - 600	41
600 – 1,200	37
1,200 – 2,400	34
2,400 - 4,800	31
4,800 – 10,000	28

“For noise levels between 7 A.M. and 10 P.M., and if the noise is not smooth and continuous, the following corrections shall be added to each of the decibel levels given above:

- Daytime operation only: +5
- Noise source operated at less than 20% of any 1-hour period: +5”

- B. In response to complaints to the Applicant about noise emanating from the existing marijuana production and processing operation, the Applicant retained sound consultant Acentech to evaluate the noise levels at the 2 Marc Road facility and recommend mitigation measures to address the noise produced by a large air-cooled chiller installed on the building’s roof which runs 24 hours a day, 7 days per week. Acentech conducted sound measurements at five locations on May 15, 2018 during the period of 12:00 am thru 2:00 am. Acentech found that the chiller did not result in conditions that violated the Massachusetts Department of Environmental Protection (DEP) Noise Policy but recommended mitigation measures to lessen emitted sound from the chiller, namely, the installation of noise control blankets on select components of the chiller. Those blankets were installed at the end of August 2018. Acentech concluded that the noise had been reduced by 7-10 dB (depending on the frequency being measured) following the installation of the blankets.
- C. In response to complaints to the Town about excessive noise emanating from the 2 Marc Road facility, the Town retained Noise Control Engineering, LLC (NCE) to evaluate the noise levels at the 2 Marc Road property under the DEP Noise Policy. NCE conducted attended noise measurements on the night of October 31, 2018 at several locations approximating the property lines of the

2 Marc Road property; these are known as source measurements. NCE also conducted attended noise measures from the street in front of two nearby residences (14 Green Valley Road and 45 Coffee Street); these are referred to as residential receiver locations. Measurements were also taken at 18 Henry Street to determine a reasonable background noise level. At the approximated north, west and south property line positions around the facility, noise levels were within the 10dB of the background noise levels measured at 18 Henry Street. The measured noise levels at the subject property's boundaries with abutting residential properties were within allowable levels with respect to the Mass DEP Noise Policy and do not reach the level of noise pollution per those standards.

NCE did find there was a noticeable tonal noise originating from the southeast corner of the building, near the location of the building's emergency generator. The highest noise level on a property line was at the property line closest to that generator. However, because the abutter to the east is an industrial facility, the high tonal noise at this location does not come under the scope of the Mass DEP Noise Policy.

- D. Both professional sound consultants have agreed that the frequency band range form of noise measurement specified in the *Zoning Bylaw* is outdated. The consultants concur that noise measurements in accordance with the *Zoning Bylaw's* standards are neither ideal nor typical today. The Board acknowledges that frequency band ranges presently included in the *Zoning Bylaw* do not accurately reflect contemporary sound measurement standards and provide challenges to interpretation and enforcement of the applicable provisions of the *Zoning Bylaw*. The Board is willing to allow a conversion to more modern standards, but only as long as the conversion is more, not less restrictive.

- E. Although the DEP Noise Policy is often used as a maximum noise standard and the Applicant must comply with that Policy, the Board must look to the frequency band range noise standards included in the Section 7.3.C.2 of the *Zoning Bylaw* as it considers this application.

The Town asked NCE to convert the noise levels as measured by NCE to the standards in the *Zoning Bylaw*. NCE estimated an adjustment factor to be applied to their data, to facilitate comparison to the Medway *Zoning Bylaw*. The method used is based on the frequency span of the octave bands and is consistent with the conversion documented in the 1980 EPA document 905-R-80-117 *Noise Legislation Trends and Implications*. The table below shows the conversion of the *Bylaw's* frequency band noise standards to the modern octave band noise standards.

Octave Band Center Frequency (Hz)	Medway Zoning Bylaw Sound Pressure Level, (dB re 20 micro-Pa)
63	67
125	55
250	48
500	42
1000	38
2000	35
4000	32
8000	28

NCE's report and conversion data were reviewed by Acentech. Acentech provided an alternative conversion of the measurements and criteria which results in lower noise levels and partial compliance with the *Zoning Bylaw*. Both sound consultants concur that there is no way to directly convert the measurements between the two standards. However, their shared conclusion is that the measured sound levels on-site and near the facility's industrial property lines are in excess of the *Zoning Bylaw*, irrespective of how the data are viewed.

- F. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to excessively loud and irritating noise emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation.

### (3) ODOR ISSUES

- A. Pursuant to Section 7.3.D. of the *Zoning Bylaw*, "In all districts, no emissions of odorous gases or odoriferous matter in such quantities as to be discernible outside the property line shall be permitted. Any industrial process which may involve the creation and/or emission of any odors shall be provided with a secondary safeguard system. No objectionable odor greater than that caused by 0.001201 oz. per thousand cubic feet of hydrogen sulfide or any odor threshold as defined in Table III in Chapter 5 of Air Pollution Abatement Manual (copyright 1951 by manufacturing Chemists Assoc., Inc., Washington, DC) shall be permitted."
- B. The Board is in receipt of written and verbal testimony of abutters and nearby residents in the vicinity of 2 Marc Road expressing serious concerns and objections to offensive odors emanating from the existing facility's operation as a medical marijuana cultivation and processing establishment. The Board, therefore, addressed this issue with the Applicant in conjunction with its request for a special permit expanded marijuana cultivation. The Board

sought and received advice from Tech Environmental, Inc. in a letter dated February 12, 2019.

- (4) Hours of operation – As a marijuana growing facility, the establishment operates 24 hours a day/7 days a week. Occupancy of the facility by employees is generally limited to the hours of 7 am to 8 pm, Sunday – Saturday.

**RECREATIONAL MARIJUANA ESTABLISHMENT SPECIAL PERMIT  
FINDINGS (Sub-section 8.10 of the Zoning Bylaw)**

- (1) The recreational marijuana establishment will operate inside the existing medical marijuana cultivation and processing facility at 2 Marc Road, a permanent, standalone building with no doctor's offices or other uses. The site includes driveways, parking areas, utility systems, and stormwater management facilities.
- (2) None of the uses listed in Section 8.10 E. 4. of the *Zoning Bylaw* are located within 500 feet of the site of the proposed facility.
- (3) Smoking, burning and consumption of marijuana products on the premises is not allowed.
- (4) No drive-through service is proposed. It is not needed as a retail operation is not planned for the site nor does the *Zoning Bylaw* allow for a drive-through facility.
- (5) The proposed signage is in compliance with Section 8.10 E. of the *Zoning Bylaw*
- (6) The Applicant has previously provided the contact information for management staff and key holders of the facility.
- (7) As conditioned herein, the Board finds that the recreational marijuana establishment will not create a nuisance to abutters or to the surrounding area or create any hazard. Both the Applicant and the Town have contracted with noise consultants to monitor noise from the facility and both found the operation to be within DEP noise regulations. The Board is requiring the Applicant to prepare a noise mitigation plan for the Board's approval after consultation with its noise consultant and to implement suitable noise mitigation measures. Further, the Board is also requiring the Applicant to prepare an odor control plan for the Board's approval after consultation with its odor consultant and to implement suitable odor mitigation measures. The Building Inspector, in consultation with the Health Agent, and the Town's consultant(s), will confirm compliance with the noise and odor requirements of the *Zoning Bylaw* after the required noise and odor mitigation measures are installed.
- (8) The existing building meets the requirements for "openness of premises" since no activities within the building or displays of products are visible from the exterior of the building and the front of the building, which includes the primary entrance to the facility, is fully visible from the street. All operations are within the restricted building and there is no direct consumer access as no retail sales are allowed.

- (9) The special permit authorizes only the following adult recreational marijuana establishment activities: cultivation, manufacturing, processing and packaging of marijuana and marijuana products and the transport and delivery of such to other recreational marijuana establishments. Retail sales are not allowed.
- (10) As conditioned herein, copies of required licenses and permits issued by the Commonwealth will be provided upon approval by the Massachusetts Cannabis Control Commission. The recreational marijuana operation will be operated in strict compliance with Massachusetts Cannabis Control Commission regulations.
- (11) The Applicant, Ellen Realty Trust, is the owner of record of the subject property and building as shown on the Medway Assessor's records. Accordingly, the Applicant has the right to use the site for a registered marijuana establishment.
- (12) A sworn statement disclosing the owner's or other similarly situated individuals' interest in the registered marijuana establishment has been provided.
- (13) A certified list of all abutter and parties of interest was provided. The Planning and Economic Development office coordinated the production and mailing of the required public hearing notice for the Special Permit application.
- (14) No changes are needed or proposed to the 2016 approved site plan. A detailed floor plan of the premises showing the functional areas of the facility has been provided. Security measures including lighting, fencing, gates and alarms were previously reviewed and approved by the Police Chief during the 2016 Approval process.
- (15) A copy of the policies and procedures for the transfer, acquisition, or sale of adult recreational marijuana between approved marijuana establishments has been provided.
- (16) The required public hearing and review process for this special permit application has been followed.
- (17) The adult recreational marijuana establishment, as conditioned herein, has been designed to minimize any adverse visual or economic impacts on abutters and other parties in interest. No changes in the existing building or site are proposed other than additional measures to further mitigate noise and odor impacts.
- (18) As conditioned herein, the proposed facility will meet all the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations.
- (19) As conditioned herein, the Applicant has satisfied the conditions and requirements of this Section 8.10 and Section 3.4 of the *Zoning Bylaw*.
- (20) The Town of Medway and CommCan, Inc. entered into a Host Community Agreement in May 2016 for the medical marijuana operation. The HCA was amended in April 2018 in anticipation of this application for a recreational marijuana establishment.

**GENERAL SPECIAL PERMIT FINDINGS (Sub-section 3.4 of the Zoning Bylaw)**

- (1) *The proposed site is an appropriate location for the proposed use.*

Section 8.10 of the *Zoning Bylaw*, Recreational Marijuana, specifies that recreational marijuana establishments are allowed by special permit in the East and West Industrial Zoning Districts. The subject site at 2 Marc Road is located within the East Industrial and is therefore an eligible location. The site is not within 500 feet of any of the uses from which such facilities are prohibited (existing public or private school serving students in grades K-12). Pursuant to the 2016 Approval, there is already a medical marijuana cultivation and manufacturing facility on the site.

- (2) *Adequate and appropriate facilities will be provided for the operation of the proposed use.*

The recreational marijuana cultivation and manufacturing uses are being added to the previously approved use of the facility for medical marijuana cultivation and manufacturing as provided in the 2016 Approval. The current activities in the building will essentially remain unchanged; the only difference is that more product will be produced and processed for recreational purposes. No changes are proposed to the 2016 Approval. Due to that 2016 Approval, adequate and appropriate facilities have been provided for the operation of the facility.

- (3) *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians or the environment.*

The existing site contains suitable driveways, parking areas and stormwater management systems. Reasonable noise and odor mitigation measures are included as Conditions herein.

- (4) *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*

The proposed facility is expected to have 30 employees, and because the retail sale of marijuana products is not permitted, other traffic to the site will be minimal. The Industrial Park Road system is adequate to handle the traffic. The Applicant previously reconstructed Marc Road as part of the approval of the 2016 Approval so the roadway quality is excellent. Furthermore, the site's access is from Main Street/Route 109, a major east-west arterial roadway, so there is no traffic impact on local residential roadways.

- (5) *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site or operational attributes of the proposed use.*

The proposed marijuana production and processing uses are not detrimental to adjoining properties, however, the operation of the rooftop HVAC equipment periodically generates conspicuous noise of concern to some residential abutters and nearby neighbors. Noise evaluation reports were provided by consultants for the Applicant (Acentech) and the Town (Noise Control Engineering). Throughout

the permitting process, the Applicant has demonstrated a strong commitment to address and mitigate the noise issues as experienced by the residential abutters. The Applicant will supplement existing noise mitigation systems as part of the build-out of the second floor after a thorough evaluation process by sound and mechanical engineers to identify additional measures. As conditioned herein, the Board finds that suitable monitoring and mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to noise.

Testimony was also provided about offensive odors emanating from the existing facility. The Board has discussed the need for the Applicant to institute more aggressive odor control measures. The Applicant intends to supplement existing odor mitigation systems as part of the build-out of the second floor after the preparation of an odor mitigation plan. As conditioned herein, the Board finds that suitable mitigation measures will be taken to comply with the Town's *Zoning Bylaw* with respect to odors.

There is no outside storage of either materials or waste. While vegetation close to the building is limited by the State's security requirements for marijuana establishments, six trees have been planted around the parking lot and other low vegetation has been added as part of the 2016 Approval to improve aesthetics from the public way and nearby residences.

- (6) *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*

The proposed use is manufacturing and is therefore consistent with the character of the East Industrial Zoning District in which the subject property is located. This application proposes to produce marijuana for adult recreational use within the existing building which is currently limited to the production and processing of medical marijuana. This expansion of use was expected at the time the 2016 Approval. The Board finds that the proposed expanded use will not significantly alter the character of the East Industrial zoning district.

The Board heard testimony from residential abutters and neighbors about adverse noise and odor conditions emanating from the 2 Marc Road facility which are negatively impacting the enjoyment of their property and quality of life. The Applicant made repeated verbal commitments during the public hearing that she will address their concerns through reasonable noise and odor mitigation measures. The Board incorporates its findings under (5) above. The Applicant will be held to the environmental standards included in Section 7.3 of the *Zoning Bylaw*. As conditioned herein, the Board finds that reasonable measures will be taken such that this particular industrial use will not adversely affect the surrounding neighborhood.

- (7) *The proposed use is in harmony with the general purpose and intent of this Zoning Bylaw.*

The Recreational Marijuana section of the *Zoning Bylaw* (Section 8.10) was adopted by the Town in May 2018 with the specific intent of allowing the limited establishment of non-retail recreational marijuana establishments in Medway. The



stated purpose of Section 8.10 is to address possible adverse public health and safety consequences and impacts on the quality of life related to this type of facility by providing for them in an appropriate places and under strict conditions, therefore, it meets the purpose of the *Zoning Bylaw*.

- (8) *The proposed use is consistent with the goals of the Medway Master Plan.*

The existing facility and the expanded use of the facility is in compliance with Goals 1 and 6 of the Economic Development Goals and Objectives section of the Medway Master Plan as follows:

- Goal 1: Maximize the area's economic resources
- Goal 6: Attract new (and retain existing) businesses and increase the industrial/manufacturing base.

- (9) *The proposed use will not be detrimental to the public good.*

As a facility in compliance with state and local law, consistent with the goals of the *Medway Master Plan*, and as conditioned herein, the proposed use will not be detrimental to the public good.

**VIII. CONDITIONS** The *Special and General Conditions* included in this Decision shall assure that the Board's approval of this special permit is consistent with the *Zoning Bylaw* and that the comments of various Town boards and public officials have been adequately addressed, and that concerns of abutters and other town residents which were aired during the public hearing process have been carefully considered. These conditions are binding on the Applicant.

#### **SPECIFIC CONDITIONS OF APPROVAL**

- A. All standard requirements included in Section 8.10 Recreational Marijuana of the *Zoning Bylaw* apply to this special permit. These include but are not limited to:
1. Upon approval and prior to commencing operations on the property to cultivate and process marijuana for adult recreational use, the Applicant shall provide the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board with a copy of the applicable state adult recreational marijuana establishment licenses, permits, and approvals from the Massachusetts Cannabis Control Commission.
  2. The Applicant shall provide an annual report of CommCan's operations to the Board and other Town officials no later than January 31<sup>st</sup> of each year, including a copy of all current state licenses and demonstrating continued compliance with the conditions of this special permit. Any change in ownership of CommCan, Inc. or change in management staff and key holders shall also be reported.
  3. This special permit is not transferrable to another party. It shall remain exclusively with the Applicant, Ellen Realty Trust, as the owner of the premises and shall be considered to include the operation of the facility's tenant, CommCan, Inc.

4. Smoking, burning and consumption of marijuana or marijuana infused products on the premises is prohibited.

**B. Noise Management**

1. The Applicant shall install and maintain at all times effective noise reduction equipment. The Applicant will complete this through industry best practices and suitable noise abatement measures. The Applicant shall ensure proper maintenance of all noise abatement equipment to ensure maximum efficiency and effectiveness.

2. As indicated by the Applicant during the hearing, buildout of the second floor is expected to commence in the near future. As part of that effort, the Applicant has indicated that the existing rooftop chiller may be modified, replaced, retrofitted, or repositioned in some manner to address the noise concerns expressed by residents of property in proximity to the subject facility. The Applicant is in the process of investigating and evaluating these issues in order to develop a noise abatement and management plan to remedy the existing noise issues as part of that buildout. Within four months of the filing of this special permit decision with the Town Clerk, the applicant shall provide the Building Commissioner, the Board of Health agent, and the Planning Board with a plan to mitigate any existing noise issues associated with the existing facility. That plan shall identify the specific mechanical systems that will be implemented to mitigate noise violations. Within four months of the filing of this special permit decision with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a noise abatement and management plan prepared by a qualified acoustical consultant, (whose qualifications include Institute of Noise Control Engineering (INCE) board certification or equivalent experience) in conjunction with qualified mechanical engineers addressing the various mechanical equipment that may cause violation of the applicable provisions of Section 7.3 of the Zoning Bylaw.

- The plan shall include the following elements:
  - Estimated noise source levels for equipment
  - Predicted propagation losses to the facility property lines and the residential receivers
  - Estimated noise levels at the facility property lines and the residential receivers
  - Estimated impacts of any proposed noise control measures.

- The plan shall be provided to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its noise consultant for review and comment, at the Applicant's expense. The Applicant shall appear before the Board at a public meeting to review and discuss the proposed improvements and obtain approval from the Board of that plan. The Board may require the Applicant to modify the plan based on the recommendations of the Town's noise consultant.

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3. Any new or altered mechanical equipment installed on the property shall be designed to comply with applicable regulations, including the provisions of Section 7.3 of the *Zoning Bylaw*.
4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall provide the Building Inspector, Health Agent, and Board a noise study measuring ambient sound levels without the external mechanical equipment in operation and the sound at each of the property boundaries during full operating conditions. All sound measurements shall be conducted by a qualified acoustical consultant (INCE board certification or equivalent experience) in accordance with industry best practices confirming that external mechanical noises have been addressed to comply with the applicable provisions of the *Zoning Bylaw*.

The sound measurements will consist of:

- Attended night time noise measurements at the facility property line and the residential receivers OR/
- Unattended noise monitoring for a period of at least one week at the facility property line and the residential receivers

If the equipment is expected to produce higher noise levels at operating conditions other than full load, those conditions shall be measured as well.

~~At a minimum, sound measurements shall be conducted at all nearby residential property lines, at locations representative of worst case noise impact on residential property. Measurements~~With respect to nearby residential uses, measurements shall be taken at the nearest residential line to the north, south (behind the Coffee Street residents), and southwest (near 35 Coffee Street). Measurement instrumentation shall comply with class 1 in accordance with IEC 61678, and should be capable of measuring A-weighted and octave-band sound levels. The acoustic descriptor for reporting shall be the L90 sound level, to minimize the influence of transient sound. Sound level meters shall be provided with windscreens and their calibration shall be field-checked before and after the measurements. Measurements shall be conducted during periods of worst-case impacts, which is typically at night after midnight when ambient sound levels are lower. If possible, ambient conditions shall be measured for at least 10 minutes with the roof chiller turned off. If operational constraints make measuring ambient noise levels at the site impractical, said measurements shall be taken in a similar environment away from the facility. Measurements of operational conditions shall be taken and compared to the ambient noise levels and an analysis provided addressing the DEP Noise Policy and Section 7.3 of the *Zoning Bylaw*.

The Board may forward the noise study to the Town's noise consultant for peer review and comment, at the Applicant's expense. The Board may, ~~at its discretion,~~ require the Applicant to implement additional noise mitigation measures ~~based on the outcome of the noise study~~if the facility continues to be non-compliant with the Bylaw.

**Commented [SA1]:** This language in this paragraph was provided by NCE, the Town's noise consultant

5. Approximately six months after beginning operations under this Special Permit, the Applicant shall provide a supplemental noise study. ~~to be performed, measuring both ambient sound levels without the external mechanical equipment in operation and with the facility in full operation.~~ These measurements shall be carried out to the same standards and methods as the initial study.

**Commented [SA2]:** The Applicant suggests that the stricken through language be deleted completely.

**Commented [SA3]:** This language was suggested by NCE.

The intent of this second study is to assess the impact of seasonal changes. The scope and methods of the study shall be the same as in the initial study described above.

**Commented [SA4]:** Language in this paragraph was suggested by Applicant.

The Applicant shall submit that study to the Building Inspector, Health Agent and Board so as to determine continued compliance with the conditions set forth herein as to noise. The Board may forward the plan to the Town's noise consultant for review and comment, at the Applicant's expense. The Board may require the Applicant to implement additional noise mitigation measures if the facility continues to be non-compliant with the Bylaw and may, at the Board's discretion, require the Applicant to implement additional noise mitigation measures based on the outcome of the noise study.

6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional mechanical engineer that there are no changes in the installed mechanical equipment which may impact the noise emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
7. The Building Inspector, in enforcing the conditions contained herein, may require the Applicant to provide additional noise studies by a qualified noise consultant and/or implement additional mitigation measures should legitimate concerns or complaints develop in the future about noise generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.

#### C. **Odor Management**

1. The Applicant is required to comply with the applicable provisions of Section 7.3.D of the *Zoning Bylaw* ~~which requires no discernable odor outside the property line.~~
2. The Applicant shall install and maintain at all times effective odor control technology to remove odors from the facility's exhaust system. The Applicant will complete this through industry best practices and suitable building filtration systems including a secondary safeguard system as required by the *Zoning Bylaw*. The Applicant shall ensure proper maintenance of all odor migration equipment to ensure maximum efficiency and effectiveness.
3. Within four months of the filing of this special permit decision with the Town Clerk, the applicant shall provide the Building Commissioner, the

**Commented [DM5]:** We would appreciate it if we do not restate or paraphrase the language of the bylaw. The bylaw language speaks for itself.

Board of Health agent, and the Planning Board with a plan to enhance the odor control systems for the existing facility. That plan shall identify the specific mechanical systems that will be implemented to enhance the odor control systems in the facility. The applicant shall also provide an odor control plan which shall describe the proposed mechanical improvements along with associated operational and maintenance programs that will be implemented.~~Nearby residents have reported intermittent and varying odor impacts from the current operation of the facility. As recommended by Michael Lannan of TechEnvironmental, Inc., the Board's odor consultant, in his letter dated February 12, 2019, the Applicant, in preparation for building out the second floor of the existing building for expanded marijuana cultivation, shall complete the following before a building permit will be issued:~~

- a. ~~assess the performance of the facility's existing odor management systems by:~~
- ~~identifying the type and location of odorous emissions being discharged from the facility to the ambient air;~~
- ~~estimating the uncontrolled maximum potential to emit recognition thresholds (RT) odor emissions; and~~
- ~~modeling these emissions off site with an EPA approved air quality dispersion modeling system such as AERMOD.~~

~~Any capture and control techniques and expected control efficiencies must be included. The "during operations" confirmation must occur when the facility and its odor generating activity is operating at its current regular maximum capacity for medical marijuana cultivation. The operational confirmation shall be a property line and neighborhood odor assessment, as well as confirmation of the uncontrolled emissions. The report and protocol of each compliance demonstration shall be provided to the Board, Building Inspector and Health Agent for review. The Board will forward the odor assessment to the Town's odor consultant, at the Applicant's expense, for peer review, comment and approval. This base line assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation.~~

- b. ~~provide a modeling demonstration of existing skunk like (thiol) odors and floral (terpene odors) similar to the RT modeling noted in item a. above.~~
- c. ~~supplement and/or modify the facility's existing odor control systems including measures to capture emissions within the building and the installation of a secondary safeguard system. Within four months of the filing of this special permit with the Town Clerk, and prior to the issuance of a building permit for the second floor, the Applicant shall provide a comprehensive odor control, abatement and mitigation plan, prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation. The plan shall address improvements needed to the facility's odor control systems to comply with the Zoning~~

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~~Bylaw. The odor control, abatement and mitigation plan shall include those elements as contained in the Denver, Colorado odor control plan templates for marijuana cultivation and processing.~~

- ~~d. The applicant shall provide the plan to the Board, Building Inspector, and Health Agent for review and comment. The Board shall forward the plan to its odor control consultant, at the Applicant's expense for review, comment, and recommendations. The Applicant shall appear before the Board to review and discuss the plan and obtain approval for the proposed improvements as specified in the plan. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town's odor consultant.~~
4. Prior to the issuance of an occupancy permit for the second floor, the Applicant shall review the updated odor control system as installed with the Building Inspector and demonstrate that the measures specified in the odor control, abatement and mitigation plan including the secondary safeguard system have been implemented. The Applicant shall provide a certification made by a licensed engineer that the odor mitigation measures included in the plan have been installed. Additional odor mitigation measures may be required if determined to be required by the Building Inspector.
5. ~~Due to unknown circumstances and potentially unforeseen odorous impacts, in order to ensure that odorous emissions shall not be in such quantities that are offensive off site and not in compliance with the Zoning Bylaw, the Applicant shall provide the Board, Building Inspector and Health Agent with an independent odor assessment six months after beginning the expanded use of the facility to cultivate and process marijuana for adult recreational use. The assessment shall be prepared by a qualified environmental consultant with demonstrated experience in the area of marijuana odor mitigation and include the items specified in 3.a. and 3.b. above. Odor measurements shall be taken at times when the odor generating activity is occurring at regular operating capacity. The report shall include an action plan with recommendations to remediate odorous emissions which may be noticeable beyond the property line of the subject premises. The Board may refer the updated report to its odor consultant for review, comment and recommendations. The Board may require the Applicant to modify the plan to include additional odor control measures based on the recommendations of the Town's odor consultant.~~
6. For each of the two successive years following occupancy of the second floor, the Applicant shall annually submit a certification by a registered professional engineer that there have been no changes in the mechanical equipment that has been installed to reduce the odor emanating from the facility. Such certification shall be provided to the Building Inspector, Health Agent and the Board.
7. The Building Inspector, in enforcing the conditions herein, may require additional odor investigations and/or odor mitigation measures should

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legitimate concerns and complaints develop in the future about odor generation from the facility. The Applicant may further be required to address such issues with the Board to its satisfaction.

- D. The permit holder shall notify the Building Inspector, Health Agent, Fire Chief, Police Chief, and the Board in writing within forty-eight hours of the cessation of operation of the marijuana business or the expiration or termination of the license holder's certificates or registration with the Massachusetts Cannabis Control Commission.
- E. There shall be a valid Host Community Agreement in effect at all times during the operation of the marijuana establishment.
- F. Limitations - This special permit is limited to the operation of a recreational marijuana cultivation and processing facility at 2 Marc Road. This permit does not authorize operation of a retail outlet for the sale of adult recreational marijuana products or the operation of a testing facility on the premises.
- G. All applicable conditions of the previous site plan approval for the site and the 2016 Approval shall also apply to this special permit.

#### **GENERAL CONDITIONS OF APPROVAL**

- A. **Fees** - Prior to filing the special permit decision with the Town Clerk, the Applicant shall pay:
  - 1. the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering, planning, noise, odor or other consultants;
  - 2. an advance on fees for continued outside noise and odor consultants as approved by the Planning and Economic Development Board;
  - 3. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes and business licenses.
- B. **Other Permits** – This special permit does not relieve the Applicant from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses and approvals. The Applicant or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
- C. **Recording** - Within thirty days of recording the Decision, the Applicant shall provide the Board and the Building Inspector with a receipt from the Norfolk County Registry of Deeds indicating that the Decision has been duly recorded, or supply another alternative verification that such recording has occurred.
- D. **Conflicts** –If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

**IX. APPEAL** – Appeals if any, from this Decision shall be made to a court of competent jurisdiction within twenty days of the date the Board files the Decision with the Town Clerk in accordance with the provisions of G. L. Chapter 40A, Section 17.

After the appeal period has expired and before this special permit takes effect, the Applicant must obtain a certified notice from the Town Clerk that no appeals have been made and provide such certification to the Board before the decision and certificate are recorded. Proof of recording the certificate of no appeal must be delivered to the Building Inspector and the Board.

###

DRAFT



**Medway Planning and Economic Development Board  
Adult Recreational Marijuana SPECIAL PERMIT DECISION  
Ellen Realty Trust – 2 Marc Road**

\_\_\_\_\_ by the Medway Planning & Economic Development Board: \_\_\_\_\_

**AYE:**

**NAY:**

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**ATTEST:**

\_\_\_\_\_  
Susan E. Affleck-Childs  
Planning & Economic Development Coordinator

\_\_\_\_\_  
Date

**COPIES TO:** Michael Boynton, Town Administrator  
Dave D’Amico, DPS Director  
Bridget Graziano, Conservation Agent  
Donna Greenwood, Assessor  
Beth Hallal, Health Agent  
Jeff Lynch, Fire Chief  
Jack Mee, Building Inspector and Zoning Enforcement Officer  
Joanne Russo, Treasurer/Collector  
Barbara Saint Andre, Director of Community and Economic Development  
Jeff Watson, Police Department  
Ellen Rosenfeld, Ellen Realty Trust  
Dan Merrikin, Merrikin Engineering  
Steven Bouley, Tetra Tech  
Gino Carlucci, PGC Associates

## Susan Affleck-Childs

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**From:** LAKnowlton <knowlton@gmail.com>  
**Sent:** Tuesday, February 26, 2019 12:30 PM  
**To:** Susan Affleck-Childs  
**Cc:** Lally, John - 0666 - MITLL  
**Subject:** Re: DRAFT CommCan Decision 2 14 19 (v.2)

Susy,

After reviewing this latest draft [CommCan Decision 2 14 19 (v.2)], I have two primary concerns.

### 1) Findings - VI.2.E (regarding NCE's converted noise standards)

At this time, I don't agree with Ron Dempsey's octave band conversions. His numbers do not appear to be consistent with the conversion method recommended by ANSI/ASA during the changeover period, nor are they consistent with a mathematical analysis described in a relevant NASA JPL tech report. I will address this further in a separate email.

This is very important because NCE's numbers would allow 2-3 dB of increased noise across most octaves compared to the ANSI/ASA conversion. If the Town wishes to continue using NCE's conversion, NCE should provide their exact methodology and calculations for peer review.

### 2) Conditions - Noise Management - VIII.B.4 (regarding measurement locations)

I am very concerned about the lack of consistency in the language addressing where sound levels shall be measured.

Para 1 - "at each of the property boundaries"

Para 2 - "at the facility property line"

Para 3 - "at all nearby residential property lines"

The language in the third paragraph in particular, which was provided by the Applicant's noise consultant, appears to be attempting to "move the goalposts" by measuring the noise at sometimes distant residential property lines instead of at the facility. This distinction has been discussed numerous times at the board meetings I have attended, and I have been assured that this is not the board's intent.

As the Bylaw stands, compliance "shall be determined at the property line of the use." It is my understanding that the purpose for additional testing at residential locations is to address hypothetical special cases where the facility measurements do not represent the worst case scenario, such as when there is a different elevation, reflected sound from other buildings or landscape, or constructive interference.

Please ensure that this section is clear about the primary basis for verifying compliance being measurement at the facility property lines. Measurements at residential property lines are in addition to -- not in lieu of -- measurements at the facility property lines.

Respectfully,  
L. Knowlton

On Fri, Feb 15, 2019 at 10:31 AM Susan Affleck-Childs <[sachilds@townofmedway.org](mailto:sachilds@townofmedway.org)> wrote:

Good morning,

Attached is the further modified draft special permit decision for 2 Marc Road.

I have also attached the review letter we received from our odor consultant Michael Lannan of TechEnvironmental.

The hearing is Tuesday, February 19<sup>th</sup> at 7 pm at the Senior Center, 76 Oakland Street.

Best regards,

**Susan E. Affleck-Childs**

**Planning and Economic Development Coordinator**

**Town of Medway**

**155 Village Street**

**Medway, MA 02053**

**508-533-3291**

## Susan Affleck-Childs

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**From:** LAKnowlton <knowlton@gmail.com>  
**Sent:** Tuesday, February 26, 2019 1:47 PM  
**To:** Susan Affleck-Childs  
**Cc:** Ron Dempsey; Lally, John - 0666 - MITLL  
**Subject:** Re: 2 Marc Road  
**Attachments:** JPL\_32-1052.pdf; ANSI\_ASA\_S1\_11\_1966.pdf; Octave\_Band\_Conversion\_Comparison\_v2\_20190226.xlsx

Susy,

I still have not heard back from Ron on this issue. I envision he might need your permission to respond because it may generate billable hours. I am therefore addressing this message to you in hopes that you will add it to a work package for Ron when the time is right.

1) Request Ron/NCE provide the calculations performed for octave conversion and a citation for the literature describing the methodology.

From my perspective, the bottom line is that Ron's octave band conversion results are not consistent with the industry standards that I've been able to identify, namely ANSI/ASA S1.11-1966 and ASTM E1686-16. This is science, and it needs to be repeatable and peer reviewable. As I wrote in my previous email, Ron is apparently using a different methodology that I cannot easily deduce from his results. In order to understand and review his work, I am requesting the calculations and literature cited. Why? Ron's results are up to 2.7 dB higher than the ANSI method. 3 dB represents a doubling of sound intensity (acoustic energy), which would allow for significantly more noise. It is important to me that we preserve the noise protection of the bylaws. If the bylaws are deemed to be unfair or too stringent, that is another discussion unrelated to conversion.

At this time, I am introducing a more mathematical method for converting the octave bands. My citation is NASA JPL Technical Report 32-1052, "Octave and One-Third Octave Acoustic Noise Spectrum Analysis." Section II of this report provides mathematical derivations for the conversion of octave bands based on energy and bandwidth. I am attaching a copy of the technical report and a spreadsheet with my work using these formulas compared to the other conversion methods.

You will see that my new results are subtly different than the ANSI/ASA simplified conversion method, but still significantly lower than Ron's calculations. Because the results using the ANSI method, JPL derivations, and the method Acentech used are all so statistically similar, and only Ron's method is an outlier, it is reasonable to suspect that there may be something inconsistent with Ron's calculations.

Respectfully,  
L. Knowlton

On Tue, Jan 29, 2019 at 6:37 PM LAKnowlton <[knowlton@gmail.com](mailto:knowlton@gmail.com)> wrote:  
Ron,

I am not satisfied with your explanation so far, as you did not provide the methodology for your conversion.

My calculations are based on the methodology published in ANSI/ASA S1.11-1966, a copy of which is

attached for your reference.

The same method is referenced in a more contemporary standard, ASTM E1686-16 (dated 10/01/2016), Standard Guide for Applying Environmental Noise Measurement Methods and Criteria. Section 11.3.4, discussing local ordinances with octave-band frequency ranges specified based on obsolete standards, says: "...Ordinances based on such obsolete octave bands may be updated by converting the criteria to equivalent criteria in current octave bands using a procedure provided in Ref (17)..."

Both standards reference: Schultz, T. J., "Conversion between old and new octave band levels," Journal of the Acoustical Society of America, Vol. 36, No. 12, December 1964, p. 2415.

Furthermore, my calculations provide the same results as shown in Acentech's memo dated January 8, 2019, where the approach was "converting the limit values in the Medway Bylaw to the standard octave bands on the basis of equal energy."

Since you are using a different methodology that I cannot easily deduce from your results, I am requesting that you please provide a citation for the literature describing your methodology and the calculations performed to arrive at your converted levels.

v/r,  
Leigh

On Tue, Jan 29, 2019 at 1:42 PM Ron Dempsey <[ron@noise-control.com](mailto:ron@noise-control.com)> wrote:

Hello Susan and Leigh,

I've looked over your spreadsheet and the calculations you provide are very different from the ones that I performed. You appear to have assumed that the noise limit was a continuous curve and used a basic interpolation to simply find the value of the curve at the center frequencies of the new octave bands. This interpretation ignores the fact that there are other differences in the new and old octave bands besides just the center frequencies.

Without getting into the exact nature of the filters used, an octave band noise level is effectively the total amount of noise in the frequency range specified. Assuming that the noise is broadband (effectively that the noise levels at all frequencies within the band are the same), the larger the frequency range, the higher the level. For most of the frequency bands, the new octave bands are wider than the old ones. For example, the old 600-1200 Hz band has a 600 Hz span while the new 1000 Hz octave band has a span of 710 Hz (710-1420 Hz). That means that for the same broadband source, the levels in the new octave bands should be higher in the new bands than the old ones as there is more energy in the larger band.

While I do not have the 1966 version of S1.11 to reference, I have included an excerpt from the 1980 EPA document Leigh brought up at the last meeting I attended. This shows that when converting measurements in the old octave bands, you should add 1 dB, not subtract. My calculations were different at the ends of the frequency range, as the bands in the bylaw do not exactly match those in this appendix, but they are in line with the EPA guidance.

**Ron Dempsey**

Noise Control Engineering, LLC  
978-584-3025 (direct line)  
[www.noise-control.com](http://www.noise-control.com)

**From:** LAKnowlton <[knowlton@gmail.com](mailto:knowlton@gmail.com)>

**Sent:** Wednesday, January 23, 2019 12:03 AM

**To:** Susan Affleck-Childs <[sachilds@townofmedway.org](mailto:sachilds@townofmedway.org)>

**Cc:** John Lally <[jdlally@comcast.net](mailto:jdlally@comcast.net)>; Ron Dempsey <[ron@noise-control.com](mailto:ron@noise-control.com)>

**Subject:** Re: 2 Marc Road

Susy,

I would like to ask Ron for clarification on the methodology he used to convert the octave bands.

When I use the methodology specified in ANSI/ASA S1.11-1966 Appendix A to convert the Bylaw limits from the old bands to the preferred bands, the results nicely fit the same curve. Furthermore, my results correlate very closely with the conversion performed by Acentech.

However, the conversion performed by NCE does not agree with my methodology or that of Acentech. Intuitively, it appears to be wrong, and I suspect there may be a math error in the conversion.

In fact, if I use the ANSI/ASA approach (i.e.,  $LN = LO + 0.237*(LOH - LO)$ ), but deliberately reverse the sign (i.e.,  $LN = LO - 0.237*(LOH - LO)$ ), I get almost exactly the same results as the NCE conversion. I get similar results if I apply the wrong formula for the reverse interpolation (i.e.,  $LO = LN - 0.237*(LN - LNL)$ ). These observations strengthen my doubts.

I am attaching a spreadsheet that shows my work, and includes a plot of the different conversion results.

Thanks,  
Leigh

On Tue, Jan 22, 2019 at 9:23 PM Susan Affleck-Childs <[sachilds@townofmedway.org](mailto:sachilds@townofmedway.org)> wrote:

Hi,

See attached email note from NCE consultant Ron Dempsey that was referenced tonight.



**February 26, 2019**  
**Medway Planning & Economic Development Board**  
**Meeting**

**Zoning Bylaw Amendments**

- Housekeeping
- Medical Marijuana
- Recreational Marijuana
- Site Plan Review
- Parking
- Accessory Uses and Structures

The attached items were submitted to the BOS/TA office on 2-22-19 for the warrant for the May town meeting.

I believe considerably more discussion and thinking needs to go into adding a requirement to the site plan section of the ZBL that any tenancy change triggers the need for a site plan. Except for projects that need a building permit, there is no system in place right now that would inform the Town when tenancy changes occur.

**ZBL – Miscellaneous Housekeeping**  
SAC edits (2-21-19)

Article \_\_\_\_

To see if the Town will vote to amend the Zoning Bylaw as follows; unless otherwise noted, new text is shown in **bold** and deleted text is shown as stricken through:

Section 1.7. FORMAT: Delete the last sentence, so that the section shall read as follows:

The Planning and Economic Development Coordinator, under the auspices of the Planning and Economic Development Board, is authorized to edit this Zoning Bylaw for format only through the use of bold, italics, underscores, bullets, font style, font size, spacing and other similar editing measures to improve the Bylaw's readability and ease of use without changing the text, section and heading titles, numbering, or content in any manner; and to clearly denote those terms throughout the Bylaw that are officially defined within SECTION 2 of this Bylaw. ~~This Section 1.7 will expire on May 9, 2018.~~

Section 2 DEFINITIONS: Amend the definition of buffer area and add a definition for bus shelter as follows:

**Buffer area:** Natural, wooded, **and** vegetated **areas**, open areas, earthen berms or mounds, landscaped areas, or any combination thereof including fences and walls, used to physically separate or screen one use or property from another use or property or provide a visual or sound barrier between adjacent properties by shielding or reducing noise, lights or other intrusions.

**Bus Stop Shelter – A small, roofed structure, usually having three walls and at least one open side, designed primarily for the protection and convenience of bus passengers.**

And delete the definition of "Building Inspector" in its entirety, and change the words "Building Inspector" and "Inspector of Buildings" to "**Building Commissioner or designee**" wherever they appear in the Zoning Bylaw.

Section 5.5. NON-CONFORMING USES AND STRUCTURES: Add a new subsection: "**H. Special Permits. Special permits granted under this Section 5.5 are not subject to the special permit criteria under Section 3.4.**"

Section 6.2. GENERAL PROVISIONS D. Amend to read as follows:

**Buildable Lot.** No ~~dwelling structure~~ may be erected on any lot ~~unless that does not include contiguous upland area of~~ at least 50 percent of the required minimum lot area for the **zoning** district ~~is contiguous upland~~. The upland shall be land that is not subject to protection under the Wetlands Protection Act, G.L. c. 131, § 40. The upland shall not include wetland replication areas that may be required by the Conservation Commission.

Or act in any manner relating thereto.

PLANNING AND ECONOMIC DEVELOPMENT BOARD



**SECTION 8.9 - MEDICAL MARIJUANA**  
**Proposed Amendments**  
**SAC – 2-20-19**

**ARTICLE :**

To see if the Town will vote to amend the Zoning Bylaw as follows; unless otherwise noted, new text is shown in **bold** and deleted text is shown as stricken through:

Section 8.9 REGISTERED MEDICAL MARIJUNAN FACILITIES: Amend Sections 8.9.D., 8.9.E., and 8.9.J. to read as follows:

**D. Eligible Locations for Registered Medical Marijuana Facilities.** Registered Medical Marijuana Facilities, ~~other than agricultural operations meeting exemption standards under G.L. c. 40A § 3,~~ may be allowed by special permit from the Planning and Economic Development Board in the following zoning districts, provided the facility meets the requirements of this Section:

<b>Retail RMMF</b>	<b>Non-Retail RMMF</b>
Business Industrial (BI)	East Industrial (EI) West Industrial (WI)

**E. General Requirements and Conditions for all Registered Marijuana Dispensaries**

1. All ~~non-exempt~~ RMMFs shall be contained within a permanent building or structure. No RMMF shall be located inside a building containing residential units or inside a movable or mobile structure such as a van, trailer, cargo container or truck.

**J. Special Permit Requirements**

4. The RMMF special permit application shall include the following:
  - i. **A comprehensive noise mitigation plan prepared by a qualified acoustical consultant (whose qualifications include Institute of Noise Control Engineering (INCE) board certification or equivalent experience)**
  - j. **A comprehensive odor control, abatement and mitigation plan prepared by a certified environmental engineer or certified environmental professional with demonstrated experience in the area of marijuana odor mitigation.**

**6. Conditions**

These conditions, limitations, and safeguards may address but are not limited to:

- d. Hours of operation
- e. Landscaping and site amenities
- f. **Requirements for noise and odor mitigation measures and monitoring**

Or to act in any manner relating thereto.

**SECTION 8.10 – RECREATIONAL MARIJUANA**  
**Proposed Amendments**  
**SAC – 2-20-19**

To see if the Town will vote to amend the Zoning Bylaw as follows; unless otherwise noted, new text is shown in **bold** and deleted text is shown as stricken through:

Section 8.10 RECREATIONAL MARIJUANA: Amend Section 8.10.E. and 8.10.J. to read as follows:

E. General Requirements and Conditions for all Recreational Marijuana Establishments

1. All ~~non-exempt~~ RMEs shall be contained within a permanent building or structure. No RME shall be located inside a building containing residential units or inside a movable or mobile structure such as a van, trailer, cargo container or truck.

J. Special Permit Requirements

5. The RME special permit application shall include the following:
  - h. A comprehensive noise mitigation plan prepared by a qualified acoustical consultant (whose qualifications include Institute of Noise Control Engineering (INCE) board certification or equivalent experience)**
  - i. A comprehensive odor control, abatement and mitigation plan prepared by a certified environmental engineer or certified environmental professional with demonstrated experience in the area of marijuana odor mitigation.**
7. Conditions

These conditions, limitations, and safeguards may address but are not limited to:

- d. Hours of operation
- e. Landscaping and site amenities
- f. Requirements for noise and odor mitigation measures and monitoring**

Or to act in any manner relating thereto.

PLANNING AND ECONOMIC DEVELOPMENT BOARD

## **SITE PLAN REVIEW – Proposed amendments**

**February 22, 2019**

Amendments offered by Barbara Saint Andre & Susy Affleck-Childs

Article \_\_\_\_

To see if the Town will vote to amend portions of Section 3.5 the Zoning Bylaw, Site Plan Review, as set forth below; unless otherwise noted, new text is shown in **bold** and deleted text is shown as stricken through:

Amend Section 3.5.3. Applicability A. as follows:

- A. Site plan review shall apply to the following:
  - 3. Administrative Site Plan Review - New construction or any alteration, reconstruction, renovation or change in use of any multi-family, commercial, industrial, institutional or municipal building or use which is not subject to Major or Minor Site Plan Review but which involves one or more of the following:
    - a. The addition of less than 1,000 square feet of gross floor area ~~or~~
    - b. Exterior alteration ~~/ or~~ renovation of an existing building or premises, visible from a public or private street or way which includes any of the following:
      - i) installation or replacement of awnings
      - ii) change in a building's exterior surface material
      - iii) rearrangement or addition of windows or doors
      - iv) façade reconstruction ~~/ or~~ replacement
      - v) roofing if the Building ~~Inspector~~ **Commissioner** determines the roof to be a distinctive architectural feature of the building
    - c. The redesign, alteration, expansion or modification of an existing parking area ~~or the creation of a new parking area~~ involving the addition of up to nine new parking spaces
    - d. The creation of a new parking area involving the addition of one to nine parking spaces**
    - ~~d.e.~~ The redesign of the layout/configuration of an existing parking area of ten to nineteen parking spaces
    - e.f.** A change in curb cuts ~~/ or~~ vehicular access to a site from a public way
    - f.g.** Installation or alteration of sidewalks and other pedestrian access improvements
    - g.h.** Removal of hedges, living shrubs, and trees greater than four inches in caliper
    - h.i.** Installation of fencing or retaining walls
    - i.j.** Outdoor placement of cargo containers, sheds, membrane structures, equipment and materials

j.k. Removal, ~~disturbance, or~~ alteration of 5,000 – 10,000 square feet of impervious surface

k.l. The conversion of a residential use to a permitted non-residential or mixed-use

l.m. Installation of a wireless communication facility as defined in this *Zoning Bylaw*

n. **Installation of a bus stop shelter**

4. ~~Consideration of activities subject to administrative site plan review may be advanced to minor or major site plan review status at the determination of the Building Inspector or the Board when the collective scope and/or quantity of the proposed activities is substantial enough to merit review by the Board at a public meeting.~~

**5. 4. Relationship to Other Permits and Approvals.**

d. Site plan projects may also be subject to other Town bylaws and/or permit requirements including but not limited to a Stormwater Management and Land Disturbance Permit, Scenic Road Work Permit, Order of Conditions, Water and Sewer connection permits, and a Street Opening/Roadway Access Permit.

Amend Section 3.5.4. Procedures for Site Plan Review as follows:

**F. The Building Commissioner shall review major and minor site plan applications and all associated submittals for compliance with the *Zoning Bylaw* and provide written communication to the Board, prior to the first public hearing date. The report shall identify any current zoning violations existing at the site to be addressed through the site plan review process. Said communication may include, but not be limited to the Building Commissioner's findings and any questions or concerns that could be clarified during the site plan review process so as to avoid the need for subsequent site plan modifications after project approval and plan endorsement.**

~~F.~~ **G.** The Board shall review and act upon applications for major and minor site plan review, requiring such conditions as necessary to satisfy the Site Plan Review Standards under Section 3.5.5 B. below, and notify the applicant of its decision. The decision shall be by majority vote of the membership, shall be made in writing and shall be filed with the Town Clerk within ninety days of the date of application for Major Site Plan Review, or sixty days of the application date for Minor Site Plan Review. The applicant may request, and the Board may grant by majority vote of the membership, an extension of the time limit set forth herein.

~~G.~~ **H.** The Board may approve a major and minor site plan or approve it with conditions, limitations, safeguards and mitigation measures or deny a site plan only if the plan does not include adequate information as required by the Site Plan Rules and Regulations, or if the plan depicts a use or structure so contrary to health, safety and welfare of the public that no set of conditions would render the project tenable.

**I. In its site plan decision, the Board may require reasonable mitigation measures to offset adverse impacts of the development on the community, including:**

a. **Requirements for off-site improvements up to a maximum value of six percent of the total development cost of the proposed project to improve the capacity and safety of roads, intersections, bridges, pedestrian access, water, sewer, drainage,**

**Commented [BSA1]:** Does this limit the statement at the beginning of this section?

and other public facilities and infrastructure including traffic signals/ and controls, or municipal services, sufficient to service the development project. The total development cost shall mean the total of the cost or value of land and all development related improvements and shall be determined on the basis of standard building or construction costs published in the *Engineering News Record* or other source acceptable to the Board for the relevant type of structure(s) and use (s).

- b. Donation and/or dedication of land for right-of-way to provide for roadway and/or intersection widening or improvements.
- c. Unless the Board determines that safe pedestrian travel is already provided to the site, sidewalks shall be provided along the entire frontage of the subject property along existing public ways, including the frontage of any lots held in common ownership with the parcel(s) within five years prior to the submission of the application for site plan review and approval. In those instances where the Board determines that sidewalk construction is not feasible or practical, the Applicant will fund sidewalk construction elsewhere in the community. This may be accomplished either by constructing an equivalent length of sidewalk elsewhere in the community as authorized by the Department of Public Works or making a payment in lieu of sidewalk construction to the Town, or a combination of both.

#### **H. J. Procedures for Administrative Site Plan Review**

- a. The Board's designee **may designate one person or an Administrative Site Plan Review Team, which** shall review and act on applications for administrative site plan review and may require conditions as necessary to satisfy the Administrative Site Plan Review Standards.
- b. **Applications for Administrative Site Plan Review shall be provided to the Board.**
- c. Consideration of activities subject to administrative site plan review may be advanced to minor or major site plan review status at the determination of the Building ~~Inspector~~ **Commissioner, or the Board, or the Administrative Site Plan Review Team** when the collective scope and/or quantity of the proposed activities is substantial enough to merit review by the Board ~~at a public meeting.~~

Amend Section 3.5.6. Appeal as follows:

- B. Any person aggrieved by an administrative site plan decision may appeal to the Planning and Economic Development Board **within twenty days of the date the decision is filed with the Town Clerk.**

Add a new Section 3.5.7 Lapse as follows:

#### **3.5.7 Lapse**

Site plan approval shall lapse within two years, which shall not include such time required to pursue or await the determination of an appeal under G.L. c. 40A, § 17 or this bylaw, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause, or, in the case of a site plan approval for construction, if construction has not begun by such date except for good cause.

Or act in any manner relating thereto.

PLANNING AND ECONOMIC DEVELOPMENT BOARD

**Proposed Amendments to Parking Section of ZBL  
Ted Brovitz (Oak Grove Zoning Consultant) and SAC  
2-22-19**

ARTICLE \_\_\_\_

To see if the Town will vote to amend portions of Section 7.1.1 of the Zoning Bylaw, Off-Street Parking and Loading, as set forth below; unless otherwise noted, new text is shown in **bold** and deleted text is shown a stricken through.

**7.1.1. Off-Street Parking and Loading**

A. ~~Purposes. The purposes of this Section 7.1 are to ensure the availability of safe and convenient vehicular parking areas; to encourage economic development; to promote safety for pedestrians, bicyclists, motor vehicle occupants, and property and business owners; to reduce impervious surfaces; and to protect adjoining lots and the general public from nuisances and hazards associated with off-street parking areas.~~ **The purposes of this Section 7.1.1 are as follows:**

- 1. To ensure the availability of safe and convenient vehicular parking areas for existing and new development.**
- 2. To minimize excessive and inefficient off-street parking lots that result in unneeded paved impervious surfaces and lost opportunities to develop new buildings that expand the tax base.**
- 3. To promote safety for pedestrians, bicyclists, motor vehicle occupants, and property and business owners.**
- 4. To protect adjoining lots and the general public from nuisances and hazards associated with off-street parking areas.**
- 5. To encourage the use of public transportation, bicycling, and walking in lieu of motor vehicle use when a choice of travel mode exists.**
- 6. To minimize the impact of sidewalk interruptions and conflict points on the walkability of the public realm.**

**J. Reduced Parking.** The number of parking spaces required pursuant to Table 3 may be reduced by special permit from the Planning and Economic Development Board, subject to the provisions herein. Where the Board of Appeals is the special permit granting authority for the proposed use, the Board of Appeals shall have the authority to administer this Section.

2. The applicant shall demonstrate to the Board's satisfaction that a reduction is warranted due to circumstances such as but not limited to:
  - a. **Potential for Shared Parking** - Peak parking needs generated by the proposed uses occur at different times.
  - b. Demographic or other characteristics of site users.
  - c. For a nonresidential development, the applicant agrees to participate in a transportation demand management program.

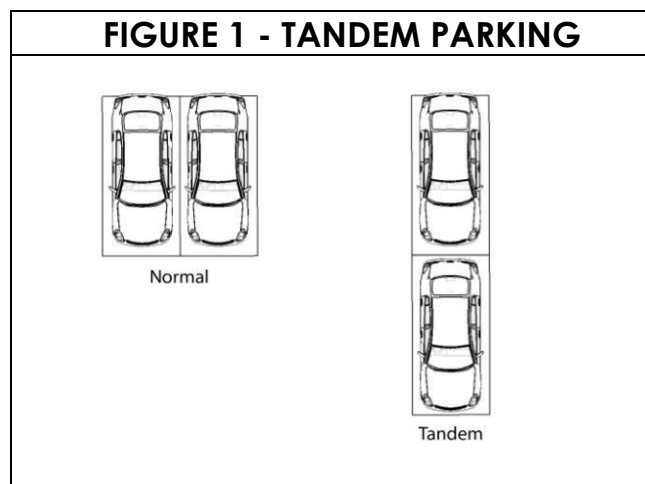
- d. The extent to which the applicant's proposal accommodates other means of transportation to or circulation within the site, such as sidewalks or bicycle racks, or safe and convenient pedestrian walkways between buildings in a multi-building development.
  - e. Safe, convenient forms of pedestrian access between the proposed development and nearby residential uses.
  - f. The presence of a public or private parking lot within 400 feet of the proposed use.
  - g. The availability of legal on-street parking.
  - h. The availability in a residential or mixed use development project of an active car-sharing program for residents and/or employees where cars for the car-share program are available on the site or within a 700-foot walking distance of the site.**
2. The Board may grant a special permit for reduced parking only upon finding that:
- ~~h.~~**a.** The reduced number of parking spaces is consistent with the general purposes of this Section 7.1.1.
  - ~~i.~~**b.** The proposed number of parking spaces will be sufficient for the proposed uses.
  - ~~j.~~**c.** The decrease in required off-street parking is supported by a parking analysis prepared by a registered professional engineer. Such analysis shall consider existing and proposed uses on the site; rate of parking turnover for various uses; expected peak traffic and parking loads for various uses based on customary hours of operation; availability of public transportation; industry parking standards for various uses; and other factors.

#### **K. Special Parking Types and Standards.**

1. **Valet Parking.** By special permit, the Board may allow valet parking if the building is pre-existing, the use is for food or entertainment, and where there is no physical means of providing the required number of parking spaces on the lot where the building and use are located. The required number of minimum or maximum spaces continue to apply for valet parking but parking spaces do not require individual striping and may be permitted on-site or off-site as a means of satisfying the applicable off-street parking requirements where:
  - a. A lease, recorded covenant, or other comparable legal instrument, executed and filed with the Town of Medway and Norfolk County Registry of Deeds, guaranteeing long term use of the off-site accessory parking area is provided to the Board.
  - b. An attendant is present at all times when the lot is in operation.
  - c. An equivalent number of valet spaces are available to replace the number of required off-street parking spaces.
  - d. The design of the valet parking area will not cause queuing in a vehicular travel lane.

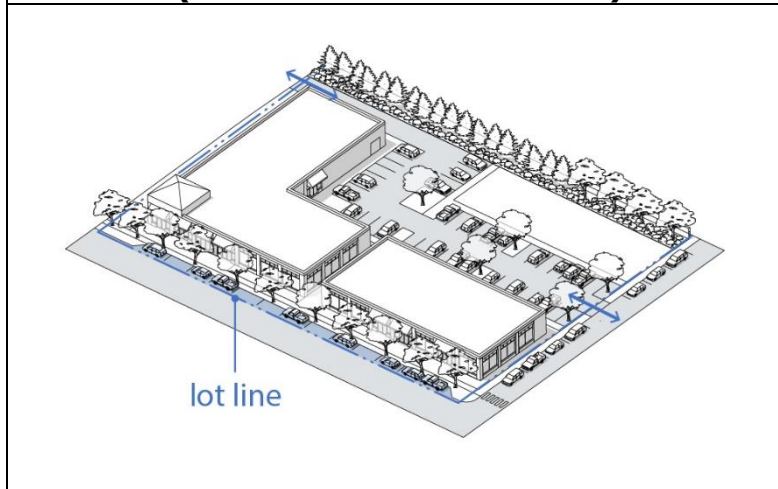


2. **Tandem Parking.** By special permit, the Board may allow tandem parking under the following conditions:
- a. To be used to meet parking requirements for residential units only. Tandem parking means two vehicles only.
  - b. Tandem spaces shall be assigned to the same dwelling unit.
  - c. Tandem parking shall not be used to provide guest parking.
  - d. Two parking spaces in tandem shall have a combined minimum dimension of 9 feet in width by 30 feet in length.
  - e. Up to 75% of the total off-street parking spaces provided may incorporate tandem parking.



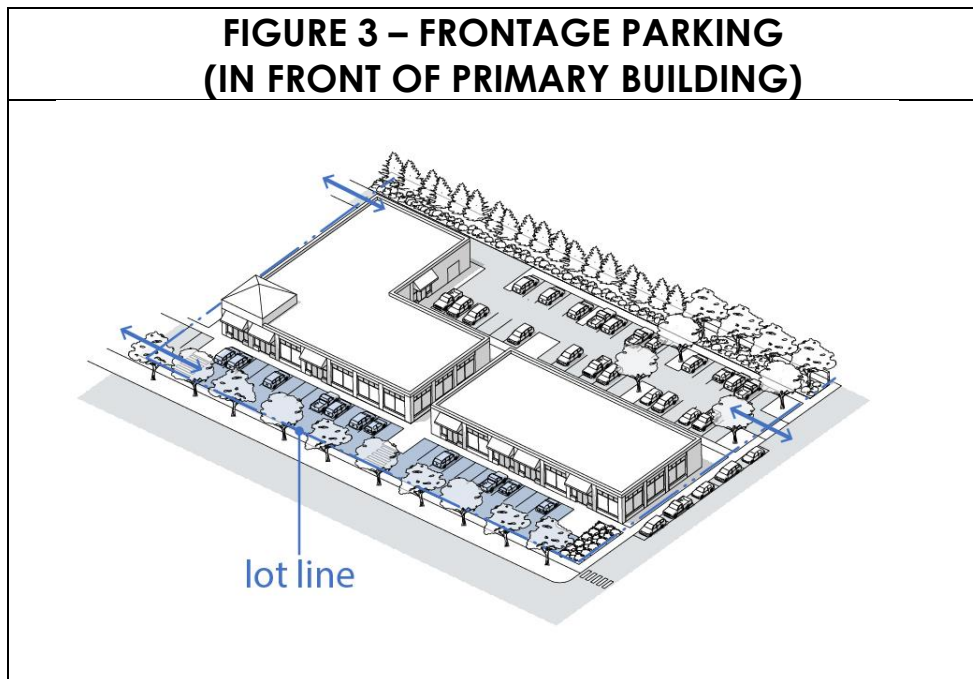
3. **Street Side Parking.** By special permit, the Board may allow parallel or angled parking provided on a privately-owned lot directly adjacent to the public street right-of-way in combination with a minimum five foot wide planting strip with street trees planted 40 feet on center, and a five foot minimum concrete sidewalk connecting to public sidewalks on abutting lots and to the primary building on-site. These parking spaces shall be privately owned but accessible to the public. These parking spaces effectively function as on-street parking.

**FIGURE 2 - STREET SIDE PARKING  
(ON FRONT PROPERTY LINE)**



3. **Frontage parking.** By special permit, the Board may allow a limited amount of off-street surface parking to be placed between a public street and the street facing façade of a primary building. Where this is permitted by the Board, the parking area will be setback a minimum of twenty feet from the street line and streetscape treatments including street trees, landscaping, and a minimum 5-foot sidewalk will be placed adjacent to the street line. The sidewalk shall also be connected to the front door of the primary building by a dedicated pedestrian connection. The portion of the parking lot located in front of the primary building shall be limited to one double row of vehicles and associated parking aisle.

**FIGURE 3 – FRONTAGE PARKING  
(IN FRONT OF PRIMARY BUILDING)**



4. **Structured Parking.** By special permit, the Board may allowed structured parking.
- a. **Permitted Types.** Off-street parking structures may include a private garage or carport, an above-ground parking structure, or an underground parking structure.
  - b. **Access.** Pedestrian access to structured parking must lead directly to a public sidewalk and to the primary building. Structured parking may also be attached directly to the primary building allowing pedestrians to enter directly into the building.
  - c. **Design and Construction.** The street facing facade of any story of a building occupied by motor vehicle parking must be designed as follows:
    - 1) Fenestration and facade openings must be vertically and horizontally aligned and all floors fronting on the facade must be level (not inclined).
    - 2) The facade must include windows of transparent or translucent, but non-reflective, glass or openings designed to appear as windows for between twenty percent and fifty percent of the wall area of each floor.
    - 3) Windows must be back-lit during evening hours and internal light sources must be concealed from view from public sidewalks.
    - 4) The facade area masking the floors occupied by motor vehicle parking must be seamlessly integrated into the architectural design of the building's facade.

And to add the following definitions in alphabetical order to Section II DEFINITIONS:

**Shared Parking** – The joint use of a parking area or facility for more than one use at different times.

**Structured Parking** - A building or structure consisting of more than one level and used for the temporary parking of motor vehicles.

**Tandem Parking** - A parking space that is located after or behind another in a lengthwise fashion. The space is accessed only by passing through another parking space from a street, lane, drive aisle or driveway.

**Frontage Parking** – Off-street surface parking spaces placed between a public street and the street facing façade of a building to encourage customers with their apparent convenience.

**Valet Parking** - A service offered by a business whereby an attendant parks and retrieves patrons' vehicles.

Or to act in any manner relating thereto.

## **ACCESSORY USES AND INCIDENTAL ACCESSORY OBJECTS**

**2-21-19**

### **ARTICLE :**

To see if the Town of Medway will vote to amend the Zoning Bylaw, Section 6.3 Accessory Building and Structures by adding Paragraphs F., G., and H. as follows:

- F. No part of any accessory building or structure shall be located closer than five feet to any principal building or structure unless it is attached to and forms part of the principal building or structure.**
- G. No accessory building or structure shall be constructed and occupied or an accessory use started on any lot prior to the time construction begins on the principal building or structure or use to which it is accessory. Conversely, no accessory building or structure shall continue to be used or occupied after a principal building or structure has been vacated or removed from the lot.**
- H. The setback requirements specified in TABLE 2 DIMENSIONAL AND DENSITY REGULATIONS shall not apply to bus stop shelters.**

Or to act in any manner relating thereto.

PLANNING AND ECONOMIC DEVELOPMENT BOARD

## Susan Affleck-Childs

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**From:** tag70c3@verizon.net  
**Sent:** Tuesday, February 26, 2019 10:19 AM  
**To:** Susan Affleck-Childs; steven.bouley@tetrattech.com  
**Subject:** Re: Medway Community Church

Susy/Steve.....

At the request of Carl Shultz (MCC) I made another visit to the MCC site this morning, meeting with Matt Barry (T & H) and Carl to review a couple tree questions. Specifically we reviewed the situation with a large oak tree on the Slocumb Place side of the project as well as noting a couple trees on the southwest side of the project that came down in last night's wind. Additionally, we discussed a couple more items and all are explained in bullets below...

- Large Oak tree on Slocumb Street side completely on MCC property (along with a dead tree in front of it) will need to come down. While we had identified it as a tree worth saving, it was destined to come down to accommodate the 24ft entrance roadway and with little wiggle room that now looks like the deal. Please note, the tree does not appear on the landscaping plan so I have to agree with the removal.
- Right where the property line takes a turn west in the SW portion of the project a couple large pines covered in ivy came down in the wind.... not much can be done other than to finish removal.... just noting it for the record.
- There was a question regarding placement of the silt sack and I asked Matt to all Steve to discuss.... while what Matt is saying makes sense, I feel it to be outside my area of responsibility/expertise.
- We discussed the need for the stone wall fill-in at the driveways to match existing on both sides.... everyone agrees that is the plan... goal is to make walls look like they have always been there.
- Item of Interest.... several neighbors inquired about taking some of the oak logs for firewood and leftover stones from from stone walls to enhance stone walls on their property.... Matt has made arrangements to pile those things where they can be accessed as long as the neighbors do so after work hours to avoid any issues with the heavy equipment and activity on site.

Still looks like everything is progressing as planned/conditioned and approved.... please feel free to share as appropriate.

TAG

**From:** tag70c3@verizon.net [mailto:tag70c3@verizon.net]  
**Sent:** Monday, February 25, 2019 5:36 PM  
**To:** Susan Affleck-Childs  
**Cc:** Mary Liscombe; Steve Bouley; Matthew Barry (mbarry@tataandhoward.com); Kim Pecorella  
**Subject:** Re: Medway Community Church

Hi Susy....

I revisited the site at 3:30p this afternoon.... Rodenhiser has been working all day and has been very respectful of the lines/conditions/agreements in the decision and reviewed in this morning's site walk and plan review. The only big trees cut in the buffer were a couple of dead trunks we tagged.

They have the silt sacks on site and will be installing along with the temp fence soon.

From my perspective, while it looks a little sparse, they are on point with the decision and plans.

Tom

On Feb 25, 2019 4:13 PM, Susan Affleck-Childs <[sachilds@townofmedway.org](mailto:sachilds@townofmedway.org)> wrote:

Hi Mary,

Thanks for your call expressing concern about tree removal in the 15' buffer area along the western edge of the Medway Community Church project.

I have attached both the site plan decision and the endorsed site plan for the MCC parking lot. Sheet C-7 of the site plan is probably the most helpful.

The site plan shows a 15' buffer/setback area between the western property line of the church with you and your Highland Street neighbors and where the western edge of the new MCC parking lot begins. Per the site plan decision, "Most of the trees greater than 18 inches in diameter within the 15-foot buffer area around the perimeter of the site are to be retained." The lower and smaller scrubby trees and plantings can be removed. Within the 15' buffer area will be installed a 6' high fence, set 10 feet easterly inside the property line along with a 5' landscape area strip between the fence and the parking lot.

I hope this information is helpful to you.

Best regards,

**Susan E. Affleck-Childs**  
**Planning and Economic Development Coordinator**  
**Town of Medway**  
**155 Village Street**  
**Medway, MA 02053**  
**508-533-3291**