

**Board Members**

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



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**TOWN OF MEDWAY**  
**COMMONWEALTH OF MASSACHUSETTS**  
**PLANNING AND ECONOMIC**  
**DEVELOPMENT BOARD**

***Site Plan and Outdoor Display Special Permit***  
***Rocky's Hardware – 98 Main Street***  
***APPROVED with Waivers and Conditions***

**Decision Date:** December 14, 2021

**Name/Address of Applicant:** Rocky's Ace Hardware, LLC  
**And Permittee** 40 Island Pond Road  
Springfield, MA 01118

**Name/Address of Property Owner:** Medway Realty, LLC  
63 Atlantic Avenue  
Boston, MA 02110

**Designated Representative:** Gareth Orsmond  
Pierce Atwood LLP  
100 Summer Street  
Boston, MA 02110

**Site Plan:** *Rocky's Ace Hardware Garden Center Plan*  
Prepared by Sugrue Associates of Smithfield, RI  
Dated 7-12-21, last revised 9-9-21 to be further revised as specified herein.

**Location:** 98 Main Street within Medway Place shopping plaza

**Assessors' Reference:** 40-055

**Zoning District:** Central Business District

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**I. PROJECT DESCRIPTION** – Rocky’s Hardware proposes to create a 1,200 square foot enclosed, year-round outdoor merchandise display area on a portion of the site that is currently paved, and which abuts the eastern end of the Medway Place shopping plaza building where Rocky’s Hardware is located at 98 Main Street. The outdoor display area will feature typical hardware store items such as seasonal tools, plants, and other related merchandise. Proposed improvements include installation of fencing and protective bollards. Additionally, the applicant wishes to install a fenced-in propane filling station on a 15’ x 24’ concrete pad, also with protective bollards. A 24’ drive aisle will be maintained between the two uses. The planned improvements result in the loss of ten parking spaces. The planned improvements are shown on *Rocky’s Ace Hardware Garden Center Plan* prepared by Sugrue Associates of Smithfield, RI, dated 7-12-21, last revised 9-9-21, to be further revised as specified herein. The proposal requires administrative site plan review pursuant to the Board’s *Site Plan Rules and Regulations* dated October 8, 2019 and an outdoor display special permit pursuant to the *Medway Zoning Bylaw*, last revised May 10, 2021. When a project needs both site plan review and a special permit, the Planning and Economic Development Board serves as the permit granting authority.

NOTE – The Medway Place shopping center is also subject to a recently approved (11-30-21) site plan decision for site improvements to the parking lot, lighting, landscaping, and other items.

## **II. VOTES OF THE BOARD**

**OUTDOOR DISPLAY SPECIAL PERMIT** - After reviewing the application and information gathered during the public hearing and review process, the Medway Planning and Economic Development Board (the “Board”), on December 14, 2021, on a motion made by Jessica Chabot and seconded by Robert Tucker, **voted by roll call to APPROVE with CONDITIONS** as specified herein, an outdoor display special permit for the construction of an outdoor garden center for Rocky’s Ace Hardware at 98 Main Street as shown on *Rocky’s Ace Hardware Garden Center Plan* dated 7-12-21, last revised 9-9-21 by Sugrue Associates of Smithfield, RI, to be further revised as specified herein. The motion was approved by a roll call vote of four in favor and one opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Jessica Chabot	AYE
Richard Di Iulio	NAY
Matthew Hayes	AYE
Thomas Gay	AYE
Robert Tucker	AYE

**SITE PLAN** - After reviewing the application and information gathered during the public hearing and review process, the Medway Planning and Economic Development Board (the “Board”), on December 14, 2021, on a motion made by Jessica Chabot and seconded by Robert Tucker, **voted to APPROVE with WAIVERS and CONDITIONS** as specified herein, an administrative site plan for the construction of site improvements for Rocky’s Ace Hardware at 98 Main Street as shown on *Rocky’s Ace Hardware Garden Center Plan* dated 7-12-21, last revised 9-9-21 by Sugrue Associates of Smithfield, RI, to be further revised as specified herein. The motion was approved by a roll call vote of four in favor and none opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Jessica Chabot	AYE
Richard Di Iulio	AYE
Matthew Hayes	AYE
Robert Tucker	AYE

NOTE – Mullins Rule certifications pursuant to G.L. c. 39, §23D were provided by Robert Tucker and Thomas Gay for the 8-10-21 public hearing.

### **III. PROCEDURAL HISTORY**

- A. June 14, 2021 - Site plan and outdoor display special permit applications and associated materials filed with the Board; the information was filed with the Town Clerk on 6-22-2021
- B. June 23, 2021 – Notice for July 13, 2021 public hearing filed with the Town Clerk and posted at the Town of Medway web site's master meeting calendar.
- C. June 24, 2021 - Project information distributed to Town boards, committees, and departments for review and comment and posted to the Board's web page.
- D. June 24, 2021 – Notice for the July 13, 2021 public hearing was sent to abutters and parties of interest by certified sent mail.
- E. June 28 and July 6, 2021 - Public hearing notice advertised in *Milford Daily News*.
- F. July 13, 2021 – Public hearing begins. The hearing was continued to August 10, August 24, September 14, September 28, October 26, November 2, November 23, and December 14, 2021 when a decision was rendered and the hearing was closed.

### **IV. INDEX OF SITE PLAN DOCUMENTS**

- A. The site plan and special permit applications for the proposed Rocky's outdoor display area and propane tank service area included the following plans and information that were provided to the Board at the time the applications were filed:
  - 1. Administrative Site Plan and Outdoor Display Special Permit applications dated June 8, 2021, project description and narrative, certified abutters' list, and requests for waivers from the *Site Plan Rules and Regulations*.
  - 2. *Medway Place Site Plan and Landscape Plan and Temporary Seating Plan and Gate Detail* dated April 22, 2021, prepared by Howard Stein Hudson of Boston, MA.
- B. During the course of the Board's review, a variety of other materials were submitted to the Board by the Applicant and its representatives:
  - 1. Rocky's Ace Hardware Garden Center plan dated 7-12-2021 by Sugrue Associates of Smithfield, RI
  - 2. Rocky's Ace Hardware Garden Center plan, revised 7-13-2021 by Sugrue Associates
  - 3. Rocky's Ace Hardware Garden Center plan, revised 7-27-21 by Sugrue Associates
  - 4. Rocky's Ace Hardware Garden Center plan, revised 8-16-21 by Sugrue Associates
  - 5. Rocky's Ace Hardware Garden Center plan, revised 9-9-21 by Sugrue Associates
  - 6. Response document by attorney Joel Quick, received 8-19-21 to the discussion and Board comments provided during the 8-10-21 public hearing
  - 7. *Medway Place Site Plan and Landscape Plan and Temporary Seating Plan and Gate Detail* dated April 22, 2021, revised August 17, 2021, last revised September 30, 2021 prepared by Howard Stein Hudson of Boston, MA.
  - 8. Existing Conditions Photometric Plan for Medway Place Shopping Center dated 9-10-21 by Highpoint Engineering, Inc. of Canton, MA
  - 9. *Rocky's Ace Hardware Dumpster Fence Details*, dated 8-30-21 by Sugrue & Associates.
  - 10. Memorandum dated 10-25-21 from Rocky's Vice President Kevin Bradley re: steps taken to address outdoor storage and display issues.
  - 11. Letter dated November 19, 2021 from attorney Gareth Orsmond of Pierce Atwood on behalf of Medway Realty LLC (owner of Medway Place)

- C. During the course of the Board's review, a variety of materials were submitted to the Board by its staff, consultants, and other Town Boards and Committees.
1. Project review memorandum dated 7-8-2021 from Susy Affleck-Childs, Planning and Economic Development Coordinator
  2. Review comments dated 7-11-2021 from Police Sergeant Jeff Watson
  3. Review comments dated 7-12-2021 from Compliance Coordinator Erika Robertson, Medway Building Department
  4. Review letters dated 7-12-2021, 8-5-2021 and 8-18-2021 from the Board's engineering consultant, Steve Bouley of Tetra Tech
  5. Review comments dated 6-24-2021 and 8-24-21 from Deputy Fire Chief Mike Fasolino
  6. Review comments dated 8-24-2021 from Kelly Millette, Medway DPW
- D. Other documents entered on the record:
1. Medway Place site plan decision dated 11-30-21, filed with the Town Clerk 12-3-21.

**V. TESTIMONY** - In addition to the site plan application materials as submitted and provided during the course of the Board's review, the Board also received verbal testimony from:

- Steve Bouley, P.E. of Tetra Tech, Inc., the Town's Consulting Engineer
- Joel Quick, attorney, Pierce Atwood
- Todd Wilson, Medway Realty, LLC
- Matt Kelly, Rocky's Hardware Regional Manager
- Chris Rich, Rocky's Hardware Medway Store Manager
- Kevin Bradley, Rocky's Vice President
- Attorney Michael Brown of Adler Pollock & Sheehan presenting Colbea Enterprises, LLC owners of the adjacent Shell gas station

**VI. FINDINGS** – The Board, at its meeting on December 14, 2021, on a motion made by Robert Tucker and seconded by Jessica Chabot, voted by roll call to approve following FINDINGS regarding the outdoor display special permit application for Rocky's Ace Hardware at 98 Main Street. The motion was approved by a roll call vote of four in favor and one opposed.

**Special Permit Findings pursuant to Medway Zoning Bylaw Section 3.4.**

- 1. The proposed site is an appropriate location for the proposed use.** Rocky's Hardware is a new anchor tenant within the Medway Place shopping plaza, a retail shopping center first established in the mid-1960's. The center is located within Medway's Central Business zoning district which includes several other shopping centers – Drybridge Crossing, Gould's Plaza, and Medway Commons. Rocky's is located in the easternmost section of Medway Place adjacent to an existing paved, but underutilized area where the proposed outdoor garden center and propane filling station would be located. This area has typically had minimal traffic and is not generally used for customer parking. An outdoor garden center and propane filling station are customary accessory uses to a retail hardware store. Placing these facilities on the side of the building near underutilized parking spaces will allow store staff to direct people to those specific nearby parking spaces to promote easier loading of merchandise. As conditioned herein, the site is appropriate for the proposed use.
- 2. Adequate and appropriate facilities will be provided for the operation of the proposed use.** The proposed enclosed garden center is modestly sized at 1,200 sq. ft. and the propane filling station area will be positioned on a 15' by 24' concrete pad, also enclosed by fencing. Rocky's Hardware employees will be responsible for moving merchandise into and out of the garden

center, assisting customers to load merchandise from the garden center into vehicles, and filling propane tanks for customers. The site plan has been reviewed by the Board's consulting engineer and the Town's safety and emergency personnel and has been modified to address concerns raised about the size of the outdoor garden center, positioning of the propane tank, width of the traffic aisle, traffic routing, and safety signage. Existing exterior building lighting will remain in place; no additional lighting is planned for these accessory uses. However, the Board continues to have some reservations about the adequacy of the size of the drive aisle to service these new uses, particularly for delivery vehicles, and has included Specific Condition D.3 to address traffic flow in this area. Specific Condition D.1 provides a time limitation on the special permit, to allow an evaluation as to whether the site improvements are functioning as intended.

- 3. The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians or the environment.** Abutters to the east, south and west are all commercial uses. During the public hearing, the immediate abutter, Colbea Enterprises (Shell gas station) raised concerns about Rocky's customers using Shell station parking spaces; the parties met and suitable parking signage will be added to the Shell building to specify Shell customer parking only. There is a residential neighborhood on the north side of the property, however those homes are screened from the shopping center by a fence and vegetated buffer; those abutters were notified of the hearing and no one attended the hearing or expressed any concerns or comments. The location of the propane tank and outdoor garden center were reviewed by the Medway Fire Department which will have oversight and regular permitting for the propane tank. The Fire Department offered comments on its location to ensure that fire trucks can safely and easily access the building, on suitable safety signage, and various protective measures which have been incorporated into the site plan. Specific Condition D.1 provides a time limitation on the special permit, to allow an evaluation as to whether the site improvements are functioning as intended. As conditioned, the proposed use will not create a hazard to abutters, vehicles, pedestrians or the environment.
- 4. The proposed use will not cause undue traffic congestion or conflicts in the immediate area.** The goal of locating these new facilities in the specified area at the eastern end of the building is to keep open the main channel in front of the building for customer vehicles and pedestrians. As conditioned herein (Specific Condition D.3), delivery vehicles to Rocky's Hardware are not permitted to use the driveway area adjacent to (east of) the outdoor garden center and propane filling station area to access the back of the store for deliveries. They are required to access the back of the Rocky's store via the shopping center's western drive aisle west of the Ocean State Job Lot retail space. The Applicant has agreed to implement this limitation for its vendors. Specific Condition D. 5 requires the installation of signage prohibiting traffic from using the driveway area to the east of Rocky's as a way to access the back of the Medway Place buildings. Specific Condition D.1 provides a time limitation on the special permit, to allow an evaluation as to whether the site improvements will cause any traffic congestion or conflict and whether the traffic restrictions are enforced. Altogether, these changes will reduce traffic conflicts in this immediate area. NOTE – The Medway Place site plan decision dated 11-30-21 includes a condition that traffic flow around the back of the building become one way, west to east.
- 5. The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site or operational attributes of the proposed use.** The proposed uses do not necessitate any changes to lighting. There will be no change to the amount of impervious surface area so no increased flooding impacts are anticipated. There will be no notable increase in odors, dust or vibration. The existing dumpster servicing Rocky's will be enclosed as shown on the site plan. This will

minimize that undesirable visual feature; the dumpster enclosure details are included on the site plan. The planned additional uses are reasonable accessory extensions of the operation of the main hardware store retail use.

6. **The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.** The proposed uses are customary accessory uses associated with a retail hardware store. The modest size of the garden center (1,200 sq. ft.) will not significantly alter the character of the central business zoning district. The impacts of these uses on the adjacent neighborhood will not be different than those from the existing shopping center's operation.
7. **The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.** The *Zoning Bylaw's* Table of Uses specifies a wide array of permitted business and retail uses for the central business district. The Bylaw authorizes outdoor display areas in the central business zoning district by special permit. By going through the special permit process, the location of these facilities is permanently designated and concerns for vehicle and pedestrian safety have been addressed pursuant to the Specific Conditions specified in Section VIII herein.
8. **The proposed use is consistent with the goals of the Medway Master Plan.** The use is consistent with the Master Plan's goal of further economic development within the Town's existing commercial areas. As a regional hardware store, Rocky's has wide name recognition and its services and merchandise provide a draw to customers to the Medway Place shopping plaza, thus serving to strengthen the viability and importance of Medway Place to the community.
9. **The proposed use will not be detrimental to the public good.** For all the above reasons, the impacts of the proposed uses will not outweigh the beneficial services to be provided to the community. Potential adverse effects have been mitigated and addressed in the conditions included in this decision in Section VIII.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Jessica Chabot	AYE
Richard Di Iulio	NAY
Thomas Gay	AYE
Matthew Hayes	AYE
Robert Tucker	AYE

- VII. WAIVERS** – At its December 14, 2021 meeting, the Board, on a motion made by Jessica Chabot and seconded by Robert Tucker, voted by roll call to approve a waiver from the following provision of Section 206-3 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 approving the waiver request are listed below. Waivers are subject to the Specific and General Conditions of Approval, which follow this section. The motion was approved by a vote of four in favor and none opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Jessica Chabot	AYE
Richard Di Iulio	AYE
Matthew Hayes	AYE
Robert Tucker	AYE

## **Administrative Site Plan Submittal Requirements/Plan Contents**

1. **Section 206-3 Stormwater Drainage Evaluation Report.** Concurrent with this application, the shopping center owner, Medway Realty LLC, is in public hearing with the Planning and Economic Development Board for a site plan for the full Medway Place shopping plaza. As part of that application, a full stormwater report and drainage plan has been prepared, submitted and reviewed by the Board's consulting engineer and the Medway Department of Public Works. The specific site for these proposed Rocky's improvements is located on existing asphalt so there is no increase in impervious surface. The planned installation of stormwater infrastructure for the plaza has been added to the Rocky's site plan. *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.*

**VIII. CONDITIONS** - The *Special and General Conditions* included in this *Decision* shall assure that the Board's approval of the site plan and special permit is consistent with the *Zoning Bylaw* and the *Site Plan Rules and Regulations*, 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.

At its December 14, 2021 meeting, the Board, on a motion made by Robert Tucker and seconded by Jessica Chabot, voted by roll call to approve the following Specific and General Conditions of Approval. The motion was approved by a roll call vote of four in favor and one opposed.

<b>Planning &amp; Economic Development Board Member</b>	<b>Vote</b>
Jessica Chabot	AYE
Richard Di Iulio	NAY
Thomas Gay	AYE
Matthew Hayes	AYE
Robert Tucker	AYE

The Board's approval is subject to the following Specific and General Conditions.

### **SPECIFIC CONDITIONS OF APPROVAL**

- A. **Plan Endorsement** - Within one hundred twenty days after the Board has filed the *Decision* with the Town Clerk, the *Rocky's Ace Hardware Garden Center Plan* dated 7-12-21, last revised 9-9-21 prepared by Sugrue Associates of Smithfield, RI shall be further revised to reflect all Conditions and required revisions and additions, including those as follows, and shall be submitted to the Board to review for compliance with the Board's *Decision*. (*Said plan is hereinafter referred to as the Revised Plan*). The Applicant shall provide the Revised Plan in its final form to the Board for its endorsement.
- B. **Plan Revisions** – Prior to plan endorsement, the following plan revisions shall be made to *Rocky's Ace Hardware Garden Center Plan* dated 7-12-21, last revised 9-9-21 prepared by Sugrue Associates of Smithfield, RI to be approved by the Board.
  1. The Revised Plan sheets shall comply with Section 206-4 E of the *Site Plan Rules and Regulations* including the addition of a standard cover sheet to include approved waivers, index, signature box, etc.



2. The Revised Plan shall be formatted suitably for recording at the Norfolk County Registry of Deeds
3. The Revised Plan shall specify the revised one-way traffic pattern west to east behind the building pursuant to Specific Condition D.3.
4. The Revised Plan shall include added details and notes regarding the text and locations for signage to prohibit the use of the paved area to the east of Rocky's pursuant to Specific Conditions D.3 and D.5.

**C. Use Limitations**

1. The permittee shall not place fertilizers, de-icing chemicals or other substances that are potential sources of pollutants as defined in the Town's Stormwater Management and Land Disturbance Bylaw, Article XXVI of the Town's General Bylaws in the outdoor garden center that may enter the Town's MS4 stormwater system.
2. Hours of operation – The outdoor garden center and the propane tank filling station shall be open only during normal store hours, except for those occasions when a declared emergency is in effect.
3. Outdoor Storage – Consistent with the *Zoning Bylaw*, Table 1 Schedule of Uses, outside storage as defined in the *Zoning Bylaw* of materials associated with a business operating in a building on the premises is not permitted in the Central Business District.
4. Other Outdoor Display - This decision does not apply to or authorize the applicant's use of the outdoor sidewalk area in front of the Rocky's Hardware store for product display purposes. Such outdoor display activity requires a separate special permit from the Zoning Board of Appeals.

**D. Other Conditions**

1. As previously noted, the Board has concerns about the adequacy of the site improvements to suitably address traffic and safety in the area where the outdoor garden center and propane filling station will be located. Accordingly, this special permit shall expire two years after the expiration of the 20-day appeal period. An application to modify this condition to extend the special permit may be filed after the expiration of 20 months from the expiration of the 20-day appeal period at which time the Board will evaluate existing conditions and determine if any other measures or site plan modifications are needed to enhance public safety.
2. The Permittee, as a tenant in the Medway Place shopping center, shall comply with applicable provisions of the Board's Medway Place site plan approval decision dated November 30, 2021 including but not limited to conditions pertaining to solid waste management and delivery scheduling coordination among Medway Place tenants.
3. Deliveries for all Rocky's Hardware merchandise shall be from behind the store, not through the store's front entrance or gate to the garden center. The traffic route for Rocky's delivery vehicles shall be one-way (west to east) from the far western end of the shopping center complex and around the rear of the buildings to the back of the Rocky's store. No delivery vehicles for Rocky's merchandise are permitted to access its back unloading area via the paved area and drive aisle at the easternmost end of the shopping center building where the Rocky's garden center and propane filling station are located.

4. No signage other than the safety signs shown on the site plan is allowed for the propane tank and filling station area. No product signage or banners are allowed on the fencing for the outdoor garden center.
5. Signage shall be installed to:
  - Direct traffic to move one-way only from west to east behind the Medway Plaza buildings. This may include pavement markings as well as signage.
  - Prohibit traffic from entering the paved area to the east of Rocky's Hardware
6. The permittee shall comply with Town of Medway water restrictions issued by the Department of Public Works as such apply to the watering of plant materials located within the garden center.

## **GENERAL CONDITIONS OF APPROVAL**

- A. **Fees** - Prior to site plan endorsement by the Board, the Permittee shall pay:
1. the balance of any outstanding plan review fees owed to the Town for review of the site plan by the Town's engineering, planning or other consultants; and
  2. any construction inspection fee that may be required by the Board; and
  3. any other outstanding expenses or obligations due the Town of Medway pertaining to this property, including real estate and personal property taxes business licenses, water/sewer bills, etc.

The Permittee's failure to pay these fees in their entirety shall be reason for the Board to withhold plan endorsement.

- B. **Other Permits** – This decision does not relieve the Permittee from its responsibility to obtain, pay and comply with all other required federal, state and Town permits. The contractor for the Permittee or assigns shall obtain, pay and comply with all other required Town permits.
- C. **Document/Plan Recording** – After conclusion of the 20-day appeal period, the Permittee shall file this decision and endorsed plan with the Norfolk County Registry of Deeds. Within thirty days of recording, the Permittee or assign shall provide the Board and the Building Commissioner with evidence of such recording.
- D. **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** - Construction work at the site and the operation of construction equipment including truck/vehicular and machine start-up and movement shall commence no earlier than 7 a.m. and shall cease no later than 6 p.m. Monday – Saturday. No construction shall take place on Sundays or legal holidays without the advance approval of the Building Commissioner.
  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/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/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 *Bylaw*, SECTION V. USE REGULATIONS, Sub-Section B. Area Standards, Paragraph 2. b).

**E. Construction Oversight**

1. 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/installation, identify what site plan work remains to be completed, prepare a bond 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.

2. Board members, its staff, consultants or other designated Town agents and staff shall have the right to inspect the site at any time during construction, for compliance with the endorsed site plan and the provisions of this *Decision*.
3. If applicable, the Department of Public Works may conduct inspections for any construction work occurring in the Town's right-of way in conjunction with a Town of Medway Street Opening/Roadway Access Permit.
4. 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. The engineer shall prepare a written report of each inspection and provide a copy to the Board within 5 days of inspection.

**F. *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 Bylaw nor conflict with a specific condition of the *Decision*. Field changes shall not substantially alter the intent, layout or design of the endorsed site 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 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 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.

**G. *Modification of Plan and/or Decision***

1. Proposed modifications, not including on-site field changes, to the *Decision* or endorsed plan shall be subject to review by the Board.
2. This site plan 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 site plan or this *Decision* shall be a violation of the *Bylaw*, unless the Permittee requests approval of a plan modification pursuant to Section 3.5.2.A.3.c. and such approval is provided in writing by the Board.
4. The request for a modification to a previously approved site 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 site plan modifications, the Permittee shall be billed and be responsible for all supplemental costs

including filing fees, plan 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 site plan project documents and shall be shown on the final as-built plan.

#### H. ***Compliance with Plan and Decision***

1. The Permittee shall construct all improvements in compliance with the approved and endorsed site plan and this *Decision* and 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 foregoing Conditions of Approval.
3. 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.

#### I. ***Project Completion***

1. Site plan approval shall lapse after two years of the grant thereof if substantial use has not commenced except for good cause. The work shown on the approved site plan shall be completed by the Permittee or its assignees within two 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 also the 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. Prior to project completion, the Permittee shall request a ***Certificate of Site Plan Completion*** from the Board. The ***Certificate*** serves as the Board's confirmation that the completed work conforms to the approved site 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 security/performance guarantee that has been provided to the Town of Medway. To secure a ***Certificate*** of Site Plan Completion, the Permittee shall:
  - a) provide the Board with 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
  - b) submit an electronic version of an 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.

- J. **Construction Standards** - All construction shall be completed in full compliance with all applicable local, state and federal laws, including but not limited to the Americans with Disabilities Act and the regulations of the Massachusetts Architectural Access Board for handicap accessibility.
- K. **Conflicts** – If there is a conflict between the site plan and the *Decision's* Conditions of Approval, the *Decision* shall rule. If there is a conflict between this *Decision* and/or site plan and the 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 Applicant/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.

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**OUTDOOR DISPLAY SPECIAL PERMIT**

**AYE:**

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Jessica Chabot

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Thomas Gay

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Matthew Hayes

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Robert Tucker

**NAY:**

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Richard Di Iulio

**COPIES TO:** Michael Boynton, Town Manager  
Mike Fasolino, Deputy Fire Chief  
Bridget Graziano, Conservation Agent  
Donna Greenwood, Assessor  
Beth Hallal, Health Agent  
Jeff Lynch, Fire Chief  
Jack Mee, Building Commissioner and Zoning Enforcement Officer  
Pete Pelletier, DPW Deputy Director  
Joanne Russo, Treasurer/Collector  
Barbara Saint Andre, Director of Community and Economic Development  
Jeff Watson, Police Department Safety Officer  
Gareth Orsmond, Pierce and Atwood  
Joel Quick, Pierce Atwood  
Steven Bouley, Tetra Tech

## OUTDOOR DISPLAY SPECIAL PERMIT

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## **SITE PLAN DECISION**

### **AYE:**

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*Jessica Chabot*

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*Richard Di Iulio*

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*Matthew Hayes*

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*Robert Tucker*

**COPIES TO:** Michael Boynton, Town Manager  
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## SITE PLAN DECISION

### AYE:




Jessica Chabot



Richard Di Iulio



Matthew Hayes



Robert Tucker

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