

Town of Sandisfield, Massachusetts
Decision Granting Special Permit to Berkshire Mountain Cannabis, LLC

The Applicant (Berkshire Mountain Cannabis, LLC) has applied to the Town of Sandisfield Select Board (Board) for a Special Permit to build and operate a Marijuana Retailer Establishment on property known and numbered as 88 South Main Street.

Pursuant to Section 3.B.24 of the Sandisfield Zoning Bylaw, a commercial use deemed by the Board to be similar to other allowed uses may be approved by special permit. The Board determines that the proposed use is similar to craft or gift shops, which are permitted under Section 3.B.17. The Board further notes that the Town has not adopted zoning that specifically regulates marijuana establishments. Therefore, since the Town has not voted to prohibit such establishments in accordance with the provisions of G.L. c.94G, §3, such uses must be deemed permitted within the Town's single zoning district. Accordingly, the Board has jurisdiction to grant a special permit for the proposed use.

Pursuant to Section 10 of the Zoning Bylaw, the Board makes the following determinations:

1. The proposed use is in compliance with all provisions and requirements of this Bylaw and in harmony with its general intent and purpose;

The proposed use satisfies all dimensional and other requirements of the Zoning Bylaw. As noted above, the proposed use is allowed by special permit, because the Board determines that it is similar to other allowed uses. The Applicant proposes to renovate and occupy an existing building on the subject property, which was previously operated as a restaurant. The building complies with all dimensional criteria set forth in the Bylaw. The size of the lot is 1.049 acres and has 200 feet of frontage on South Main Street, thereby complying with the area and frontage requirements of Section 4.B of the Zoning Bylaw. The lot depth and setback requirements of Section 4.B are also satisfied. As conditioned, impacts of the project will be adequately mitigated in the Board's view.

2. Is essential or desirable to the public convenience or welfare at the proposed location;

The project represents a significant nonresidential investment in the Town and will result in additional tax revenue and job creation, as well as other benefits as detailed in the Host Community Agreement between the Applicant and the Town. The Applicant intends to invest over \$700,000 in the acquisition and renovation of the subject property.

3. Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;

The site is located on a state highway and is bordered by dense vegetation. The existing

structure will be substantially renovated. No new structures are proposed. Therefore, this project will represent a significant improvement to the aesthetics and character of the area. As detailed below, additional conditions have been imposed that mitigate potential concerns regarding odor and noise.

4. Will not create undue traffic congestion or unduly impair pedestrian safety; and

Route 8 does not currently experience significant traffic delays. The subject property has previously been operated as a restaurant. There is ample parking on site to accommodate the proposed use. The addition of project traffic to a state highway, which currently operates without any concern is not expected to lead to undue traffic congestion.

5. Will not overload any public water, drainage or sewer system or any other municipal facility to such extent that the proposed use or any existing use in the immediate area of the Town will be unduly subjected to hazards affecting the public health, safety or general welfare.

There is no public water or sewer in the vicinity of the subject property. As conditioned, the project will not have substantial negative impacts on any existing use in the immediate area.

In addition to the Select Board's Special Permit Regulations, the Select Board shall find that the proposed use meets the specific requirements as described below, as conditions for issuing a Special Permit:

I. General Conditions

A. Plans and Application Materials Incorporated Herein: Except as specifically set forth herein, the plans and application materials submitted by the Applicant are hereby incorporated as part of this special permit, and any material divergence from such plans and materials shall require modification of this Special Permit.

B. Compliance with Host Community Agreement: The provisions of the Host Community Agreement ("HCA") between the Applicant and the Town approved by the Select Board on February 14, 2022 are hereby incorporated by reference as conditions of this Special Permit.

C. Enforcement: If the Town prevails in any action to enforce any provision of this Special Permit, the Applicant shall be required to pay the Town's costs of such action, including without limitation attorney and expert witness fees.

D. Security: The Applicant shall submit a written security plan to the Sandisfield Police Department to demonstrate that there is limited burden on the Town public safety officials due to the proposed Establishment. The security plan shall include all security measures

for the site and for transportation of Cannabis and marijuana products to and from off-site premises to ensure the safety of employees and the public and to protect the premises from theft or other criminal activity. A letter from the Sandisfield Police Department to the Select Board acknowledging receipt and approval of such a security plan shall be submitted as part of the Special Permit application and/or Site Plan Review. For confidentiality and security reasons, these security measures will only be submitted to and reviewed by the Sandisfield Police Department, who may only consult with the Sandisfield Fire Department on pertinent items as needed.

E. Hours: The Applicant shall be open and/or operating only between the hours of 9:00 AM and 8:00 PM, unless otherwise approved by the Select Board.

F. Design Guidelines:

- 1) **Signage.** Signage for the facility shall comply with the provisions of Section 7 of the Zoning Bylaw.
- 2) **Vegetation Clearing.** The Applicant shall not clear trees from the site unless it first marks the trees to be removed and obtains the Board's approval for such removal.
- 3) **Construction Site:** The "Massachusetts Erosion and Sediment Control Guidelines for Urban and Suburban Areas" design guidelines shall be followed with respect to a Stabilized Construction Entrance and other relevant construction areas.
- 4) **Lighting:** All lighting on the site shall be dark sky compliant. There shall be no light trespass beyond the property line.

G. Inspections: The Establishment may be inspected annually and/or in response to any reasonable complaint, by the Building Inspector, the Fire Chief, the Police Department, or their designee(s), to ensure compliance with this Special Permit. If such inspections are the result of a complaint or determination that there has been a violation of this special permit, the reasonable costs of such inspections shall be borne by the Applicant.

H. Technical Review: The Board has engaged counsel to assist it with its review and approval of this Special Permit. The Applicant shall pay any outstanding legal fees within thirty (30) days after the Board's vote to approve this Special Permit. The Board may engage additional professional and technical consultants, at the Applicant's expense, pursuant to M.G.L. Chapter 44 § 53G to assist the Select Board with its review of materials and to ensure compliance with this Special Permit. The Applicant shall pay all fees for such consultants within thirty (30) days after a request for such payment.

I. License: Issuance of a valid license pursuant to M.G.L. c.94G or Certificate of Registration pursuant to M.G.L. c.94I is a condition of the Special Permit. Copies of all licenses and permits issued to the Applicant by the Commonwealth of Massachusetts and any of its agencies shall be submitted to the Select Board.

J. Renewable Energy Usage Required: The Establishment shall directly offset 100% of its electricity consumption through the purchase of renewable energy in the form of a verified subscription in a Community Solar system, wind, or hydropower project, and/or renewable energy generated on site, or equivalent approved by the Sandisfield Building

Inspector. The offset must be demonstrated by a sustainability plan approved by the Sandisfield Building Inspector. The Establishment must keep monthly records to verify its energy use and renewable energy credit purchases, which must be disclosed to Town officials upon request.

- K. Final Plans:** At least thirty days prior to commencement of construction, the Applicant shall submit a final plan set demonstrating compliance with all conditions hereof. If unforeseen situations arise, the Select Board may revise these conditions accordingly.

II. Operating Conditions

- A.** The Applicant shall submit a copy of the Provisional License or Certificate of Registration from the Cannabis Control Commission with the Select Board and the Building Inspector prior to the issuance of a certificate of occupancy, or commencement of use, whichever occurs first.
- B.** Prior to the commencement of operations, the Applicant shall provide in writing to the Chief of Police and Town Manager the names, phone numbers and email addresses of all management staff, key-holders, and a minimum of two (2) contact persons to whom complaints or inquiries associated with the Establishment shall be directed. All such contact information shall be updated as needed to keep it current and accurate. The Town Manager shall provide this information to the Board of Health, Fire Department, Building Inspector and the Select Board. The owner or manager of the establishment shall respond by phone or email within twenty-four hours of being contacted by a duly authorized Town official. Such contact will be made to the phone number or email address provided to the Town as the contact for the establishment.
- C.** After commencing operations, the Applicant must:
- a) Report any incidents to the Police Department as required pursuant to 935 CMR 500.110(7) within 24 hours of their occurrence. Such reports may be redacted as necessary to comply with any applicable state or federal laws or regulations.
 - b) Report to the Building Inspector any cease-and-desist order, quarantine order, suspension order, limiting sales order, notice of hearing or final action by the Cannabis Control Commission or the Division of Administrative Law Appeals, as applicable, regarding the Establishment within 48 hours of the Applicant's receipt.
 - c) Submit copies of all reports submitted to any state agency, including, but not limited to, the reports required by 935 CMR 500.105(10)(d) describing the establishment's liability insurance coverage and the annual security system audits required by 935 CMR 500.110(8). These shall be submitted to the SPGA within 5 business days of submission to the State. Such reports may be redacted as necessary to comply with any applicable state or federal laws or regulations.
 - d) Document to the Board that each Establishment Agent has completed training regarding the proper handling of Cannabis prior to performing job functions. Such documentation must be provided to the Board within 5 business days of the completion of such training. Annually, the Applicant shall provide

documentation to the Board that all Agents have received at least eight hours of ongoing training.

- e) The Applicant shall utilize all means, including police detail if deemed necessary by the Chief of Police, to minimize the impacts of increased traffic, and the impacts of any odors or noise generated from the site.
 - f) Cannabis products shall not be visible from the exterior of the building. No outside storage of cannabis, related supplies, or educational materials is permitted.
- D.** This Special Permit shall be limited to the original Applicant and shall expire on the earliest date of either:
- 1) the cessation of operation of the Establishment by the Special Permit holder; or
 - 2) any revocation, expiration or termination of an Applicant's license from the Cannabis Control Commission;
 - 3) any change in the Company's ownership, including without limitation a takeover, merger, sale of assets and equity, sale to another entity for which the original Applicant and/or the individuals defined as Controlling Persons do not maintain a controlling equity interest or other change in ownership, unless such change in ownership has previously been approved in writing by the Select Board, in its discretion, such approval not to be unreasonably withheld, or;
 - 4) A determination by the Board, after public hearing, that there have been repeated and documented violations of the conditions of this Special Permit. Upon such determination, the Board may decide to modify, suspend or revoke the Special Permit.
- E.** The Applicant shall annually file an affidavit with the Building Inspector demonstrating that it is in good standing with respect to its license from the Cannabis Control Commission and any other applicable State licenses.
- F.** The Applicant shall notify the Board within 20 days of any projected or actual increase in the number of employees, amount of traffic, or extent of tree removal, grading, drainage or lighting beyond that specified in the Site Plan submitted as part of this Application.
- G.** The Applicant shall notify the SPGA and the Conservation Commission within 20 days of any increase over 10% in projected or actual peak daily water use, and of any projected or intended use of fertilizer, pesticide, rodenticide, herbicide or fungicide, whether organic or not, prior to use by the facility, beyond that specified in the Site Plan submitted as part of the Special Permit Application.
- H.** The Applicant shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, landscaping and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services.

III. Abandonment & Removal

- A.** The Applicant shall notify the Building Inspector and the SPGA in writing at least 48 hours prior to the intended cessation of operation of the establishment for a period of 12 months or more, or of the revocation, expiration or termination of the permit holder's license from the Cannabis Control Commission.
- B.** The facility shall be deemed abandoned if it ceases to operate for a period of twelve (12) months.
- C.** After twelve (12) months of non-operation, the Building Inspector shall provide written notification to the Applicant that such establishment is presumed to be abandoned. The Applicant has thirty (30) days from the issuance of such notice to rebut the presumption of abandonment by submitting evidence to the Building Inspector that the establishment has been in operation during the relevant twelve (12) month or that good cause exists for the non-operation and that the facility has not in fact been abandoned.
- D.** If the Applicant does not respond within the thirty (30) day period or does not submit evidence that, in the discretion of the Building Inspector, proves that the facility has been in operation for the relevant twelve (12) month period or that good cause exists for the non-operation and that the facility has not in fact been abandoned, then the facility shall be deemed abandoned. The Building Inspector shall provide written notification of abandonment to the Applicant.
- E.** In the event of abandonment, the Applicant shall remove all traces of cannabis and cannabis products from the site or transfer it to another owner within thirty (30) days of the date of the written notification of abandonment. If the Applicant fails to remove all traces of cannabis and cannabis products or transfer the Establishment within thirty (30) days, the Town shall have the right, to the extent it is duly authorized by law, to enter onto the site and remove all traces of cannabis and cannabis products at the sole expense of the Operator.