



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

February 26, 2019

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

Decision Date: February 26, 2019

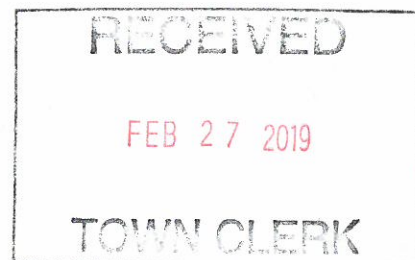
Name/Address of Applicant: Ellen Realty Trust
730 Main Street, Suite 2A
Millis, MA 02054

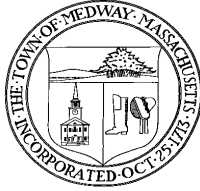
Name/Address of Property Owner: Ellen Realty Trust
730 Main Street, Suite 2A
Millis, MA 02054

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

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

Zoning District: East Industrial





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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 February 26, 2019, on a motion made by Bob Tucker and seconded by Rich Di Iulio, voted to APPROVE with CONDITIONS as specified herein a recreational marijuana establishment special permit for 2 Marc Road in Medway, MA.

The vote was approved by a vote of four in favor and none opposed.

Planning & Economic Development Board Member	Vote
Richard Di Iulio	Yes
Matthew Hayes	Absent
Thomas A. Gay	Yes
Andy Rodenhiser	Yes
Robert Tucker	Yes

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 and 26, 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 for 2 Marc Road and final site plan 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, the Town's noise consultant, 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 dated February 12, 2019 from Michael Lannan, of TechEnvironmental, Inc., the Board's odor consultant and email communications dated February 20, 2019 between Planning and Economic Development Coordinator Susan Affleck-Childs and Michael Lannan of TechEnvironmental.
 12. Uvonair_CD_Brochure 2017 (existing air filtration system at 2 Marc Road)
- 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
- Ellen Rosenfeld, Applicant.
- Dan Merrikin, Legacy Engineering, project engineer for the Applicant – Commentary throughout the public hearing process and comments on multiple drafts of the draft special permit decision.
- 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 (some with attachments) 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; email dated February 19, 2019; and regular attendance and commentary throughout the public hearing process.
- Email communications dated December 10, 2018 between 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 resident 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; email dated January 23, 2019 with attachment; emails dated February 26, 2019 with attachments; and regular attendance and commentary throughout the public hearing process.
- Resident Jeanette Gibson, 45 Coffee Street.
- Selectman Dennis Crowley.
- Town Administrator Michael Boynton.
- Email from attorney Susan Murray dated January 29, 2019
- Michael Lannan, TechEnvironmental, Inc., odor consultant for the Board.

VI. FINDINGS

The Planning and Economic Development Board, at its meeting on February 26, 2019, on a motion made by Bob Tucker and seconded by Rich Di Iulio, 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 four in favor and none 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.
- G. As specified in the conditions of approval and as stated during the public hearing, the Applicant has agreed to install additional noise mitigation systems within the facility to address the above referenced noise concerns. The Applicant stated that the existing chiller equipment on the roof of the 2 Marc Road facility will be removed and relocated to the ground on the premises within a structure.

(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 TechEnvironmental, Inc. in a letter dated February 12, 2019.
- C. As specified in the conditions of approval and as stated during the public hearing, the Applicant has agreed to install additional odor mitigation systems within the facility to address the above referenced odor concerns.
- (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 and implement a noise mitigation plan. Further, the Board is also requiring the Applicant to prepare and implement an odor control plan. The Building Commissioner, 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 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 Commissioner, 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 31st 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.
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 Commissioner, 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.

With respect to nearby residential uses, measurements shall be taken at the nearest residential line to the north, south (behind the Coffee Street residents), southwest (near 35 Coffee Street), and west (on the County Layout/private way that abuts the industrial park to the west of 4 Marc Road).

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 require the Applicant to implement additional noise mitigation measures if the facility continues to be non-compliant with the Bylaw.

5. Approximately six months after beginning operations under this Special Permit, the Applicant shall provide a supplemental noise study. These measurements shall be carried out to the same standards and methods as the initial study.

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.

The Applicant shall submit that study to the Building Commissioner, 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.

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 Commissioner, Health Agent and the Board.
7. The Building Commissioner, 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 provisions of Section 7.3.D of the *Zoning Bylaw*.
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 Board of Health agent, and the 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.
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 Commissioner 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 Commissioner.

5. 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 Commissioner, Health Agent and the Board.
 6. The Building Commissioner, 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 Commissioner, 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 Commissioner 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 Commissioner 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**

APPROVED by the Medway Planning & Economic Development Board: February 26, 2019

AYE:

NAY:

ATTEST:

Susan E. Affleck-Childs
Planning & Economic Development Coordinator

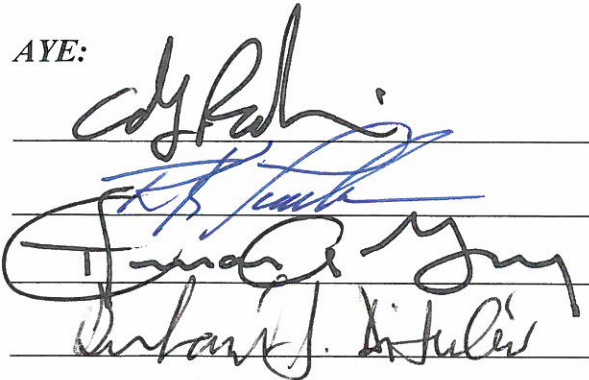
Date

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 Commissioner 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

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

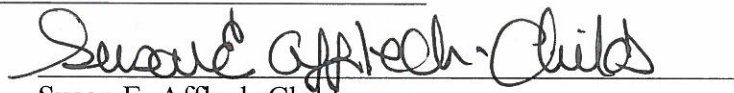
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Susan E. Affleck-Childs
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