

Board Members

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TOWN OF MEDWAY COMMONWEALTH OF MASSACHUSETTS

PLANNING AND ECONOMIC DEVELOPMENT BOARD

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20 Day Appeal
October 24, 2022

Major Site Plan, Groundwater Protection Special Permit and Reduced Parking Special Permit DECISION APPROVED with Conditions

Decision Date: September 27, 2022

Name/Address of Applicant/Permittee

Phytopia, Inc.
25 Newbury Street
Peabody, MA 01960

Name/Address of Property Owner:

Medway Flower, LLC
990 Paradise Road
Swampscott, MA 01907

Location: 6 Industrial Park Road

Parcel Size: 4.24 acres

Assessors' Reference: 33 – 004

Zoning District: East Industrial
Groundwater Protection District (Mass DEP Zone II wellhead protection area)

Engineer: Chris Sparages, P.E.
Williams & Sparages LLC, Engineers, Planners and Surveyors
189 North Main Street – Suite 101
Middleton, MA 01949

Site Plan: *Industrial Park Road*, dated April 1, 2021, last revised May 13, 2022, prepared by Williams & Sparages LLC, Engineers, Planners and Surveyors to be further revised as specified herein before plan endorsement

The architectural drawings dated April 6, 2021, prepared by Anderson Porter Design of Cambridge, MA.

Members Voting: Matthew Hayes, Robert Tucker, Richard Di Iulio, and Jessica Chabot

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I. PROJECT DESCRIPTION - The Applicant seeks major site plan approval, a groundwater protection special permit and a reduced parking special permit pursuant respectively to Sections 3.5, 5.6.3, and 7.1.1 of the Medway *Zoning Bylaw* for the development of a marijuana cultivation, manufacturing, and processing business at 6 Industrial Park Road. NOTE – The Applicant previously applied for and received medical marijuana and adult use recreational marijuana special permits from the Board dated October 30, 2021. The subject property, located at 6 Industrial Park Road is located at the southeast corner of Industrial Park and Jayar Roads, is 4.24 acres (184,685 sq. ft.). The site presently includes an existing 53,128 sq. ft. industrial manufacturing building and paved areas which comprise 89,869 sq. ft. of the property (48.7% impervious).

The Applicant proposes to renovate and use the existing building and construct a 66,238 sq. ft., 2-story addition, both to be used for the cultivation, manufacturing, processing, and packaging of marijuana for medical use and adult recreational use and the delivery of such products off site to retail marijuana establishments in other communities. The planned scope of work includes interior renovations to the existing building, construction of the addition, improvements to the access/egress driveways, installation of curbing, parking area improvements, landscaping, lighting, installation of and improvements to stormwater drainage facilities, installation of noise and odor mitigation measures, and remediation of site contamination incurred by the previous owner. The planned work is shown on a plan titled *Industrial Park Road*, dated April 1, 2021, last revised May 13, 2022, prepared by Williams & Sparages LLC, Engineers, Planners and Surveyors of Middleton, MA.

The property also includes wetlands resources which are under the jurisdiction of the Medway Conservation Commission which issued an Order of Conditions and a Land Disturbance Permit pursuant to Article XXVI of the *Medway General Bylaws* on June 27, 2022.

The Board has been briefed on the hazardous waste incident which occurred prior to the Applicant's ownership of the Property for which the Applicant is actively pursuing clean-up in accordance with State law and MA Department of Environmental Protection regulations. Environmental clean-up will be ongoing under the guidance of the Applicant's Licensed Site Professional with oversight by the Town boards and commissions with jurisdiction over the project, agreeing in writing in advance on each step in the clean-up process.

Phasing Plan – The Applicant intends to build out the project in two phases as follows:

Phase 1

- 1) Renovate existing building.
- 2) Install new water services for fire and domestic flow.
- 3) Install new 6-inch water line to new hydrant on east side of building.
- 4) Install new sewer service.
- 5) Install new electric service, transformer, utility meter & dual breaker station, and generator.
- 6) Install the following stormwater infrastructure: SWMA2P, SWMA1P, CDS1515-5, CDS1515-3, DMH6, DGCB2, DMH4, CB1, CB7, DMH10, DMH14, DGCB8, DGCB11, JFS10404-12, and JFS10406-9. This includes all connecting drainage piping.
- 7) Construct the cooling tower concrete pad and cooling tower for the Phase 1 Building.
- 8) Install landscape improvements on the south side and west side of the Phase 1 Building.
- 9) Install binder course of pavement in all parking areas and sidewalks.
- 10) Install as much bituminous curbing as needed to ensure that stormwater is directed to the drainage structures. All rims of drainage structures to be set at binder course of pavement in Phase 1.

- 11) Install fencing along 24 Jayar Road shared property line.
- 12) Install dumpster with fencing.
- 13) Install CO2 storage tank enclosure with fencing.
- 14) Future additional building pad to be treated with temporary seeding.
- 15) Install parking lot light poles and building mounted lighting.
- 16) Complete all work within jurisdictional areas of the Conservation Commission, including loam, seed, and plantings.

Phase 2 - Construction to begin within 24 months of the issuance of a certificate of occupancy for Phase 1.

- 1) Construct new building addition.
- 2) Install second cooling tower.
- 3) Install electric service to EV Parking Spaces and EV Charging Stations.
- 4) Install the following stormwater infrastructure: SWMA3P (Rain Garden), SWMA4P (subsurface infiltration basin for addition), and DMH13.
- 5) Raise all drainage structures and install finish pavement and remaining curbing.
- 6) Install remaining Landscape Improvements.
- 7) Install transformer and generator.
- 8) Install remaining building mounted lighting.

II. VOTES OF THE BOARD

A. **MAJOR SITE PLAN** - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board's consultants and Town staff, the Medway Planning and Economic Development Board, on September 27, 2022, voted to APPROVE with CONDITIONS and WAIVERS from the *Site Plan Rules and Regulations* as specified herein, a site plan titled *Industrial Park Road*, dated April 1, 2021, last revised May 13, 2022, prepared by Williams & Sparages LLC, Engineers, Planners and Surveyors of Middleton, MA with associated attachments including architectural plans by Anderson Porter dated April 6, 2021, to be further revised as specified herein.

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

B. **REDUCED PARKING SPECIAL PERMIT** - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board's consultants and Town staff, the Medway Planning and Economic Development Board, on September 27, 2022, voted to APPROVE with CONDITIONS a reduced parking special permit for 6 Industrial Park Road, pursuant to Section 7.1.1 of the Zoning Bylaw.

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

C. **GROUNDWATER PROTECTION SPECIAL PERMIT** - After reviewing the application and information gathered during the public hearing and review process, including statements of the Applicant and its representatives, comments offered by the public, and comments provided by the Board's consultants and Town staff, the Medway Planning and Economic Development Board, on September 27, 2022, voted to APPROVE with CONDITIONS a groundwater protection special permit for 6 Industrial Park Road pursuant to Section 5.6.3 of the Zoning Bylaw.

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

III. PROCEDURAL HISTORY

- A. May 12, 2021 – Major site plan approval and two special permit applications were filed with the Board, one for a Groundwater Protection Special Permit and one for a Reduced Parking Special Permit.
- B. May 19, 2021– Public hearing notice was filed with the Town Clerk and posted at the Town of Medway web site.
- C. May 19, 2021 - Public hearing notice was mailed to abutters by certified sent mail.
- D. May 24 and June 1, 2021 - Public hearing notice was advertised in *Milford Daily News*.
- E. June 8, 2021 - Public hearing commenced. The public hearing was continued to June 22, July 13, July 27, August 10, August 24, September 28, October 26, November 23, and November 30, 2021 and January 11, February 8, March 8, April 12, April 26, May 24, July 12, July 26, August 9, August 23, and September 27, 2022 when a decision was rendered, and the hearing was closed.

IV. INDEX OF DOCUMENTS

- A. The following documents were provided at the time the site plan and special permit applications were filed with the Board:
 - Major site plan application dated 4-30-21 and groundwater protection special permit application and reduced parking special permit application both dated 5-1-21, along with special permit applications for Recreational (Adult Use) Marijuana Establishment and Non-Retail Registered Medical Marijuana Facility Special Permit applications dated 4-30-21 with Project Descriptions
 - Phytotherapy Odor Control Approach (undated), received 5-12-21, prepared by BLW Engineers
 - 4-12-21 Letter from Andy Carballeira of Acentech regarding the noise mitigation plan
 - 5-10-21 Letter from Kevin Doherty of Knoll Environmental regarding groundwater contamination
 - 4-9-21 Interest Disclosure Attestation for Phytopia
 - Site Plan dated 4-1-21 by Williams & Sparages LLC, Engineers Planners and Surveyors of Middleton, MA
 - Parking Evaluation dated 5-12-21 from MDM Transportation Consultants
 - *Stormwater Report for 6 Industrial Park Road*, dated April 1, 2021, prepared by Williams & Sparages LLC of Middleton, MA
- B. During the course of the review, the following additional materials were submitted to the Board by the Applicant and its representatives and consultants:
 - Architectural drawings dated 4-6-21 prepared by Anderson Porter Design of Cambridge, MA.
 - Architectural drawings updated 6-6-21 prepared by Anderson Porter Design of Cambridge, MA.
 - Updated Noise Mitigation Plan by Acentech, dated 7-9-21

- Parking Memorandum dated 7-8-21 from Attorney Ted Cannon in support of reduced parking special permit application
- Letter from Attorney Ted Cannon dated 7-22-21 in response to the 7-1-21 Tetra Tech parking and traffic review
- Memorandum from Erik Gath, BLW Engineers, Inc. dated 7-9-21 in response to the 6-16-21 Straughan Forensic odor mitigation review.
- Groundwater protection district special permit memorandum from Attorney Ted Cannon dated 8-5-21
- Email from Andy Caballeria of Acentech, dated 7-20-22 responding to Noise Control Engineering review letter dated 7-7-21
- Memorandum dated 7-27-21 from Robert Michaud and Dan Dumais, MDM Transportation Consultants in response to Tetra Tech review letter dated 7-1-21
- Email from Dan Dumais, MDM Transportation Consultants, dated 8-11-21 regarding the Fire Department's review of turning requirements on the site.
- Letter dated 8-18-21 from Attorney Ted Cannon regarding chemical and materials expected to be used for business operation
- Letter dated 9-21-21 from Attorney Ted Cannon re: disposal of plant waste
- Updated site plan dated 10-12-21 by Williams & Sparages LLC, Engineers Planners and Surveyors.
- Letter dated 10-12-21 to the PEDB from Civil Engineer Chris Sparages, P.E. in response to the 6-8-21 technical review letter from Tetra Tech.
- Email dated 10-18-21 from Attorney Ted Cannon regarding staff's request for information on the Applicant's policies/procedures for the transfer, acquisition, or sale of medical marijuana between approved RMMF's in compliance with 105 CMR 725.105(b) (2).
- Lease Agreement between Medway Flower, LLC (property owner) and Phytotherapy, LLC for use of the premises at 6 Industrial Park Road.
- Email dated 11-30-21 from Attorney Ted Cannon re: draft marijuana special permit decision
- Revised site plan dated 3-7-22 by Williams & Sparages LLC, Engineers Planners and Surveyors.
- Response letter dated 4-12-22 to the PEDB from Civil Engineer Chris Sparages, P.E. to address previously issued Tetra Tech site plan review comments dated 10-27-21.
- Revised site plan dated 5-13-22 by Williams & Sparages LLC, Engineers Planners and Surveyors.
- Requests for Waivers from the *Site Plan Rules and Regulations* dated 4-30-21.
- Email dated 5-17-22 from attorney Ted Cannon re: status report, with attachments
- Letter dated 8-9-22 from attorney Ted Cannon re: Cannabis Control Commission's requirement for an on-site generator
- Phasing Plan received 8-11-22 from Civil Engineer Chris Sparages, P.E.
- Impervious surface information received 8-16-22 from Civil Engineer Chris Sparages. P.E.
- Information on sizes of various uses within the buildings received 8-18-22 from project architect.
- Request for waiver from the *Site Plan Rules and Regulations*, dated September 26, 2022

- C. During the course of the review, additional materials were submitted to the Board by the Board’s consultants and Town staff:
- Plan review letter to the Board from Steve Bouley, P.E. Tetra Tech, dated 6-8-21
 - Odor mitigation plan review letter from Bruce Straughan, Straughan Forensic dated, 6-16-21
 - Reduced parking and traffic review letter to the Board from Courtney Sudak, P.E. Tetra Tech, dated 7-1-21
 - Noise mitigation review letter to the Board from Jeff Komrower, Noise Control Engineering, dated 7-7-21
 - Marijuana Cultivation Facility Parking Guidelines Summary prepared by Tetra Tech, dated 7-13-21
 - Noise mitigation review letter to the Board from Jeff Komrower, Noise Control Engineering, dated 8-2-21
 - Email from Fire Chief Jeff Lynch regarding Phytopia’s security and emergency plans, dated 8-4-21
 - Email from Fire Chief Jeff Lynch dated 8-11-21
 - Plan review letter to the Board from Steve Bouley, P.E., Tetra Tech, dated 10-27-21
 - Plan review letter to the Board from Steve Bouley, P.E. Tetra Tech, dated 4-22-22.
 - Review letter dated 5-6-22 from Medway DPW Director Pete Pelletier
 - Email dated 5-13-22 from Medway Building Commissioner Jack Mee
 - Review letter dated 5-20-22 from Deputy Fire Chief Mike Fasolino
 - Email dated 7-12-22 from Medway Building Commissioner Jack Mee
 - Order of Conditions dated 6-27-22 from Medway Conservation Commission
 - Design Review Committee letter dated 7-25-22
 - Plan review letter to the Board from Steve Bouley, P.E., Tetra Tech, dated 8-22-22.
- D. Citizen Comments
- Email dated June 7, 2021 (with attachments) from resident John Lally, 35 Coffee Street
 - Email dated June 21, 2021 (with attachments) from resident Leigh Knowlton, 14 Green Valley Road
 - Email dated November 29, 2021 (with attachments) from resident John Lally, 35 Coffee Street
- E. Other Documentation
1. Mullins Rule Certification dated August 2, 2021 for Board member Matthew Hayes pertaining to the July 27, 2021 hearing.
 2. Mullins Rule Certification dated August 24, 2021 for Board member Robert Tucker pertaining to the August 10, 2021 hearing.

- V. **TESTIMONY** – During the course of the public hearing, the Board heard and received verbal testimony from:
- Steve Bouley, P.E, Tetra Tech – Commentary throughout the public hearing process
 - Courtney Sudak, P.E. Tetra Tech – Commentary related to parking and traffic
 - Jeff Komrower of Noise Control Engineering LLC, the Town’s acoustic sound consultant

- Andy Carballeira, Acentech Inc., acoustic sound consultant for the Applicant.
- Chris Sparges, P.E., Williams & Sparages LLC, Engineers Planners and Surveyors, civil engineering consultant for the Applicant.
- Edward (Ted) Cannon, Doherty Dugan Cannon Raymond and Weil, P.C., attorney for the Applicant
- Brian Anderson of Anderson Porter Design, architect for the Applicant
- Kevin Doherty of Knoll Environmental LLC, environmental consultant for the Applicant
- Peter D’Agostino, Tenax Strategies, Inc. regulatory consultant for the Applicant
- Daniel Dumais, P.E. MDM Transportation Consultants, traffic consultant for the Applicant
- Former Norfolk County Sheriff Jerry McDermott and Retired State Police Major Pat Russolillo, security consultants for the Applicant
- Medway Conservation Agent Bridget Graziano
- Resident John Lally, 35 Coffee Street
- Resident Leigh Knowlton, 14 Green Valley Road
- Resident Maria Walzer, 11 Green Valley Road

VI. FINDINGS

A. **Site Plan Rules and Regulations Findings** – The Board shall determine whether the proposed development is in conformance with the standards and criteria set forth in the *Site Plan Rules and Regulations*, unless specifically waived. In making its decision, the Board makes the following findings in accordance with Section 204-8 of the *Site Plan Rules and Regulations*, as amended October 8, 2019. and Section 3.5 of the *Bylaw*:

- 1) **Has internal circulation, queuing and egress been designed such that traffic safety is protected, access via minor streets servicing residential areas is minimized, and traffic backing up into the public way is minimized?** *The plan has been thoroughly reviewed by Town officials and the Board’s Consulting Engineer. No access from minor streets is necessary or available, there is no backing onto a public way, and Industrial Park Road and Jayar Roads are adequate to safely handle the additional traffic from the new establishment.*
- 2) **Does the site plan show designs that minimize any departure from the character, materials, and scale of buildings in the vicinity as viewed from public ways and places?** *The proposed building is in an industrial style; its scale and materials are suitable for the site and use. The design has been positively reviewed by the Design Review Committee and is acceptable for its location. There are no particularly distinguished industrial buildings in the vicinity with which the proposed building renovation and new construction would conflict in terms of character, materials, and scale.*
- 3) **Is reasonable use made of building location, grading, and vegetation to reduce the visible intrusion of structures, parking areas, outside storage or other outdoor service areas (e.g., waste removal) from public views or from (nearby) premises residentially used and zoned.** *The subject property is centrally located within the East Industrial zone and is abutted on all sides by other industrial and business properties. The dumpster is located adjacent to the building and within the rear parking area in the southeastern portion of the site, well out of public view from Industrial Park Road and*

Jayar Road. Suitable provisions have been made to screen the dumpster. The landscape plan shows a landscape buffer along the southern property line to screen the building for the adjacent property at 4 Industrial Park Road. The entrances to the front and rear parking areas will be landscaped.

- 4) **Is adequate access to each structure for fire and service equipment provided?** *Access for fire and service equipment is provided with paved surfaces on three sides of the combined existing building and planned addition. The Fire Department has reviewed the proposed driveway and parking lot reconfiguration and the auto turn analysis provided by the Applicant's traffic consultant. The Fire Department has determined that its fire apparatus will be able to maneuver throughout the site. Further, at the request of the Fire Department, an additional hydrant has been added on the east side of the building at the back and is shown on Sheet C4.1 of the May 13, 2022 plan set.*
- 5) **Will the design and construction minimize, to the extent reasonably possible, the following environmental impacts?**
- a) the volume of cut and fill;
 - b) the number of trees to be removed with particular care taken with mature trees and root systems;
 - c) the visual prominence of man-made elements not necessary for safety;
 - d) the removal of existing stone walls;
 - e) the visibility of building sites from existing streets;
 - f) the impacts on waterways and environmental resource areas;
 - g) soil pollution and erosion;
 - h) noise.

The site plan and proposed stormwater drainage system have been rigorously reviewed by the Town's Consulting Engineer and the Conservation Commission which issued an Order of Conditions and Land Disturbance Permit on June 27, 2022. Appropriate soil pollution and erosion controls have been incorporated into the plan. The building will be highly visible from both Industrial Park Road and Jayar Road. However, the robust landscaping plan and building design have been reviewed and positively recommended by the Design Review Committee. No stone walls are being removed. The site is already heavily disturbed; the existing industrial building on the property was constructed in 1973. Since the site is located within a Groundwater Protection District, this Decision also includes a groundwater protection special permit to ensure that the project will not adversely affect groundwater.

The Applicant provided an initial (April 2021) and updated noise study and plan (July 2021) prepared by Acentech that were reviewed by the Board's noise consultant, Jeff Komrower of Noise Control Engineering for compliance with the Town's noise standards in effect at the time the project applications were submitted to the Town in May 2021. The updated noise predictions pertain only to Phase 1 of the project and do not consider any measure of acoustic shielding that would be provided from the Phase 2 building addition. The updated plan includes noise controls to meet the Town's noise limits at the property line nearest to the noise source for noise radiated continuously from the source between 10 PM and 7 AM. The projections also meet the MassDEP standards. The updated predicted noise levels at all adjacent residential receptors and property lines are at or below the Town of Medway's noise requirements and meet the Mass DEP

requirements. At all industrial property lines, overall noise levels are predicted to meet the Town's daytime and nighttime requirements.

- 6) **Is pedestrian and vehicular safety both on the site and egressing from it maximized?** *Because of its use as a marijuana cultivation facility, the building is not open to the general public. The entrances and egresses to the site and its parking facilities have been designed for safe operation and have been reviewed by the Board's consulting engineer. The site plan has been revised to have only one vehicular entrance from Industrial Park Road instead of two as originally proposed. A sidewalk connecting the rear parking area to the main entrance at the front of the building has been added to enable employees to walk safely from their cars to the building. The site plan shows the provision of bicycle racks to accommodate employees who may wish to cycle to work.*
- 7) **Does the design and will the construction incorporate, to the maximum extent possible, the visual prominence of natural and historic features of the site?** *There are no visually prominent natural or historic features on site.*
- 8) **Does the lighting of structures and parking area avoid glare on adjoining properties and minimize light pollution within the town?** *The lighting plan was reviewed by the Board's consulting engineer and the Permittee is required to comply with Section 7.1.2 of the Zoning Bylaw regarding Outdoor Lighting.*
- 9) **Is the proposed limit of work area reasonable and does it protect sensitive environmental and/or cultural resources? The site plan as designed should not cause substantial or irrevocable damage to the environment, which damage could be avoided or ameliorated through an alternative development plan or mitigation measures.** *The plan has been vigorously reviewed by both the Conservation Commission and the Planning and Economic Development Board and their consulting engineer and has been modified to address environmental concerns. The limit of work is reasonable, and the site design has evolved to protect sensitive environmental resources. The project has been reviewed by the Conservation Commission and an Order of Conditions has been issued. The installation of a stormwater management system reduces the current impacts of presently untreated stormwater discharge.*

Vote on Site Plan Findings - The Planning and Economic Development Board, at its meeting on September 27, 2022, voted to Approve the above noted Site Plan Findings regarding the major site plan application for 6 Industrial Park Road (the "Property"). The motion was approved by a vote of four in favor and none opposed.

B. Reduced Parking Special Permit Findings (Sub-Section 7.1.1.J. of the Zoning Bylaw) - The Board may grant a special permit for reduced parking, (not to exceed 30% of the minimum number of spaces required under Table 3 of the Zoning Bylaw for the specified use), only upon finding that the reduction is warranted.

- 1) The Applicant has provided a site plan showing parking areas to accommodate 92 vehicles including 4 handicapped spaces and 4 spaces to charge electric vehicles. Phase 1 of the project includes renovation of the existing building (53,128 sq. ft.) for use by approximately 53 employees. Phase 2 which includes the building addition will provide an additional 66,238+/- sq. ft of space. The project, when both phases are completed, will include 119,366 sq. ft. of space with 89,247 sq. ft. devoted to horticultural cultivation

space, and the remaining 30,089 sq. ft. will be used for office space, storage, processing and preparation, shipping and receiving, and various building systems.

- 2) The Applicant expects to have up to 90 employees working at the location once both Phase 1 and Phase 2 of the project are complete. However, the number of employees would be spread out over two shifts once Phase 2 is constructed and occupied with approximately 53-65 employees on the first shift and the remaining employees on the later shift.
- 3) Table 3 of the Zoning Bylaw does not include a parking standard for a marijuana cultivation and processing facility. The closest, somewhat similar parking standard is for “manufacturing” which requires 2 parking spaces for each employee plus 1 parking space for every 1,000 sq. ft. of building space. At final buildout, the Phytopia facility would have 119,336 sq. ft. and 90 employees; the total required number of parking spaces required by strict adherence to this manufacturing standard is 165. With the maximum possible 30% parking space reduction cap specified in the Bylaw, the maximum number of parking spaces could be reduced to 105.
- 4) The Applicant has requested that the Board determine that the Town’s Parking Table does not include a suitable parking standard applicable to a marijuana cultivation facility and that therefore, the 30% parking cap is also not applicable. NOTE - Table 3 indicates that industry parking standards or the most nearly comparable use in Table 3 may be used when a particular use is not specifically referenced in the Parking Table.
- 5) The Applicant, Town staff and traffic consultants have supplied information that the industry parking standard for marijuana cultivation facilities is 1 space per 1,000 sq. ft. of cultivation space. With this standard, 89 parking spaces would be needed for the cultivation portion of the building which the site can accommodate. The Board finds that the industry standard is the most appropriate measure for determining the minimum parking requirements for the facility.
- 6) The facility will not include retail sales, so there will be no customer traffic. Parking will be limited primarily to employees.
- 7) The Applicant has committed to coordinate shift times such that the parking limit is observed at all times and demand is eliminated during transition periods.
- 8) The parking information has been reviewed by Building Commissioner/Zoning Enforcement Officer Jack Mee who has provided an email dated 7-12-22 indicating that the proposed number of parking spaces should be adequate for this use.
- 9) The reduced number of parking spaces is consistent with the general purposes of Section 7.1.1 of the Zoning Bylaw, the primary ones being to ensure the availability of safe and convenient parking and to minimize excessive off-street parking areas that result in unneeded paved impervious surfaces.
- 10) The decrease in required off-street parking is supported by a parking analysis prepared by a registered professional engineer. The Applicant has supplied a parking report prepared by MDM Transportation Consultants, dated May 12, 2021 which has been reviewed by Tetra Tech’s traffic consultant.

- 11) Accordingly, the Board finds that the proposed development meets the criteria for a Reduced Parking Special permit under Section 7.1.1.J. of the Zoning Bylaw.

Vote on Reduced Parking Findings - The Planning and Economic Development Board, at its meeting on September 2, 2022, voted to approve the above noted Reduced Parking Special Permit Findings for 6 Industrial Park Road (the “Property”). The motion was approved by a vote of four in favor and none opposed.

C. Groundwater Protection Special Permit Findings (Sub-Section 5.6.3 of the Zoning Bylaw) – The subject property at 6 Industrial Park Road is located within the Town’s Groundwater Protection District (MA Department of Environmental Protection Zone 2 recharge area). The scope of the project with the building addition and site improvements will increase the extent of impervious surface to more than 15% of the lot area. Accordingly, a groundwater protection special permit is required. Section 5.6.3 specifies that the following findings must be made to issue a groundwater protection special permit:

- 1) **Permitted Uses** – *Enlargement of an existing structure and new construction are permitted uses, subject to certain restrictions, within the Groundwater Protection District. As conditioned herein, the project will comply with those restrictions.*
- 2) **Prohibited Uses** – *The project includes an on-site emergency generator. The bylaw prohibits the storage of liquid petroleum products, with an exception for an emergency generator which is required by statute, rule, or regulation. The Applicant has provided documentation that the Cannabis Control Commission requires marijuana facilities to maintain the ability to remain operational during power outages for a minimum of 4 hours, thus necessitating the installation of a generator.*
- 3) **Uses and Activities Requiring a Groundwater Special Permit** – *Specific to this project, the following activities are allowed only upon issuance of a special permit.*
 - *Any use which will render impervious more than 15% or 2,500 sq. ft. of any lot whichever is greater. The proposed building expansion and site improvements planned for 6 Industrial Park Road increase the extent of impervious surface to from the current 48.7% of the site (89,869 sq. ft.) to 76.1% of the site, thus triggering the need for a Groundwater Protection special permit.*
- 4) **Special Permit Granting Authority** - *The Board of Appeals is the designated special permit grating authority for the Groundwater Protection District. However, the Bylaw (Section 3.5. Site Plan Review, 4.a.) provides that authority to the Planning and Economic Development Board when both site plan approval and a special permit are needed so as to consolidate and streamline the review process.*
- 5) **Does the site design include a system for groundwater recharge which does not degrade groundwater quality? Does the recharge system use stormwater infiltration basins, or a similar system covered with natural vegetation? Are such basins preceded by oil, grease, and sediment traps to facilitate removal of contamination? Is there a plan for all recharge areas to be permanently maintained in full working order by the owner?** *The existing facility, proposed addition, and associated site improvements will render the site to be 76.1% impervious. The stormwater management plan includes construction of subsurface infiltration structures, subsurface pipe network, proprietary stormwater devices, and a rain garden to mitigate*

the rate of peak runoff, treat stormwater for water quality, and promote groundwater recharge.

The Board's Consulting Engineer has reviewed the stormwater management plan to ensure that groundwater recharge does not degrade groundwater quality. The Conservation Commission is responsible for stormwater review on this site and has issued its Order of Conditions and a Land Disturbance permit which includes numerous conditions and protective measures. As part of its review, the Commission used the services of a consulting peer review engineer to ensure compliance with DEP's Stormwater Management Regulations and the Town's Stormwater Management and Land Disturbance Bylaw.

- 6) **Does the proposed use, during constructure or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Groundwater Protection District?** *The project has been reviewed by the Conservation Commission and the Town's Consulting Engineer to ensure that the planned stormwater management facilities and the associated groundwater recharge does not degrade groundwater quality. The Conservation Commission issued an Order of Conditions and Land Disturbance Permit on June 27, 2022 which specifies suitable measures to protect groundwater. The comprehensive stormwater management system approved for this site is a considerable improvement over current conditions where stormwater simply runs off the site and into the ground uncontrolled and without treatment.*
- 7) **Is the proposed development designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed?** *The plan for the proposed development has been developed and revised such that the impact of the planned stormwater infrastructure on groundwater is minimized.*
- 8) **Has the applicant provided sufficiently detailed, definite, and credible information to supportive positive findings in relation to the standards given herein?** *The Board finds that the Applicant has provided sufficiently detailed, definite, and credible information to support positive findings in relation to the standards for a Groundwater Protection special permit as documented in the application materials and additional information provided during the course of the public hearing.*
- 9) **Were the submission requirements and hearing procedures conducted in accordance with Section 3.4 of the Zoning Bylaw?** *The submission requirements and public hearing procedures have been conducted in accordance with Section 3.4 of the Bylaw and the Board's Site Plan Rules and Regulations including the posting of a public hearing notice with the Town Clerk, abutter notification, and legal advertisement. In a local newspaper of general circulation. Information about the project has also been posted to the Board's web page and review and comments have been sought from the Board of Health, Conservation Commission, and the Department of Public Works.*
- 10) **Has the Board consulted with the Board of Health, Conservation Commission, Water and Sewer Commission and the Department of Public Works and referred this project to those entities for review and comment?** *The site plan has been provided to the Board of Health, Conservation Commission, and Department of Public Works Services for review and consultation. The noted boards and committees were kept apprised of the status of the Board's review of the project and were able to provide*

information and recommendations throughout the process. Further, the Conservation Commission has rigorously reviewed this project and issued an Order of Conditions and Land Disturbance Permit with associated conditions.

- 11) **Other Conditions** - For further protection, the Board has included a series of conditions in this decision which require certain measures to address groundwater protection. See Specific Condition H.
- 12) **Project Meets the Special Permit Decision Criteria (Zoning Bylaw, Section 3.4 C. 1-9)** **Special permits shall be granted by the special permit granting authority only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In making its determination, the special permit granting authority, in addition to any specific factors that may be set forth in other sections of the Bylaw, shall make findings on all of the applicable criteria. See Special Permit Findings included in the previously granted Phytopia marijuana special permit issued by the Board dated October 30, 2021.**
- 13) Accordingly, the Board finds that the proposed development meets the criteria for a Groundwater Protection Special permit under Section 5.6.3 of the Zoning Bylaw.

Vote on Groundwater Protection Findings - The Planning and Economic Development Board, at its meeting on September 27, 2022, voted to approve the above noted Groundwater Protection Special Permit Findings for 6 Industrial Park Road (the “Property”). The motion was approved by a vote of four in favor and none opposed.

- VII. WAIVERS** - At its September 27, 2022 meeting, the Board voted to grant waivers from the following provisions of the *Rules and Regulations for the Submission and Approval of Site Plans*, as amended October 8, 2019. The Board’s action and reasons for granting each waiver are listed below. All waivers are subject to the *Special and General Conditions of Approval*, which follow this section.

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

A. Site Plan Submittal Requirements

- 1) **Section 204-3 F. Development Impact Statement** – The Applicant shall provide a written Development Impact Statement which shall describe the potential and anticipated impacts of the proposed development, identify all positive and adverse impacts, and propose an acceptable program to prevent, reduce, or mitigate adverse impacts. A Development Impact Statement shall consist of four elements: Traffic Impact Assessment, Environmental Impact Assessment, Neighborhood Impact Assessment and Parking Impact Assessment.

The Applicant has requested a waiver from this requirement for a single Development Impact Statement and points to the submittal of separate professionally prepared documents to address traffic and parking, noise, and odor. The project and the site’s pre-existing contamination issue have also been subject to intense environmental scrutiny by the Conservation Commission and are addressed in the Order of Conditions. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and

intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

2) **Section 204-5 C. 3) Existing Landscape Inventory** - An *Existing Landscape Inventory* shall be prepared by a Professional Landscape Architect licensed in the Commonwealth of Massachusetts. This inventory shall include a “*mapped*” overview of existing landscape features and structures and a general inventory of major plant species including the specific identification of existing trees with a diameter of one foot or greater at four feet above grade.

The Applicant has requested a waiver from this requirement as the site has been used for many years by the previous owner and is already considerably disturbed. The site plan denotes the location of three trees along the property’s Industrial Park Road frontage which are specified to be retained and which is included as a condition of this decision (See Condition L). For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

3) **Section 204-5 D. Landscape Plan, a)** A Landscape Plan shall be prepared by a Registered Professional Landscape Architect licensed to practice in the Commonwealth of Massachusetts or a Massachusetts Certified Landscape Professional.

The Applicant has requested a waiver from this requirement. Instead, a landscape plan has been prepared by the Applicant’s project engineer who has completed many such plans for other development projects. The landscape plan has been reviewed by both the Conservation Commission and the Design Review Committee and has been found to be acceptable. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

4) **Section 204-5 D. 14 Master Signage Plan** – A Master Signage Plan shall be provided including preliminary proposed designs, locations, materials, dimensions, and lighting for proposed development sign and all business identification signage.

The Applicant has requested a waiver from fulfilling this requirement at this time. Instead, the Applicant proposes to provide such master signage plan to the Board as construction plans are finalized. See Specific Condition O. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

B. Site Plan Development Standards

5) **Section 207-12 Parking, G. Parking Spaces 3) Location b)** - Parking spaces shall not be located within 15’ feet of the front, side, and rear property lines.

The Applicant has requested a waiver from this requirement. Portions of the east and west parking lots are located within the 15’ of the side property. The Applicant indicates that the proposed spaces do not impede proper traffic flow and follow similar parking layouts on other properties within the existing industrial park. The use of a portion of the 15’ setback

area is needed to allow for suitable drive aisle widths to provide access to accommodate emergency vehicles. For the foregoing reasons, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

6) Section 207-11 Traffic and Vehicular Circulation, A. Site Access, Curb Cuts, Entrance and Egress Driveways, 4) Site entrances shall be clearly delineated by vertical granite curbing or other approved material along the entire radius of the opening . . .”

The Applicant has requested a waiver from the vertical granite curbing standard for the project’s driveway entrances and instead plans to use bituminous berm. This alternative approach to driveway openings matches the existing driveway openings to the other establishments in the industrial park and is in keeping with that character. For the foregoing reason, the Board APPROVES this waiver request as being consistent with the purpose and intent of the Site Plan Rules and Regulations which will have no significant detriment to the achievement of any of the purposes of Site Plan Review and Approval.

VIII. CONDITIONS The *Specific and General Conditions* included in this Decision are to assure that the Board’s approval of the major site plan, groundwater protection special permit, and reduced parking special permit are consistent with the *Zoning Bylaw*, 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 Permittee.

SPECIFIC CONDITIONS OF APPROVAL

A. **Limitations** - Notwithstanding any future amendment of the *Bylaw*, G.L. c. 40A, or any other legislative act:

1. The tract(s) of land on which this proposed development will be located at 6 Industrial Park Road shall not be altered or used except:
 - a) as granted by this site plan and special permits decision;
 - b) as granted by the marijuana uses special permit granted November 30, 2021 and recorded on January 18, 2022 in Book 40248, Pages 330 – 350 at the Norfolk County Registry of Deeds.
 - c) substantially as shown on the site plan *Industrial Park Road*, dated April 1, 2021, last revised May 13, 2022, prepared by Williams and Sparages Engineers, Planners and Surveyors including landscaping, lighting, and architectural plans, to be further revised as specified herein before plan endorsement.
 - d) in accordance with any subsequently approved field changes, modified plans, or amendments to this site plan/special permit decision; and
2. The tract of land and buildings comprising 6 Industrial Park Road shall not be used, sold, transferred, or leased except in conformity with this decision and approved site plan and shall not be further divided.
3. The reduced parking and groundwater protection special permits are limited to the operation of the property for the cultivation, manufacturing and processing of medical and adult use recreational marijuana and marijuana products.

- B. All conditions included in the previously issued marijuana uses special permit approved by the Board on October 30, 2021 are incorporated herein.
- C. **Plan Endorsement** – Within 60 days after the Board has filed its *Decision* with the Town Clerk, the site plan Industrial Park Road, dated April 1, 2021, last revised May 13, 2022, prepared by Williams & Sparages LLC, Engineers, Planners and Surveyors of Middleton, MA including building elevations, renderings, landscaping plan and lighting plan, shall be further revised to reflect all Conditions and required revisions as specified herein, and shall be submitted to the Board to review for compliance with the Board’s *Decision*. (*Said plan is hereinafter referred to as the Plan*). Upon approval, the Applicant shall provide the revised Plan in its final form to the Board for its endorsement prior to recording at the Norfolk County Registry of Deeds along with this decision. All plan sheets shall be bound together in a complete set. Prior to plan endorsement, the Permittee shall also provide a Certificate of No Appeal from the Town Clerk’s office. The time period may be extended by mutual agreement of the Permittee and Board.
- D. **Recording** - No construction shall begin on the site and no building permit for any work shall be issued before this Decision and the *Plan* are recorded at the Norfolk County Registry of Deeds and proof of such recording is provided to the Board within thirty days of recording.
- E. **Cover Sheet Revisions** – The following revisions shall be made to the Cover Sheet of the plan set.
1. Revise the cover sheet to include a plan set title and date and a list of APPROVED waivers.
 2. Add a reference to the previously issued marijuana special use permit including the recording information.
 3. Add reference to the Anderson Porter architectural plans to the index.
 4. Add a standard box for the Town Clerk’s certification of no appeal
 5. Any other revisions as required by the Registry of Deeds for recording purposes.
- F. **Other Plan Revisions** – The following revisions shall be made to other sheets in the plan set.
1. Add the Long-Term Stormwater Operations and Maintenance plan as a sheet of the plan set and reference it on the cover sheet plan index.
 2. Designate and label the open space areas and note the amount of area included in each.
 3. As requested by the Medway Fire Department, an additional fire hydrant shall be installed in the southeast corner of the project and shown on the plan set.
 4. As recommended by Tetra Tech, add a note to indicate the fuel source for the emergency generator.
 5. Add a note to specify the following as requested by the Medway department of Public Works. Back flow preventors shall be installed on both the fire service water line and the domestic water service line. A by-pass metering device shall be installed at the backflow preventor for the fire service line to detect any leakage or unauthorized use of water from the fire/automatic sprinkler system.

G. Parking

1. The Permittee shall require employees to park on the premises; employee parking is not allowed on Industrial Park and Jayar Roads.
2. Parking or use of the parking areas at 6 Industrial Park Road shall be limited only to vehicles for Phytopia employees, deliveries, vendors, and customers. The parking area shall not be leased or made available to any other businesses for any purposes.

H. Conditions Pertaining to Groundwater Protection District Special Permit

1. Use and storage of toxic and hazardous materials is prohibited unless stored within a free-standing container located inside the building. Any accidental spillage must be contained within the building and any that enters the sewer system shall be treated prior to being discharged to the municipal sewer system. Operation and maintenance procedures are in place to prevent any accidental outdoor spillage from reaching groundwater.
2. Any commercial fertilizers, as defined in Massachusetts General Law, c. 128 §64, used for the growing of marijuana plants shall be stored within containers and kept inside the 6 Industrial Park Road building. Any fertilizers used on landscape material anywhere on the site shall be the slow-release organic granular type, and only the absolute minimum necessary. All storage of fertilizers must be in a free-standing container within a building, have adequate secondary storage capacity or be within a facility designed to prevent the generation and escape of contaminated runoff or leachate. Application of fertilizers on site must be done in a manner to prevent adverse impacts on groundwater.
3. Outdoor storage anywhere on the site shall consist only of non-hazardous materials. Metal materials stored outside shall be under cover of a building or structure to prevent leaching of the metal into the groundwater.
4. There shall be no outdoor storage of pesticides, herbicides, fungicides, or insecticides anywhere on the site. Any such products shall be stored inside.
5. Deicing materials shall be limited to calcium chloride or other deicer material approved by the Medway Department of Public Works.
6. Plowed snow for the site shall be stored only in the designated areas shown on the plan or taken off site in times of substantial storms.
7. All vehicles shall be parked or stored on the paved surface to ensure treatment of any leaks of fluids from the vehicles. There shall be no outdoor maintenance or cleaning of vehicles.
8. There shall be no earth removal within six feet of the historical high groundwater level.
9. The Town reserves the right to periodically inspect the site to ensure compliance with these conditions.

10. The Conservation Commission issued an Order of Conditions and Land Disturbance Permit on June 27, 2022 which specifies suitable measures and conditions to protect groundwater. This groundwater special permit is subject to those applicable conditions.
- I. **Nuisance** – The Permittee shall construct and maintain the property and building so as to not create a nuisance to abutters or to the surrounding area, or create any hazard, including but not limited to fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure, or dwelling in the area. The Permittee shall comply with Section 7.3 of the *Zoning Bylaw*.
- J. **Noise Management** – See conditions included in the marijuana special permit decision dated October 30, 2021.
- K. **Odor Management** – See conditions included in the marijuana special permit decision dated October 30, 2021.
- L. **Tree Preservation** – Sheet #C7.1 Landscape Plan of the site plan denotes the location of three trees along the property's Industrial Park Road frontage which are specified to be retained. These include: 16" maple, 18" maple, and 10" maple clump.
 1. The Permittee and its contractors shall not remove the 3 noted trees during site preparation and construction of infrastructure and the buildings.
 2. The 3 trees shall be clearly identified in the field and verified by the Board's consulting engineer before site preparation and construction commences.
 3. If any of the 3 identified trees are removed or damaged during site preparation or construction, the Permittee shall be responsible for tree restoration by replacing the removed or damaged trees with nursery grade trees on a one square inch per two square inch replacement basis within one year after the tree removal or damage has occurred. The one square inch per two square inch replacement amount is calculated by squaring 1/2 the established diameter of each tree that is removed or damaged and multiplying that amount by 3.14 to determine its trunk area (tree radius squared x pi rounded to 3.14). The resulting figure is halved, and that square inch total is the amount of required square inches of the replacement tree(s). The location of the replacement trees shall be recommended by the Permittee and approved by Planning and Economic Development Board (as a field change). The species of replacement tree(s) shall be from those listed in Section 207-19. F of the *Site Plan Rules and Regulations*
- M. **Open Space** – At least 20% of the site shall be permanently retained as open space and/or yard in perpetuity. This is an on-going obligation of the Permittee. This area shall be unpaved but may be landscaped or left natural with the balance being trees, shrubs, and grass suitable for the site. The area may include communal gathering space for employees.
- N. **Maintenance of the Phase 2 building addition property** – In the event that the Permittee does not proceed with construction of the Phase 2 building addition, the

Permittee shall prepare a landscaping plan for this area for review by the Design Review Committee and approval of the Board. Such will be handled as a modification to the site plan in accordance with Section 208-4 of the *Site Plan Rules and Regulations*.

- O. **Signage** – Any business signage for this project shall comply with the sign regulations of the Zoning Bylaw (Section 7.2) and is subject to review by the Design Review Committee. Within six months after plan endorsement and before an occupancy permit is issued, the Permittee shall provide a Master Signage Plan as specified in Section 204-5 D. 14 Master Signage Plan of the *Site Plan Rules and Regulations* for review by the Design Review Committee and approval of the Planning and Economic Development Board.
- P. **Sidewalk Construction on Industrial Park Road and Jayar Road** – Pursuant to Section 3.5.4. I.3. Procedures for Site Plan Review of the *Zoning Bylaw*, the Board may require reasonable mitigation measures to offset the adverse impacts of a development, including that sidewalks shall be provided along the entire frontage of properties along existing public ways unless an adequate means of pedestrian travel is already provided. When sidewalk construction is not feasible or practical, an applicant will fund sidewalk construction elsewhere in the community or make a payment in lieu of sidewalk construction to the Town.

The Applicant has not proposed to construct sidewalks along the property's frontages on Industrial Park Road and Jayar Road (775 linear feet), noting that sidewalks do not exist elsewhere in the industrial park. Further, the Applicant is making a substantial financial investment for the environmental clean-up on the property resulting from the previous owner's operation. This clean-up is of great value to the Town as the property is located in the Town's groundwater protection district. If the applicant were to make a payment to the Town in lieu of sidewalk construction for this property, the amount would be \$54,286.00 as calculated by the Board's Consulting Engineer (Tetra Tech 8-15-22 estimate) to construct 775 linear feet of 5' wide asphalt sidewalk with Cape Cod berm and accessible ramps. Instead, the Applicant has agreed to make a \$25,000 contribution to the Town's Sidewalk Fund to fund sidewalk construction elsewhere in the community. The Board finds that this is reasonable mitigation. The funds shall be paid to the Town before an occupancy permit is issued by the Building Department.

- Q. **Snow Storage and Removal**
1. On-site snow storage shall not encroach upon nor prohibit the use of any parking spaces required by the Bylaw.
 2. Accumulated snow which exceeds the capacity of the designated snow storage areas on-site shall be removed from the premises within 72 hours after the conclusion of the storm event.
- R. **Water Conservation** – The development is relying on the Town's public water system and the Town is being held to its Water Management Act Permit with the MA Department of Environmental Protection. The Permittee shall incorporate the following water conservation measures:
1. Any landscape irrigation system shall not be connected to municipal water supply. Irrigation wells must be permitted by the Board of Health.

2. rain-gauge controlled irrigation systems
 3. low flow plumbing fixtures
 4. water efficient appliances for toilets, etc.
 5. any irrigation planned for the property shall not use potable water
- S. **Construction** – In conjunction with the pre-construction meeting (See General Condition Y, the Permittee shall provide the following:
1. Stormwater Pollution Prevention Plan (SWPPP) and documentation under the NPDES General Construction Permit program of the US EPA.
 2. Construction Management Plan compliant with Section 204-3 H. Site Plan Submittals of the *Site Plan Rules and Regulations*
- T. **Occupancy Permit**
1. **Phase 1** – The occupancy permit for Phase 1 shall not be issued until:
 - a) the following Phase 1 items, at a minimum, are installed in compliance with this decision, the Plan, and applicable bylaws and regulations and determined to be acceptable to the Board and the Board so notifies the Building Commissioner/Zoning Enforcement Officer.
 - i) driveways and parking areas gravel sub-base
 - ii) driveways and parking areas binder course
 - iii) drainage system completed
 - iv) as-built plan of each stormwater facility with all critical elevations and details
 - v) stop line pavement markings and traffic control signs
 - vi) provisions for fire prevention and protection
 - vii) suitable erosion controls
 - viii) construction of sidewalk/pathway from the rear of the building to the front door.
 - b) suitable performance security has been provided to the Town of Medway, to the Board's satisfaction, to cover the cost of all remaining site work for Phase 1 and all Phase 2 work as specified herein. See General Condition CC.
 2. **Phase 2** – Prior to the final occupancy permit for Phase 2 being issued, the applicant shall obtain a Certificate of Site Plan Completion from the Planning and Economic Development Board. See General Condition DD.

GENERAL CONDITIONS OF APPROVAL

- U. **Applicability** – This Decision shall apply to any successor in control or successor in interest to the subject property
- V. **Fees** - Prior to plan endorsement, the Board requires the Applicant to pay:
1. the balance of any outstanding project review fees owed to the Town for review of the application by the Town's engineering or other consultants;
 2. 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.

- W. **Compliance with 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 Permittee or agent shall apply for, obtain, pay for, and comply with all other required Town permits.
- X. **Restrictions on Construction Activities** – During construction, all local, state, and federal laws shall be followed regarding noise, vibration, dust and blocking of Town roads. The Permittee and its contractors shall at all times use all reasonable means to minimize inconvenience to abutters and residents in the general area. The following specific restrictions on construction activity shall apply.
1. *Construction Time* – Work at construction sites and in the operation of construction equipment including start-up and movement of trucks, vehicles, and machines shall commence no earlier than 7 a.m. and shall cease no later than 7 p.m. Monday through Saturday. No construction shall take place on Sundays, federal holidays or state legal holidays without the advance written approval of the Building Commissioner. These rules do not apply to interior construction work such as carpentry, installation of drywall, flooring, electrical and HVAC systems, painting, etc.
 2. *Neighborhood Relations* – The Permittee shall notify neighbors in the general area around the site when site work and construction are scheduled to begin and provide a phone number for them to use for questions and concerns that arise during construction.
 3. The Permittee shall take all measures necessary to ensure that no excessive dust leaves the premises during construction including use of water spray to wet down dusty surfaces.
 4. There shall be no tracking of construction materials onto any public way. Daily sweeping of roadways adjacent to the site shall be done to ensure that any loose gravel and dirt is removed from the roadways and does not create hazardous or deleterious conditions for vehicles, pedestrians, or abutting residents. In the event construction debris is carried onto a public way, the Permittee shall be responsible for all clean-up of the roadway which shall occur as soon as possible and in any event within twelve hours of its occurrence.
 5. The Permittee is responsible for having the contractor clean-up the construction site and the adjacent properties onto which construction debris may fall on a daily basis.
 6. All erosion and siltation control measures shall be installed by the Permittee prior to the start of construction and observed by the Board's consulting engineer and maintained in good repair throughout the construction period.
 7. *Construction Traffic and Parking* – During construction, adequate provisions shall be made on-site for the parking, storing, and stacking of construction materials and vehicles. All parking for construction vehicles and construction related traffic shall be maintained on site. No parking of construction and construction related vehicles shall take place on adjacent public or private ways or

interfere with the safe movement of persons and vehicles on adjacent properties or roadways.

8. *Noise* - Construction noise shall not exceed the noise standards as specified in the *Zoning Bylaw*, Section 7.3 Environmental Standards.
9. *Stormwater Management* – During construction, the Applicant shall maintain the site and installed stormwater management facilities in accordance with the Construction Period Pollution Prevention Plan included in the *Stormwater Report for 6 Industrial Park Road*, dated April 1, 2021, last revised May 18, 2022, prepared by Williams and Sparges, LLC of Middleton, MA

Y. Construction Oversight

1. *Pre-Construction Meeting* – At least seven days prior to the start of any site preparation or construction, the Applicant shall meet with the Town’s Consulting Engineer, the Planning and Economic Development Coordinator, the Medway Department of Public Works, the Medway Conservation Agent, other Town officials as may be appropriate, and the Permittee’s project engineer and site contractors for a pre-construction meeting. The construction schedule shall be reviewed and the procedures for inspections discussed.
2. *Construction Account*
 - a) Inspection of infrastructure and utility construction, installation of site amenities including landscaping, and the review of legal documents by Town Counsel is required. Prior to plan endorsement, the Permittee shall establish a construction account with the Board. The funds may be used at the Board’s discretion to retain professional outside consultants to perform the items listed above as well as the following other tasks - inspect the site during construction, identify what site plan work remains to be completed, prepare a surety estimate, conduct other reasonable inspections until the site work is completed and determined to be satisfactory, review as-built plans, and advise the Board as it prepares to issue a *Certificate of Site Plan Completion*.
 - b) Prior to plan endorsement, the Permittee shall pay an advance toward the cost of these services to the Town of Medway. The advance amount shall be determined by the Board based on an estimate provided by the Town’s Consulting Engineer.
 - c) Depending on the scope of professional outside consultant assistance that the Board may need, the Permittee shall provide supplemental payments to the project’s construction inspection account, upon invoice from the Board.
 - d) Any funds remaining in the Permittee’s construction inspection account after the *Certificate of Site Plan Completion* is issued shall be returned to the Permittee.
3. *Right to Enter Property* - Board members, its staff, consultants or other designated Town agents and staff shall have the right to enter the property at reasonable times during construction and with advance notice to the Permittee to inspect the site for compliance with the terms and conditions of this decision and the Plan and

while on site, may acquire any information, measurements, photographs, and observations deemed necessary for that evaluation.

4. DPW Inspections - The Department of Public Works will conduct inspections for any construction work occurring in the Town's right-of way in conjunction with the Town of Medway Street Opening/Roadway Access Permit.
5. Monthly Reports - The Permittee shall have a professional engineer licensed in the Commonwealth of Massachusetts conduct progress inspections of the construction of the approved site improvements. Inspections shall occur at least on a monthly basis and shall start immediately once any work begins on the property. The Permittee's engineer shall prepare a written report of each inspection and provide a copy to the Board within five days of inspection. The Board may provide a template for such monthly reports.

Z. On-Site Field Changes

1. During construction, the Permittee may be authorized to make limited, minor, on-site field changes to the approved plan based on unforeseen site or job conditions, situations, or emergencies necessitated by field conditions or due to practical considerations. These field changes shall not alter items which may affect the site's compliance with this *Decision* and the *Zoning Bylaw* nor conflict with a specific condition of the *Decision*. Field changes shall not substantially alter the intent, layout, or design of the endorsed *Plan*.
2. Prior to undertaking such field changes, the Permittee and/or contractor shall discuss the possible field changes with the Town's Consulting Engineer and the Planning and Economic Development Coordinator and submit a letter and drawings to the Planning and Economic Development Coordinator and the Building Commissioner describing the proposed changes and what conditions, situations, or emergencies necessitate such changes. In accordance with Section 3.5.2.C of the *Zoning Bylaw*, the Building Commissioner may determine that the field change is insubstantial, authorize the change, and so notify the Board. Otherwise, the Board shall review the proposed field changes at a public meeting and determine whether the proposed field changes are reasonable and acceptable based on the unforeseen conditions, situations, or emergencies and whether other options are feasible or more suitable. A written authorization of field change will be provided. Any approved field change shall be reflected in the as-built plan to be provided at project completion.

AA. Modification of Plan and/or Decision

1. Proposed modifications, not including on-site field changes, to this *Decision* or the endorsed *Plan* shall be subject to review by the Board.
2. This site plan and special permit approval is subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies, or commissions. Any changes to the site plan that may be required by the decisions of other Town boards, agencies or commissions shall be submitted to the Board for review as site plan modifications.
3. Any work that deviates from the approved *Plan* or this *Decision* may be a violation of the *Zoning Bylaw* unless the Permittee requests approval of a

modification pursuant to Section 208-4 of the *Site Plan Rules and Regulations* and such approval is provided in writing by the Board, or as provided in General Condition Z.

4. The request for a modification to a previously approved special permit and/or *Plan* shall be subject to the same application and review process including a public hearing. Whenever additional reviews by the Board, its staff or consultants are necessary due to proposed modifications, the Permittee shall be billed and be responsible for all supplemental costs including filing fees, review fees and all costs associated with another public hearing including legal notice and abutter notification. If the proposed revisions affect only specific limited aspects of the site, the Board may reduce the scope of the required review and waive part of the filing and review fees.
5. The Board shall issue a modification decision, file such with the Town Clerk, and provide copies to the Building Commissioner and other Town officials and the Permittee. Any modification approved by the Board shall be made a permanent part of the approved special permit documents and shall be shown on the final as-built plan.

BB. Compliance with Plan and Decision

1. The Permittee shall construct all improvements in compliance with the approved and endorsed *Plan* and this *Decision* any modifications thereto.
2. The Board or its agent(s) may use all legal options available to it, including referring any violation to the Building Commissioner/Zoning Enforcement Officer for appropriate enforcement action, to ensure compliance with the decision and the foregoing Specific and General Conditions of Approval.
3. The Specific and General Conditions of Approval are enforceable under Section 3.1.F. of the *Zoning Bylaw* (non-criminal disposition) and violations or non-compliance are subject to the appropriate fine.

CC. Performance Security

1. Prior to the grant of an occupancy permit, the Board must provide a written communication to the Building Commissioner/Zoning Enforcement Officer that the project, as constructed, substantially conforms to the approved site plan and that any conditions including construction of any required on and off-site improvements, have been satisfactorily completed OR that suitable performance security has been provided to the Town of Medway, to the Board's satisfaction, to cover the cost of all remaining work.
2. The Permittee shall propose a form of performance security which shall be of a source and in a form acceptable to the Board, the Treasurer/Collector, and Town Counsel. The Board requires that the performance security be accompanied by an agreement which shall define the obligations of the Permittee and the performance security company including:
 - a) the date by which the Permittee shall complete construction
 - b) a statement that the agreement does not expire until released in full by the Board
 - c) procedures for collection upon default.

3. The amount of the performance security shall be equal to 100% of the amount that would be required for the Town of Medway to complete construction of the site infrastructure including installation of stormwater management facilities, utilities, services, pedestrian facilities, and all site amenities as specified in the approved Site Plan that remain unfinished at the time the performance security estimate is prepared if the developer failed to do so.
4. The performance security amount shall be approved by the Board based on an estimate provided by the Town's Consulting Engineer based on the latest weighted average bid prices issued by the Mass Department of Transportation. The estimate shall reflect the cost for the Town to complete the work as a public works project which may necessitate additional engineering, inspection, legal and administrative services, staff time and public bidding procedures. The estimate shall also include the cost to maintain the infrastructure in the event the Permittee fails to adequately perform such and the cost for the development of as-built plans. In determining the amount, the Board shall be guided by the following formula in setting the sum: estimate of the Town's Consulting Engineer of the cost to complete the work plus a 30% contingency.
5. Final release of performance security is contingent on project completion.

DD. Project Completion

1. Site plan approval shall lapse after two years of the grant thereof as provided in Section 3.5.7 of the Zoning Bylaw if construction has not begun except for good cause. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
2. The work shown on the approved Plan including all site work and the building addition for Phases 1 and 2 shall be completed by the Permittee or its assignees within 5 years of the date of plan endorsement. Upon receipt of a written request from the Permittee filed at least thirty days prior to the date of expiration, the Board may grant an extension for good cause. The request shall state the reasons for the extension and specify the additional length of time requested. If no request for extension is filed and approved, the site plan approval shall lapse and may be reestablished only after a new filing, hearing, and decision.
3. Prior to issuance of a final occupancy permit, the Permittee shall request a ***Certificate of Site Plan Completion*** from the Board. The ***Certificate*** serves as the Board's confirmation that, in its opinion, the completed work conforms to the approved Plan and any conditions and modifications thereto, including the construction of any required on and off-site improvements. The ***Certificate*** also serves to release any performance security that has been provided to the Town of Medway.
 - a) Before issuing such Certificate, the Board's Agent shall conduct a final inspection of the site and prepare a punch list to identify any remaining work

to be completed. The Board may consult with its consulting engineer and various Town staff and boards or committees to determine whether the project is complete.

- b) To secure a Certificate of Site Plan Completion, the Permittee shall complete or provide the following items to the satisfaction of the Board.
 - i. receipts to document cleaning of the stormwater system
 - ii. a signed statement from the Permittee committing to the ongoing maintenance of the stormwater management facilities and replacement of landscaping.
 - iii. removal of erosion controls
 - iv. full stabilization of the site
 - v. a written certification from a Professional Engineer registered in the Commonwealth of Massachusetts that all building and site work has been completed in substantial compliance with the approved and endorsed site Plan, and any modifications thereto; and
 - vi. an electronic version of a final As-Built Plan, prepared by a registered Professional Land Surveyor or Engineer registered in the Commonwealth of Massachusetts, to the Board for its review and approval. The As-Built Plan shall show actual as-built locations and conditions of all buildings and site work shown on the original site plan and any modifications thereto. The As-Built Plan shall also show all utilities found during the construction process. The final As-Built Plan shall also be provided to the Town in CAD/GIS file format per MASS GIS specifications.

EE. ***Landscape Maintenance*** - The site's landscaping shall be maintained in good condition throughout the life of the facility and to the same extent as shown on the *Plan of Record*. Any shrubs, trees, bushes, or other landscaping features shown on the Plan that die shall be replaced by the following spring.

Conflicts – If there is a conflict between the Plan and the Decision's Specific and General Conditions, the Decision shall rule. If there is a conflict between this Decision and the *Zoning Bylaw*, the *Bylaw* shall apply.

IX. APPEAL – The Board and the Applicant have complied with all statutory requirements for the issuance of this Decision on the terms set forth herein. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Permittee, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

In accordance with G.L. c. 40A, §11, no special permit shall take effect until a copy of the Decision is recorded in the Norfolk County Registry of Deeds, and indexed in the grantor index under the name of the owner of record, or is recorded and noted on the owner's certificate of title, bearing the certification of the Town Clerk that twenty days have elapsed after the Decision has been filed in the office of the Town Clerk and no appeal has been filed within said twenty-day period, or that an

appeal has been filed. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. The fee for recording or registering shall be paid by the Permittee. A copy of the recorded Decision, and notification by the Permittee of the recording, shall be furnished to the Board.

###

Decision Date: _____

AYE:

Jessica Chabot

Richard Di Iulio


Matthew Hayes

Robert Tucker

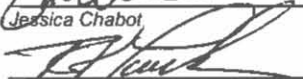
Decision Date: 9/27/2022

AYE:


Matthew Hayes, Chair


Richard Di Iulio


Jessica Chabot


Robert Tucker

COPIES TO: Michael Boynton, Town Manager
Stephanie Carlisle, DPW Compliance Officer
Michael Fasolino, Deputy Fire Chief
Bridget Graziano, Conservation Agent
Sean Harrington, Deputy DPW Director
William Kingsbury, Police Chief
Derek Kwok, Health Agent
Jeff Lynch, Fire Chief
Building Commissioner and Zoning Enforcement Officer
Christopher Pace, Assessor
Pete Pelletier, DPW Director
Joanne Russo, Treasurer/Collector
Barbara Saint Andre, Director of Community and Economic Development
Jeff Watson, Police Department
Steven Bouley, Tetra Tech
Edward Cannon, esq.
Phytopia, LLC
Chris Sparages, P.E.