

Board Members

Andy Rodenhiser, Chair
Robert Tucker, Vice Chair
Richard Di Iulio, Clerk
Matthew Hayes, P.E., Member
Jessica Chabot, Member
Thomas Gay, Associate Member



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TOWN OF MEDWAY

COMMONWEALTH OF MASSACHUSETTS

PLANNING AND ECONOMIC DEVELOPMENT BOARD

November 30, 2021

Recreational Adult Use Marijuana Special Permit Non-Retail Registered Medical Marijuana Facility Special Permit Approved with Conditions

Decision Date: November 30, 2021

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

Assessors' Reference: 33 – 004

Zoning District: East Industrial

Site Plan: *Industrial Park Road*, dated April 1, 2021, last revised October 12, 2021, prepared by William Sparages Engineers, Planners and Surveyors of Middleton, MA. The architectural drawings dated April 6, 2021 were prepared by Anderson Porter Design of Cambridge, MA.

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DEC 6 '21 AM 11:31

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I. PROJECT DESCRIPTION - The Applicant seeks a Recreational (Adult Use) Marijuana Establishment special permit and a Non-Retail Registered Medical Marijuana Facility special permit pursuant to Sections 8.9 and 8.10 of the Medway *Zoning Bylaw* to operate a medical and a recreational adult-use marijuana cultivation, manufacturing and processing business at 6 Industrial Park Road. NOTE – The Applicant has also applied to the Planning and Economic Development Board for Major Site Plan Approval, a Reduced Parking Special Permit, and a Groundwater Protection Special Permit. This decision does not pertain to those three applications that are still pending before the Board. The property also includes wetlands resources which are under the jurisdiction of and pending before the Medway Conservation Commission for an Order of Conditions and a Land Disturbance Permit pursuant to Article XXVI of the *Medway General Bylaws*.

The Applicant proposes to use the existing 53,128 sq. ft. industrial manufacturing building at 6 Industrial Park Road and construct a 2-story addition (total of 66,238 sq. ft.) to the existing building 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. A retail marijuana operation at this location is NOT proposed.

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, and remediation of site contamination by the previous owner. The planned work is shown on a plan titled *Industrial Park Road*, dated April 1, 2021, last revised October 12, 2021, prepared by Williams & Sparages Engineers, Planners and Surveyors of Middleton, MA. The architectural drawings dated April 6, 2021 were prepared by Anderson Porter Design of Cambridge, MA.

The Applicant has requested the Board to act on these two marijuana special permit applications separate from the related applications for Major Site Plan Approval, a Reduced Parking Special Permit, and a Groundwater Protection Special Permit, so that it can apply to the MA Cannabis Control Commission. The Board’s usual procedure is to review and act on all related applications together. As an accommodation to the Applicant, the Board has agreed to consider these two special permit applications separately, while the other applications are still pending.

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, comments offered by the public, and comments provided by the Board’s consultants and Town staff, the Medway Planning and Economic Development Board, on November 30, 2021, on a motion made by Matthew Hayes and seconded by Richard Di Iulio, voted to approve with CONDITIONS as specified herein, special permits to operate a Recreational (adult use) Marijuana Establishment (“Establishment”) and a Non-Retail Registered Medical Marijuana Facility (“Facility”) at 6 Industrial Park Road in Medway, MA.

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

Planning & Economic Development Board Member	Vote
Jessica Chabot	AYE
Richard Di Iulio	AYE
Matthew Hayes	AYE
Andy Rodenhiser	AYE
Robert Tucker	AYE

III. PROCEDURAL HISTORY

- A. May 12, 2021 – Two special permit applications were filed with the Board, one for a Recreational (Adult Use) Marijuana Establishment and the other for a Non-Retail Registered Medical Marijuana Facility. The applications were filed with the Town Clerk on May 19, 2021
- 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, 2021 and November 23, 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 special permit applications were filed with the Board:
 - Recreational (Adult Use) Marijuana Establishment and Non-Retail Registered Medical Marijuana Facility Special Permit applications dated 4-30-21 with Project Descriptions (along with applications for major site plan review, reduced parking special permit, and a groundwater protection district special permit)
 - 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 William Sparages Engineers Planners and Surveyors of Middleton, MA
 - Parking Evaluation dated 5-12-21 from MDM Transportation Consultants
- B. During the course of the review, the following additional materials were submitted to the Board by the Applicant and its representatives and consultants:
 - Parking memorandum from Attorney Ted Cannon dated 7-8-21
 - Groundwater protection district special permit memorandum from Attorney Ted Cannon dated 8-5-21
 - Noise Mitigation Plan by Acentech, updated 7-9-21
 - 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. in response to the 6-16-21 Straughan Forensic odor mitigation review.
 - Email from Dan Dumais, MDM Transportation Consultants, dated 8-11-21 regarding the Fire Department’s review of turning requirements on the site.

- Updated site plan dated 10-12-21 by William Sparages Engineers Planners and Surveyors
- Letter dated 10-12-21 to the PEDB from Chris Sparages to summarize site plan changes resulting from previous public hearings, consultant review letters, and feedback from the PEDB, Design Review Committee and the Conservation Commission.
- Letter dated 10-12-21 to the PEDB from Chris Sparages 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.

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
- 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
- Cultivation Facility Parking Guidelines Summary prepared by Tetra Tech, dated 7-13-21
- Email from Fire Chief Jeff Lynch dated 8-4-21 regarding Phytopia's security and emergency plans

D. Abutter 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

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, Sparges Engineering Consultants, 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
- Maria Walzer, 11 Green Valley Road

VI. FINDINGS - The Planning and Economic Development Board, at its meeting on November 30, 2021 on a motion made by Matthew Hayes and seconded by Richard Di Iulio, voted to approve the following **FINDINGS** regarding the special use permit applications for a Recreational (Adult Use) Marijuana Establishment (the “Establishment”) and a Non-Retail Registered Medical Marijuana Facility (“Facility”) at 6 Industrial Park Road (the “Property”). The motion was approved by a vote of five in favor and none opposed.

REGISTERED MEDICAL MARIJUANA FACILITIES SPECIAL PERMIT FINDINGS
(Sub-Section 8.9 of the Zoning Bylaw)

- (1) Section 8.9.E(1), (2), (3), and (5). The Facility will be contained within an established building located at 6 Industrial Park Road and its associated addition at the Property located in the East Industrial zoning district where such facilities may be authorized by special permit. This is and will be a permanent stand-building which does not contain any residential uses or medical doctors’ offices or offices of other professional practitioners’ authorized to prescribe the use of medical marijuana. The Property will include driveways, parking areas, utility systems, sidewalks and stormwater management facilities. The Facility is not located within 500 feet of any lot with an existing public or private school serving students in grades K-12. Retail sales are prohibited at this Property.
- (2) Concurrent with the Board’s review of the special permit application, the Board is also reviewing a major site plan for the Property, which is still pending before the Board.
- (3) Section 8.9.E (4). The hours of operation are as prescribed in Specific Condition D.
- (4) Section 8.9.E(6) and (7) As conditioned herein (Specific Condition A. 5) and as required by the *Zoning Bylaw*, no smoking, burning and consumption of marijuana or marijuana-infused products on the premises is allowed; drive-through services shall also not be permitted.

- (5) As conditioned in Specific Condition H, any signage for the Facility shall comply with Section 8.9.F and Section 7.2 of the *Zoning Bylaw*.
- (6) As conditioned in Specific Condition A. 2, the Permittee shall provide the contact information for management staff and key holders of the Facility to Town officials as indicated in Section 8.9.G.
- (7) As conditioned in Specific Condition E, the Board finds that the operation of a Facility 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 and odor consultants during the permitting process. The Applicant has prepared a noise mitigation plan which has been reviewed by the Town's noise consultant; said plan shall be implemented in accordance with Specific Condition F herein. The Applicant has also provided an odor control plan which will be implemented in accordance with Specific Condition G. herein.

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 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.

- (8) As conditioned in Specific Condition A.7, the Facility shall meet the Openness of Premises requirements of Section 8.9.I of the *Zoning Bylaw*. No activities within the building will be visible from the exterior of the building. The front of the building, which includes the primary entrance to the Facility, is fully visible from the site's frontage on Industrial Park Road. All operations will be within the restricted building.
- (9) This special permit authorizes only the cultivation, processing and packaging of marijuana for medical use. Retail sale of medical marijuana is not allowed in this zoning district.
- (10) As conditioned in Specific Condition A.1, copies of required licenses and permits issued by the Commonwealth will be provided upon approval by the Massachusetts Cannabis Control Commission. The Facility will be operated in strict compliance with Massachusetts Cannabis Control Commission regulations.
- (11) The special permit application and associated documents include the submittals required in Section 8.9 J.(4) of the *Zoning Bylaw*.
 - Medway Flower, LLC is the record owner of the Property as shown on the Medway Assessor's records as documented in a quitclaim deed from Alexander S. Athanas of Peabody, MA recorded at the Norfolk County Registry of Deeds, Book 36836, Pages 269 and 270, on May 30, 2019.

The Applicant, Phytopia, LLC will be a tenant in the subject Property and building pursuant to a lease dated December 31, 2020 with Medway Flower LLC. Accordingly, the Applicant has the right to use the site for a registered marijuana establishment.

- The Applicant has provided a sworn statement disclosing the owner's or other similarly situated individuals' interest in the registered marijuana establishment.
 - A certified list of all abutter and parties of interest was provided.
 - A site plan was submitted and is under review by the Board, the Conservation Commission and the Town's consultants. A detailed floor plan of the premises showing the functional areas of the Facility has also been provided. The Facility's security plan including lighting, fencing, gates and alarms was submitted and provided to the Police and Fire Chiefs during the permitting process.
 - The Applicant has informed the Board that the policies/procedures for the transfer, acquisition, or sale of medical marijuana between approved RMMF's (seed-to-sale tracking) has been standardized and is now regulated via oversight by the Cannabis Control Commission through METRC, a national cannabis supply chain tracking and monitoring company.
 - A comprehensive noise mitigation plan prepared by acoustical consultant Acentech, Inc. has been provided. It has been reviewed by the Town's noise consultant, Noise Control Engineering. The plan was revised, re-submitted and re-reviewed. It will be implemented in accordance with Specific Condition F. herein. The planned noise mitigation measures are expected to enable the Facility to meet the Town's noise standards as included in Section 7.3 of the *Zoning Bylaw* and as further specified herein. As conditioned herein, any non-compliance will be addressed through zoning enforcement.
 - A comprehensive odor mitigation plan prepared by the Applicant's odor consultant, BLW Engineers, Inc., was submitted to the Board and reviewed by Straughan Forensic, LLC, the Board's odor consultant. The odor mitigation plan was revised, re-submitted and re-reviewed. It will be implemented in accordance with Specific Condition G. herein.
- (12) The Facility, as conditioned herein, has been designed to minimize adverse visual or economic impacts on abutters and other parties in interest.
- (13) 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.
- (14) As conditioned herein, the Applicant has satisfied the conditions and requirements of this Section 8.9 and Section 3.4 of the *Zoning Bylaw*.

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

- (1) Section 8.10.E.(1) and (2). The Establishment will be contained within an established building located at 6 Industrial Park Road and its associated addition at the Property located in the East Industrial zoning district where such facilities may be authorized by special permit. This is and will be a permanent stand-building which does not

- contain any residential uses or medical doctors’ offices or offices of other professional practitioners’ authorized to prescribe the use of medical marijuana. The Property will include driveways, parking areas, utility systems, sidewalks and stormwater management facilities. Retail sales are prohibited at this site.
- (2) Section 8.10.E(4). None of the uses listed in Section 8.10 E. 4. of the *Zoning Bylaw* (public or private school serving students in grades K-12) are located within 500 feet of the site of the proposed Establishment.
 - (3) Section 8.10.E.(5) and (6). As conditioned herein (Specific Condition A.5), and as required by the *Zoning Bylaw*, smoking, burning and consumption of marijuana or marijuana-infused products on the Property is not allowed, and drive-through services are not allowed.
 - (4) As conditioned herein (Specific Condition H), any signage for the Establishment shall comply with Section 8.10.F and Section 7.2 of the *Zoning Bylaw*.
 - (5) As conditioned herein (Specific Condition A.1), the Permittee shall provide the contact information for management staff and key holders of the Establishment to Town officials.
 - (6) As conditioned herein (Specific Condition E), the Board finds that the operation of 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 and odor consultants. The Applicant has prepared a noise mitigation plan which has been reviewed by the Town’s noise consultant. It will be implemented in accordance with Specific Condition F. herein. The Applicant has also provided an odor control plan which will be implemented in accordance with Specific Condition G. herein.

The Board is requiring on-going noise and odor monitoring to ensure compliance with the Town’s requirements. See Specific Conditions F and G.
 - (7) 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 Establishment, is fully visible from the site’s frontage. All operations will be within the restricted building
 - (8) This 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 and marijuana social establishments are not allowed pursuant to the *Zoning Bylaw*.
 - (9) As conditioned herein (Specific Condition A.1), 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.

- (10) Medway Flower, LLC is the record owner of the property as shown on the Medway Assessor's records as documented in a quitclaim deed from Alexander S. Athanas of Peabody, MA recorded at the Norfolk County Registry of Deeds, Book 36836, Pages 269 and 270, on May 30, 2019.

The Applicant, Phytopia, LLC will be a tenant in the subject Property and building pursuant to a lease dated December 31, 2020, with Medway Flower, LLC. Accordingly, the Applicant has the right to use the site for an adult use recreational marijuana establishment.

- (11) The Applicant has provided a sworn statement disclosing the owner's or other similarly situated individuals' interest in the registered marijuana establishment.
- (12) A certified list of all abutter and parties of interest was provided as part of the application submittal documents.
- (13) A site plan was submitted and is under review by the Board, the Conservation Commission and the Town's consultants. A detailed floor plan of the premises showing the functional areas of the Establishment has also been provided. The Establishment's security plan including lighting, fencing, gates and alarms was submitted and provided to the Police and Fire Chiefs for review during the permitting process.
- (14) The Applicant has informed the Board that the policies/procedures for the transfer, acquisition, or sale of medical marijuana between approved RMMF's (seed-to-sale tracking) has been standardized and is now regulated via oversight by the Cannabis Control Commission through METRC, a national cannabis supply chain tracking and monitoring company.
- (15) A comprehensive noise mitigation plan prepared by the Applicant's noise consultant, Acentech, Inc. was submitted and reviewed by Noise Control Engineering, the Board's noise consultant. The plan was revised, re-submitted, and re-reviewed. The planned noise mitigation measures are expected to enable the Phase I component of the project to meet the Town's noise standards as included in Section 7.3 of the *Zoning Bylaw* and further clarified herein. Further provisions regarding noise mitigation for the Phase II component are included in Specific Condition F.
- (16) A comprehensive odor mitigation plan prepared by the Applicant's odor consultant, BLW Engineers, Inc., was submitted to the Board and reviewed by Straughan Forensic, LLC, the Board's odor consultant. Further provisions regarding odor mitigation are included in Specific Condition G.
- (17) The adult recreational marijuana establishment, as conditioned herein, (Specific Conditions D & E), has been designed to minimize adverse visual or economic impacts on abutters and other parties in interest.
- (18) As conditioned herein, the proposed Establishment 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*.

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

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

Sections 8.9 and 8.10 of the Zoning Bylaw and Table 1 – Schedule of Uses specifies that registered medical marijuana facilities and non-retail recreational marijuana establishments are allowed by special permit in the East and West Industrial zoning districts. The subject Property at 6 Industrial Park Road is located within the East Industrial zoning district and is therefore an eligible location for the proposed use. Further, the Property is not located within 500 feet of any of the uses from which marijuana establishments are prohibited (existing public or private school serving students in grades K-12). The Property includes an existing industrial building constructed in 1973.

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

The recreational and medical marijuana cultivation, manufacturing and processing uses will occur within the existing industrial building at 6 Industrial Park Road and a planned addition. The project has been reviewed by the Town's engineering, noise and odor consultants. These special permits are conditioned (Specific Condition B) on the Permittee's receipt of major site plan approval, a reduced parking special permit, and a groundwater protection special permit which have yet to be issued.

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

As conditioned in Specific Condition E, the Board finds that the operation of the Facility and 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 and odor consultants during the permitting process. The Applicant has prepared a noise mitigation plan which has been reviewed by the Town's noise consultant. It will be implemented in accordance with Specific Condition F. herein. The Applicant has also provided an odor control plan which will be implemented in accordance with Specific Condition G. herein.

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 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.

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

The proposed Facility and Establishment are expected to have up to 87 employees. The planned parking configuration provides for 92 vehicles. As the Facility and Establishment will not have a retail operation, non-employee traffic to the site will be minimal. Industrial Park Road is adequate to handle the routine employee traffic. 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. Pursuant to Specific

Condition D, the Applicant has agreed to staff the Facility and Establishment with 2 or 3 shifts with 30-minute intervals between shifts to minimize parking overlap and maximize parking available onsite for employees. No offsite parking is permitted.

- (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 Applicant, as a condition of receiving these special permits prior to completion of the Board's review of the Major Site Plan, Reduced Parking, and Groundwater Protection applications, has agreed that the conditions imposed by the Board in these other applications shall also apply to these special permit decisions. (See Specific Condition B). Further, the Applicant has agreed and shall to comply with the new Environmental Standards, Section 7.3 of the Zoning Bylaw, as approved by Medway Town Meeting on 11-15-21.

- (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 cultivation, processing and 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 medical and adult recreational use within the existing building and the planned addition. The proposed cultivation, processing and manufacturing uses will not significantly alter the character of the East Industrial zoning district.

The Board heard testimony from residential abutters and neighbors about their concerns regarding adverse noise and odor conditions that may emanate from the proposed Facility and Establishment. The Board contracted with outside consultants specializing in noise and odor control to review and provide guidance as to how to minimize potential noise and odors. The final site plan will include extensive and rigorous measures to ensure that the impacts are minimal at best. The Applicant will be required to comply with the recently amended environmental standards included in Section 7.3 of the Zoning Bylaw. The Cannabis Control Commission also requires its Applicants to the MA Department of Environmental Protection (DEP) noise standards. Measures to address other types of potential impacts (lighting, flooding, dust, vibration, refuse materials, etc.) may be addressed in the site plan decision as well. 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 establishment of non-retail recreational marijuana establishments at limited locations 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 Establishment by providing for them in appropriate places and under strict

conditions. As the proposed Establishment is located within one of the designated zoning districts and has been rigorously reviewed by the Board and its consultants, and as conditioned herein, it meets the purpose of the Zoning Bylaw.

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

The proposed project complies 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 and Establishment in compliance with state and local law, consistent with the goals of the Medway Master Plan, and as thoroughly conditioned herein, the proposed use will not be detrimental to the public good.

VIII. CONDITIONS The *Specific and General Conditions* included in this Decision are to assure that the Board's approval of these special permits for a Recreational (adult-use) Marijuana Establishment and a Non-Retail Registered Medical Marijuana Facility 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. All standard requirements included in Sections 8.9 and 8.10 of the *Zoning Bylaw* apply to these special permits. These include but are not limited to:
1. Prior to commencing operations on the Property to cultivate, manufacture, and process marijuana for adult recreational and medical uses, the Permittee shall provide the Building Commissioner, Health Agent, Fire Chief, Police Chief, and the Board with a copy of the applicable state marijuana licenses, permits, and approvals from the Massachusetts Cannabis Control Commission.
 2. The Permittee shall provide the Medway Police and Fire Departments, Building Commissioner, and the Board with the names, telephone numbers, and email addresses of all management staff and key holders to whom the Town can provide notice if there are operating problems associated with the Establishment and/or Facility.
 3. The Permittee shall provide an annual report of Phytopia LLC to the Board, Town Manager, Building Commissioner, Health Agent, Police Chief and Fire Chief no later than January 31st of each year, including a copy of all current state licenses and demonstrating continued compliance with the conditions of these special permits. Any change in ownership of Phytopia, LLC or change in management staff and key holders shall also be reported.
 4. These special permits are not transferrable to another party. It shall remain exclusively with the Permittee, Phytopia, LLC, as the operator of a recreational

(adult use) marijuana Establishment and a non-retail registered medical marijuana facility on the Property.

5. Smoking, burning and consumption of marijuana or marijuana infused products on the Property is prohibited.
 6. The Permittee 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.
 7. The Permittee shall fulfill the *Openness of Premises* requirements as specified in Sections 8.9 and 8.10 of the *Zoning Bylaw*.
- B. **Compliance with Other Permits** - These special permits are subject to all subsequent conditions that may be imposed by other Town departments, boards, agencies or commissions including the Planning and Economic Development Board and the Conservation Commission and are conditioned upon receipt of the other necessary permits and approvals including, but not limited to, site plan approval, groundwater protection special permit, reduced parking special permit, Order of Conditions, and a land disturbance permit.
- C. **Host Community Agreement** - There shall be a Host Community Agreement with the Town of Medway in effect at all times during the operation of the Establishment and Facility.
- D. **Hours of Operation** – The hours of operation for the Establishment and Facility may be up to 24 hours a day, seven days a week. The Applicant has indicated that staffing shall be split into 2 or 3 different shifts separated by at least 30 minutes to reduce parking overlap.
- E. **Nuisance** – The Permittee shall construct and maintain the Property, Facility, and Establishment 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*, as recently amended at the November 15, 2021 Town Meeting.
- F. **Noise Management**
1. The Permittee shall install and maintain at all times effective noise reduction equipment for the property to comply with Section 7.3 of the *Zoning Bylaw* as recently amended as well as the Massachusetts Department of Environmental Protection (MA DEP) noise requirements as established in 310 CMR 7.10. The Permittee shall achieve compliance through industry best practices and suitable noise abatement measures. The Permittee shall ensure proper maintenance of all noise abatement equipment to ensure maximum efficiency and effectiveness and ongoing compliance.

2. Prior to the issuance of a building permit for the Phase II addition, the Permittee shall submit its proposed noise mitigation plan to the Board to demonstrate that Phase I & Phase II combined are expected to be in compliance with the Town's recently approved noise requirements as specified in Section 7.3 of the *Medway Zoning Bylaw*. The Board may refer the noise mitigation plan to the Board's noise consultant for review and comment, at the Permittee's expense.
3. Prior to the issuance of an occupancy permit, the Permittee shall:
 - Provide verification to the Board that the noise mitigation measures have been constructed and installed as designed; and
 - Provide a noise compliance verification to the Board, to be performed with sound generating equipment emitting maximum sound or as limited by the project's reviewed and approved noise limiting process controls, e.g. cooling tower limited to 80% during nighttime hours.
4. Approximately six months after beginning operations under these special permits, the Permittee shall provide a supplemental noise study to the Building Commissioner, Health Agent and Board so as to determine compliance with the *Zoning Bylaw* and any conditions set forth herein as to noise. The Building Commissioner, Health Agent or Board may forward the study to the Town's noise consultant for review and comment, at the Permittee's expense.
5. The Permittee may be required to implement additional noise mitigation measures if the Facility and/or Establishment is found to be non-compliant with the *Zoning Bylaw*.
6. Upon the Town's written request, the Permittee shall submit a certification by a registered professional mechanical engineer that there are no changes in the installed mechanical equipment which may adversely impact the noise emanating from the Facility and/or the Establishment. 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 Permittee to provide additional noise studies by a qualified noise consultant and/or implement additional mitigation measures should the Facility and/or the Establishment become non-compliant with the recently amended Section 7.3 of the *Zoning Bylaw*. The Building Commissioner, Health Agent or Board may forward a noise study and/or noise mitigation plan to the Town's noise consultant for review and comment, at the Permittee's expense. The Permittee may further be required to address such issues with the Board to its satisfaction.

G. Odor Management

1. The Permittee shall install and maintain at all times effective odor control technology to remove odors from the Facility's and Establishment's exhaust system to comply with Section 7.3 of the *Zoning Bylaw* as recently amended by the 11-15-21 Town Meeting. The Permittee shall achieve compliance through industry best practices and suitable building filtration systems. The Permittee shall maintain all odor migration equipment to ensure maximum efficiency and effectiveness and ongoing compliance.

2. The *Odor Control Approach* (odor mitigation plan) prepared by BLW Engineers submitted to the Board does not include mechanical drawings for the odor management system. At such time as the mechanical drawings are available, and before associated building permit(s) are issued, the mechanical drawings shall be submitted to the Board for review by the Board's odor consultant, at the Permittee's expense, to determine if they comply with the Town's odor requirements.
 3. The June 16, 2021 review letter from Straughan Forensic, LLC, the Board's odor consultant, identifies a number of issues and information missing from the Applicant's odor mitigation plan. The noted letter is attached and made a part of this decision. Accordingly, the odor mitigation plan shall be revised to fully address these items and to comply with recently updated odor standards included in Section 7.3 of the *Zoning Bylaw* and shall be submitted to the Board before associated building permit(s) are issued, for review and further revision, if needed. The Permittee's submittal to the Cannabis Control Commission shall indicate that the odor control system must comply with Section 7.3 of the *Zoning Bylaw*.
 4. If the Cannabis Control Commission requires changes to the Permittee's odor mitigation plan, the Permittee shall inform the Board and the changes shall be reviewed by the Town's odor consultant at the Permittee's expense.
 5. Prior to the issuance of an occupancy permit by the Medway Building Department, the Permittee shall provide a certification made by a licensed engineer that the odor mitigation measures included in the approved plan have been installed. Additional odor mitigation measures may be required if determined to be necessary by the Building Commissioner.
 6. For each of the two successive years following occupancy, the Permittee shall annually submit a certification by a registered professional engineer to address all maintenance and changes in the mechanical equipment that has been installed to control the odor emanating from the Facility and Establishment. Such certification shall be provided to the Building Commissioner, Health Agent and the Board.
 7. The Building Commissioner, in enforcing the conditions herein, may require additional odor investigations and/or odor mitigation measures should the Facility or Establishment fail to comply with the Town's environmental standards bylaw. The Permittee may further be required to address such issues with the Board to its satisfaction.
- H. **Signage** – Any signs shall comply with Section 7.2 of the *Zoning Bylaw* and the respective signage requirements of Sections 8.9 and 8.10.
- I. **Limitations**
1. These special permits are limited to the operation of the Facility and the Establishment solely for the cultivation, manufacturing and processing of medical and adult use recreational marijuana and marijuana products. These special permits do not authorize the retail sale of marijuana or marijuana products, or the

operation of a marijuana social establishment, marijuana testing, or any other marijuana use at the Property.

2. These special permits do not relieve the Permittee from its responsibility to apply for, obtain, pay for, and comply with all other required federal, state and Town permits, licenses and approvals.
3. An approved site plan, groundwater protection special permit, reduced parking special permit, Order of Conditions, and a land disturbance permit are required before any building permits can be issued or site work undertaken except for “white box” construction approved by the Town of Medway Building Commissioner and all environmental clean-up work in accordance with MA DEP requirements.
4. These special permits shall expire on December 1, 2022 if the Permittee has not secured the Board’s approval of the associated major site plan, reduced parking special permit, groundwater protection permit, Order of Conditions and land disturbance permit.

GENERAL CONDITIONS OF APPROVAL

- A. **Fees** - Prior to filing these special permit decisions with the Town Clerk, 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, planning, noise, odor or other consultants;
 2. an advance on fees for the continued review services to be provided by 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. **Modification of Decision**
 1. Proposed modifications to these *Decisions* shall be subject to review by the Board.
 2. Any work that deviates from these *Decisions* shall be a violation of the *Zoning Bylaw*, unless the Permittee requests approval of a modification pursuant to Section 3.5.2.A.3.c. herein and such approval is provided in writing by the Board.
 3. The request for a modification to a previously approved special permit 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 a proposed modification, 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.

4. 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.
- C. **Enforcement**
1. 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 special permits and their Conditions of Approval.
 2. The 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.
- D. ***Right to Enter Property*** – Board members, its staff, consultants or other designated agents of the Town shall have the right to enter onto the Property, subject to MA Cannabis Control Commission regulations, to ascertain compliance with the terms and conditions of these special permits.
- E. ***Recording*** - Within thirty days of recording the Decision, the Permittee 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.
- F. ***Conflicts*** –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: November 30, 2021

AYE:

Jessica Chabot

Richard Di Iulio

Matthew Hayes


Robert Tucker

Andy Rodenhiser


COPIES TO: Michael Boynton, Town Manager
Stephanie Carlisle, DPW Compliance Officer
Michael Fasolino, Deputy Fire Chief
Bridget Graziano, Conservation Agent
Donna Greenwood, Assessor
Beth Hallal, Health Agent
Sean Harrington, Deputy DPW Director
Jeff Lynch, Fire Chief
Jack Mee, Building Commissioner and Zoning Enforcement Officer
Pete Pelletier, DPW Director
Joanne Russo, Treasurer/Collector
Barbara Saint Andre, Director of Community and Economic Development
Alan Tingley, Police Chief
Jeff Watson, Police Department
Steven Bouley, Tetra Tech
Edward Cannon
Phytopia, LLC

Decision Date: November 30, 2021

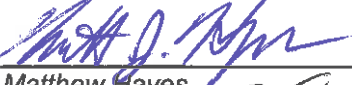
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Barbara Saint Andre, Director of Community and Economic Development
Alan Tingley, Police Chief
Jeff Watson, Police Department
Steven Bouley, Tetra Tech
Edward Cannon
Phytopia, LLC

June 16, 2021

Susan Affleck - Childs
Planning and Economic Development Coordinator
Town of Medway
155 Village Street
Medway, MA 02053
508-533-3291
Email: sachilds@townofmedway.org

Re: Phytotherapy, 6 Industrial Park Road – Review of Odor Control Plan

Dear Ms. Affleck - Childs:

This letter documents the findings from my review of documents received related to the Phytotherapy facility at 6 Industrial Park Road in Medway for cultivation, manufacturing, processing, and packaging of marijuana products.

The following document was received for review:

- Phytotherapy, Medway, MA, Odor Control Approach - 19 pages.

General Comments:

1. The Town of Medway Zoning Bylaws require the plan to be *“prepared by a certified environmental engineer or certificated environmental professional with demonstrated experience in the area of marijuana odor mitigation.”* No engineer’s stamp or other form of certification has been provided.
2. No general description of operations has been provided. Is the facility intended only for cultivation, production, and packaging of smokable marijuana? Will the operations include oil extraction or the production of edibles or non-smokable products?
3. No general description of odor containment strategies and procedures has been provided. Is there a specific ventilation procedure for the harvesting cycle and cleaning of flower rooms?
4. What is the planned maintenance schedule for the critical components of the odor mitigation systems, e.g., schedule for replacement of carbon filters?

Multi-Faceted Approach, page 3:

5. What percent of the odor elimination will be achieved by each of the three stages – SecureAire, Carbon Filtration, and Fogco? Will the SecureAire systems be installed in the Flower Rooms only? What about Drying/Curing, Trimming, and any non-flower rooms that may have significant odors? Is it the intent to eliminate all or almost all the odor with the SecureAire units, and use the central exhaust mainly just to maintain negative pressure? Or will the carbon filters and Fogco units be sized to handle a major portion of the odor elimination?

Building Pressure, page 4:

6. The room names are not legible on the plan provided. The locations of odor emitting activities, type of activity, and source of odor are not indicated.
7. Locations of doors, windows, and air intakes are not indicated.
8. Locations of exhaust fans and air handling units are not indicated. Will some rooms have individual exhaust fans? Will flower rooms have emergency CO2 purge fans? If so, are filters planned for those fans as well?

SecureAire, pages 5 – 10:

9. What are the sizing criteria to be used for the SecureAire units in terms of air changes per hour for the volume of the room? Will this be enough to handle the peak odor load, or will the amount of odor contained in flower rooms accumulate for the duration of the flower cycle? Is there a strategy to avoid a large “burst” of odor escaping from the facility at the time of harvesting and cleaning the room?
10. Will the SecureAire units be mounted in 100% recirculating air handling units? Where will the units be located?

Carbon Filtration, pages 11 – 16:

11. What are the sizing criteria to be used for the carbon filtration units?
12. How many of these units will be installed, and where will they be located?

Fogco, pages 17 – 19:

13. What are the sizing criteria to be used for the Fogco units?
14. How many of these units will be installed, and where will they be located?
15. What chemicals will be stored on site for the operation of Fogco systems? Are any of these chemicals hazardous materials?

Respectfully,



Bruce Straughan, PE
Straughan Forensic, LLC