

Town of Southborough

BOARD OF APPEALS

SOUTHBOROUGH, MASSACHUSETTS 01772

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SOUTHBOROUGH, MA

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James Hegarty
Town Clerk
Town House
Southborough, MA 01772

March 28, 2016

Notice of Decision for an Application for a Special Permit

Property Address: 255 Turnpike Rd.

Appellants: CommCan, Inc.

Application Filed: February 16, 2016

The Board opened the public hearing on March 23, 2016 at 7:30pm in the Public Meeting Room of Southborough Town Hall with regard to the petition for the appellants for the following:

Petition: Special Permit request(s) to allow a Registered Medical Marijuana Dispensary (RMD) within the existing building at 255 Turnpike Rd. The Special Permit is pursuant to Sec. 174-8.5C (14) and Sec. 174-9J.

Sitting as a Board: Leo Bartolini, Chairman
Thomas Bhisitkul
Paul Drepanos
Andrew R. Dennington
David Williams

For the Appellants: Daniel Merrikin, Engineer
730 Main St.
Millis, MA 02054

Valerio Romano, Attorney
109 State St. Ste. 404
Boston, MA 02109

Marc Rosenfeld
730 Main St.
Millis, MA 02054

The Hearing was subsequently continued to March 24, 2016 at 6:30pm at the same location.

Procedural History:

1. An application for a Special Permit was filed in the Office of Southborough Building Department on February 16, 2016
2. The application for a Special Permit is to operate a Registered Marijuana Dispensary.
3. The applicant is seeking a Special Permit from Sec. 174-8.5C (14) and Sec. 174-9J.
4. The Record Owner of the subject property is Unicorn Realty Trust, William Picardi, Trustee.
5. A public hearing before the Zoning Board of Appeals was duly noticed, opened on March 23, 2016, continued to March 24, 2016 and closed in the same evening.

Plans/ Documents:

1. Letter of non-opposition from the Town of Southborough Board of Selectman to Marc Rosenfeld dated February 3, 2016.
2. One (1) page site plan from Merrikin Engineering, LLP dated February 16, 2016.
3. Letter from the Building Commissioner/ Zoning Officer Mark Robidoux to Mark Purple, Town Administrator dated January 22, 2016.
4. One (1) page project summary from the applicant providing information pertaining to the Town of Southborough Zoning Bylaws.
5. Two (2) pages of photographs of the current building from the applicant.

Findings:

1. The proposal constitutes a Special Permit request under the Town of Southborough Zoning Bylaw.
2. The Property is located in the Highway Business zoning district.
3. The applicant is proposing a Registered Marijuana Dispensary (RMD) within the current building on the premises.
4. The Board received the following documents from individuals/ entities other than the applicant in regards to the proposal:
 - i. Letter of opposition from David McKay on behalf of the Economic Development Committee
 - ii. Letter of opposition from Erin Wheatly, Paul Murphy, Marty Hoolihan, 22 Clifford St; Kevin Hoolihan, located at 22 Clifford St
 - iii. Picture of alleged Recreational field located at 26 Clifford Rd
 - iv. Presentation from Safdar Medina, dated March 23, 2016
 - v. Email from Brian Shea, Town of Southborough Selectman, dated March 24, 2016
 - vi. Email from Bonnie Phaneuf, Town of Southborough Selectman, dated March 24, 2016

- vii. Pictures of examples of edible products from similar facility types
 - viii. Presentation from Guan Yang, dated March 24, 2016
5. The Board received information from the applicant regarding the operations of the business, including steps left in the DPH licensing process, the disbursement of the medication and hours of operation.
 6. Additional information was provided regarding the proposed security, signage, product packaging and appearance.
 7. Comments received in favor of the petition emphasized the value that may be provided to those prescribed the medicine offered by the facility.
 8. Comments received in opposition of the petition consisted of concerns regarding the facility's proximity to nearby schools and residential homes, the unknown value of the medicine to be provided, the effect on property values, public safety relative to crime, and concerns about the diversion of medication to children, specifically regarding the appearance edibles may have.
 9. The Board heard from the Building Commissioner regarding the interpretation of the Zoning Bylaw and why the facility at 26 Clifford Rd did not constitute a recreational facility.

Decision and Vote of the Board:

1. The Board finds that the proposed use generally complies with the applicable provisions of Section 174-9A with specific findings as follows:
 - i. The proposed use is a reasonable and appropriate use of properly zoned commercial land along Route 9, a major commercial thoroughfare in Southborough. The proposed use will operate in harmony with surrounding uses and will provide a unique and desirable service to the community by providing appropriate access to medical substance which are beneficial to many people with serious illnesses subject to State regulation.
 - ii. The site is segregated from the nearby residential homes by a broad swath of woodland with significant topographical slopes, which will substantially deter direct access from the facility to the residential neighborhood. All traffic to and from the facility will be via the Route 9 frontage.
 - iii. The existing commercial building and appurtenances have adequate water and drainage facilities that will not be affected by the proposed RMD.
 - iv. Several requirements of this section of the bylaw do not apply because this an existing building with existing driveways, parking facilities and utility systems.

At its meeting on March 24, 2016, the Zoning Board of Appeals voted 4-1 to grant the Special Permit pursuant to Sec. 174--8.5C (14) and Sec. 174-9J for the operation of a Registered Marijuana Dispensary at 255 Turnpike Rd. subject to the following condition(s):

1. Subject to review and approval by the Police Chief of the proposed safety plan, with regularly scheduled update meetings with the Police Department thereafter
2. Hours of operation shall be restricted to 8:00am – 8:00pm, seven days a week
3. The applicant shall include a statement within the client acknowledgment form advising patients how to get to and from the facility. Specifically, to advise patients to access RT. 9 East by going on Rt. 9 West until a U-turn can be performed and to avoid any access onto or through Deerfoot Rd.
4. Loitering on site is to be prohibited
5. Landscaping, Lighting and Parking plans shall be subject to Planning Board approval
6. Edible products shall take the appearance of nondescript, medicinal forms as allowable by applicable state laws and shall not resemble the appearance of candy-like products
7. The Special Permit shall pertain only to the proposed RMD by CommCan, Inc. and shall not be transferable to another individual or company/entity.
8. The permit shall pertain to medical dispensing only and shall not allow the sale or dispensing of recreational marijuana.
9. The Special Permit shall be contingent upon an executed Host Community agreement, or a document of similar name, between CommCan, Inc. and the Town of Southborough, as approved by the Board of Selectmen.
10. Subject to Site Plan Review by the Planning Board.

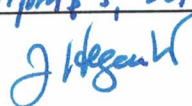
After review of all evidence and facts presented at this hearing, and after deliberations on the same, voted 4-1 on a motion made by A. Dennington, and seconded by D. Williams, with members voting as follows to grant the requested Special Permit:

Leo Bartolini,	Yes
Thomas Bhisitkul	No
Paul Drepanos	Yes
Andrew R. Dennington	Yes
David Williams	Yes



Leo F. Bartolini, Jr., Chair

Signing on behalf of the Zoning Board of Appeals

Filed with the Town Clerk on: April 5, 2016


****NOT VALID FOR RECORDING UNTIL CERTIFIED BY THE TOWN CLERK OF SOUTHBOROUGH****

In accordance with Sec. 11 of Ch. 40A of Massachusetts General Laws, I hereby certify that twenty (20) days have elapsed after the within decision was filed in the office of the Southborough Town Clerk, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

Attest: _____

James F. Hegarty, Town Clerk

Date