

**Town of Hopedale
Decision of the Hopedale Zoning Board of Appeals
December 15, 2021**

Case: 5-2021

<u>Applicant(s):</u>	MACA Industries, LLC 291 Main Street, Milford MA 01757
<u>Property Owner:</u>	2 Condon Way, LLC
<u>Property:</u>	2 Condon Way Hopedale, MA 01747
<u>Application Filed:</u>	August 9, 2021
<u>Hearing Held:</u>	September 22, 2021
<u>Continuation Hearings:</u>	October 20, November 15 and December 15, 2021
<u>Relief Sought:</u> Applicant is seeking a special permit for construction of a new two-story building for cultivation of marijuana.	

Decision: Following the closing of the public hearing on December 15, 2021, the special permit to construct a new two-story marijuana cultivation facility was approved with a unanimous vote with the following conditions:

1. Compliance with Planning Board Conditions

The applicant shall comply with all Planning Board conditions as set forth in the report of the Planning Board and transmitted to the Zoning Board of Appeals (unless specifically modified herein).

2. Hours of Operation

Hours of operation shall be daily from 7 a.m. to 8 p.m.

3. Compliance with Plans and Application Materials

The plans and application materials submitted by the applicant to the Planning Board and the Zoning Board of Appeals have been materially relied upon by these respective boards. The applicant shall comply with all plans, supplemental plans, and application materials that have been submitted. Any material deviation from these plans, supplemental plans, or application materials shall require approval from the Planning Board and the Zoning Board of Appeals. Any requests to modify Zoning Board conditions requires another application for a special permit, notice to abutters and other interested parties, and approval of the Zoning Board of Appeals.

4. Limited to MACA

The special permit issued herein is expressly limited to MACA Industries, LLC. Any change in ownership will require another application for a special permit,

notice to abutters and other interested parties, and approval of the Zoning Board of Appeals.

5. Limited to 5 years

The special permit granted herein is limited in duration to 5 years. This special permit shall expire 5 years from the date this decision is filed with the Hopedale Town Clerk. Another application for a special permit, notice to abutters and other interested parties, and approval by the Zoning Board of Appeals will be required to continue operations upon the expiration of this special permit.

6. Compliance with Signage Requirements in Zoning By-Laws

The applicant shall comply with all Hopedale Zoning By-Laws. In particular, the applicant shall comply with §§ 7 through 7.11 of the Hopedale Zoning By-Laws pertaining to signage requirements. Temporary signs and freestanding signs are not permitted. The applicant must contact the Hopedale Building Commissioner before adding any signage to the property.

7. Limitation of Water Usage

The applicant is limited to drawing 1000 gallons per day of water from the Hopedale municipal water supply. The applicant shall notify the Planning Board 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.

8. Disposal of Waste

The applicant will not discharge any wastewater or hazardous material of any kind from the growing operation into a septic system, surrounding landscape, or groundwater. The applicant will maintain a 5,000-gallon holding tank inside the facility to collect liquid waste from the water treatment equipment within the growing operation. All wastewater from the growing operation will be removed on a monthly basis and transported to an appropriate facility outside of Hopedale for disposal as authorized by law. A septic system, approved by the Hopedale Board of Health, may be used solely for normal domestic liquid waste from bathrooms and washrooms, but may not accept any liquid waste from the growing operation itself. The applicant will comply with all requirements of the Conservation Commission and Board of Health relative to storm water runoff.

9. Partnership Disclaimer

Nothing contained in any Host Agreement, Site Plan approval, Special Permit, Order of Conditions, building permit, or any other document executed by the town of Hopedale shall be construed as establishing any kind of joint venture or partnership between the applicant and the town of Hopedale.

10. Noise Limits

The applicant will make every effort to operate unobtrusively without generating excessive noise to surrounding properties. The applicant shall maintain all noise mitigation equipment and buffering materials to insure maximum efficiency and to prevent its processing or manufacturing process from being detected from surrounding properties by a person with an unimpaired sense of hearing. In the

event that the Hopedale Building Commissioner reports a complaint regarding excessive noise to the applicant, the applicant shall respond within 5 working days with a plan to rectify the situation.

11. Odor Limits

The applicant will make every effort to operate unobtrusively without generating odors detectable at surrounding properties. The applicant shall maintain all odor mitigation equipment to insure maximum efficiency and to prevent its processing or manufacturing process from being detected from surrounding properties by a person with an unimpaired sense of smell. No toxic discharges, whether detectable by smell or not, are permitted at any time. In the event that the Building Commissioner reports a complaint regarding odors or the release of toxic materials into the environment, the applicant shall respond within 5 working days with a plan to rectify the situation.

12. Compliance with Lighting Requirements in Zoning By-Laws

The applicant shall comply with all Hopedale Zoning By-Laws. In particular, the applicant shall comply with § 7.11 of the Hopedale Zoning By-Laws pertaining to lighting requirements. No floodlights or other lights shall be placed so as to shine onto an adjoining property or placed so as to become a nuisance to surrounding properties.

13. Compliance with Screening Requirements in Zoning By-Laws

The applicant shall comply with all Hopedale Zoning By-Laws. In particular, the applicant shall comply with §§ 8.6-8.9 of the Hopedale Zoning By-Laws pertaining to screening requirements. The applicant shall maintain dense native evergreen vegetation along adjoining properties, public and private ways, around all parking areas, storage areas, loading areas, and dumpsters.

14. Compliance with State Law

The applicant shall comply with all laws of the Commonwealth of Massachusetts and all regulations of the Cannabis Control Commission.

15. Compliance with Host Agreement

The applicant shall comply with all provisions of the Host Agreement entered into with the Hopedale Select Board.

16. Compliance with Conservation Commission Orders

The applicant shall comply with all orders issued by the Hopedale Conservation Commission.

Certification

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on _____, 2021.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.



Christopher P. Hodgins, Chairman

**Record of Proceedings
Hopedale Zoning Board of Appeals**

Case: 5-2021

Applicant(s): MACA Industries, LLC
291 Main Street, Milford MA 01757

Property Owner: 2 Condon Way, LLC
Property: 2 Condon Way
Hopedale, MA 01747

Hearing Proceedings

On August 9, 2021, MACA Industries, LLC, filed an application for a special permit to operate a marijuana cultivation facility at 2 Condon Way. The Zoning Board of Appeals (ZBA) scheduled a public hearing for September 22, 2021, and notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Town Clerk posted the hearing notice on September 3, 2021. The Milford Daily News published the first notice on September 8, 2021, and published the second notice on September 15, 2021.

On September 19, 2021, the ZBA sent a letter to the applicant indicating that site plan review had not been obtained and recommended that the matter be scheduled for review before the Planning Board pursuant to Hopedale Zoning By-Laws § 18.4.

Hearing Dates: September 22, October 20, and November 15, 2021

On September 22, 2021, a public hearing opened on the application of MACA Industries, LLC. Following a discussion of the site plan review issue, the applicant and the ZBA agreed to continue the public hearing to October 20, 2021. The parties filed a written agreement to continue with the Town Clerk. On October 20, 2021, the ZBA discussed the status of the site plan review before the Planning Board. The public hearing continued by agreement to November 15, 2021. On November 15, 2021, the ZBA discussed the status of the site plan review before the Planning Board. The public hearing continued by agreement to December 15, 2021.

Hearing Date: December 15, 2021

On December 15, 2021, the applicant indicated that the Planning Board had approved the site plan. The ZBA received a copy of a report from the Planning Board regarding site plan review. The report contained a number of conditions. The applicant asked to proceed with the hearing on the special permit.

Engineer Ron Tiberi presented the board with the existing condition plans for the property located at the corner of Plain Street and Condon Way. It is a 70,000 square foot parcel with 4500 square feet of wetlands on the east side. Soil and septic system testings were done and the wetland areas are flagged. Security fence has been approved by the Police Department. The drainage plans were reviewed. Planning Board and Graves

Engineering have approved the drainage. Landscaping plan will be augmented on the east side of the property.

Amanda Cox, Compliance Attorney for MACA, went through how MACA's operations are consistent with the town of Hopedale's economic plan. She shared the positive impact this business will have in Hopedale. Not only with the gross sale value, estimated in excess of \$500,000 a year, MACA community benefit payments \$5,000 a year will be earmarked to benefit the senior citizen transportation services. They will also be sending three police officers to be trained as drug recognition experts, a training expense requested by the police chief. They are currently a member of the Hopedale Opioid Task Force. MACA will use and partner with local vendors and equitable hiring. A partnership has been formed with New Hope, who offers services in our local area to citizens impacted by criminalization of marijuana in the past. This will include a new program to mentor and provide legal services up to \$50,000 for new clients who wish to get involved in cultivation businesses. MACA is also determined to reduce the impact on town resources such as water with high performing technology. MACA will be using 800 gallons a day (page 3 of supplemental submission). This is a greatly reduced number as they will be using 4000 gallons but only using 800 gallons of town water. The difference is a reclaiming process with a system that filtrates it through Commercial Reverse Osmosis. This also results in a lack of liquid waste. In the future, MACA will look into collecting rainwater to use and possibly installing solar panels. MACA is also committed to eliminating hazardous waste production by using organic soil and not using any chemical pesticides. Their grow process does not pour nutrients on their plants and flushing them to get rid of hazardous materials. MACA will install a Brome Composter for the leaves and stocks that breaks these materials down and are recycled. There is no residual THC. Once the material is at the point no longer usable, it is taken off the premises by a third party. Another benefit is reclaiming heat with a Compost Drum Dragon that helps reclaim heat and turns it into radiant heat. This attaches to the composter. This is a closed loop as well. The Active Radiant Catalyst that breaks down organic compounds, controls the odor. It pulls the air through the charcoal filters with a high flow fan and eliminates the odor. This is a closed loop system so there are no odors vented outside. The odor is also controlled with the composter as that system scrubs the exhaust that comes out and returns back to the handlers along with passing through charcoal filters. Boston Environmental Corporation will be hired once the business is up and running to run odor testing.

Scott Savage questioned whether there would be external air source needed for the energy efficiency requirements and a detailed discussion was held regarding flow of air.

Security, traffic impact and parking have all been addressed. The Planning Board draft decision was approved at its meeting (December 15, 2021). The business hours will be 7 am to 8 pm seven days a week. Lou Costanza inquired about the approval from the Fire Chief, and Amanda Cox reported that they have been working with both the Fire and Police Departments throughout the design of the cultivation business. Everything they both asked for are in the design plans. Mr. Hodgins stated that all departments have been notified of the public hearing, and the ZBA has not received any objections. Only the Water and Sewer Department has commented on water usage for these projects.

After soliciting public comments and receiving none, the Chairman entertained a discussion on which members of the ZBA would be voting on this special permit. Mr. Costanza was absent at the first hearing although he did watch the recording of the

meeting, and this meeting was limited in details and scope of the project at that time. Nevertheless, Mr. Costanza recused himself from the vote and asked the alternate, Mary Arcudi, to take his place. Attorney Cox consented to the recusal of Mr. Costanza.

At this time Chairman Hodgens closed the public hearing.

Mr. Hodgens noted that there are many conditions included in the report of the Planning Board. Without encouraging members to vote for or against the application, Mr. Hodgens said that those conditions will be included as ZBA conditions should a special permit be approved. Mr. Hodgens also asked the board members to consider the following conditions (in addition to the Planning Board conditions) if a motion to approve was forthcoming:

1. hours of operation 7 a.m. to 8 p.m.
2. compliance with all plans and supplemental plans presented
3. special permit would be limited to 5 years
4. special permit would be limited to MACA (also noted by Planning Board)
5. compliance with signage requirements in zoning bylaws
6. water usage limit 1000 gallons a day
7. disposal as presented to make sure no discharge into the groundwater
8. partnership disclaimer as stated in the host agreement with Select Board
9. noise limits (also noted by Planning Board)
10. odor limits (also noted by Planning Board)
11. lighting must comply with zoning bylaws (also noted by Planning Board)
12. screening must comply with zoning bylaws (also noted by Planning Board)
13. process for complaints (also noted by Planning Board)
14. compliance with state law
15. compliance with host agreement
16. compliance with any order of conditions produced by the Conservation Commission

A brief discussion followed. Sandra Biagetti said that the conditions are “spot on.” Nicholas Alexander said that it must be made clear that signage must be approved. Scott Savage said that he is in favor of the list as read, but he wants to make clear that the 5-year limitation is not designed to harm the interests of investors in the business. Mary Arcudi questioned the liability issue in connection with the partnership disclaimer as well as the limitation on water usage. Mr. Hodgens indicated that the LLC status of MACA does not limit the liability of Hopedale, and the water limitation is essential. Mr. Hodgens said that he would not be inclined to vote in favor of the special permit without a water usage limitation. Mr. Hodgens then asked if the representatives of the applicant agreed to the water limitation. The representatives all expressed agreement. Mr. Hodgens then asked the representatives of the applicant if there were objections to any of the conditions that he had suggested. The representatives said they had no objections. Mr. Hodgens also asked about the conditions of the road. He said that he was not suggesting another condition, but he noted the absence of any sidewalks on the private road and asked the applicant to consider that issue going forward. Attorney Cox said they had not thought of that issue. Mary Arcudi made a motion to approve the special permit for construction of a two-story marijuana cultivation facility at 2 Condon Way with the conditions as outlined above.

Sandra Biagetti seconded the motion, and the roll call vote was as follows:

Sandra Biagetti	yes
Nick Alexander	yes
Scott Savage	yes
Mary Arcudi	yes
Chris Hodgens	yes

Motion passes unanimously in favor.

Summary of Findings and Decision

The subject property at 2 Condon Way consists of 70,645 square feet (1.62 acres) of undeveloped land at the corner of Condon Way and Plain Street. The scope of the project is delineated in the following materials submitted by the applicant: (1) Existing Conditions Plan of Land by A.S. Elliott & Associates, (2) Existing Conditions Plan by Ronald Tiberi, P.E., (3) Septic System Plan by Ronald Tiberi, P.E. (2 pages), (4) Grading & Drainage Plan by Ronald Tiberi, P.E., (5) Drainage Details Plan by Ronald Tiberi, P.E., (6) Landscape Plan by Ronald Tiberi, P.E., (7) Lighting Plan by Ronald Tiberi, P.E., and (8) Supplemental Submission by MACA Industries, LLC. Condon Way is a private road that loops through a light industrial zone that consists of a variety of small business enterprises. Plain street is a heavily travelled road primarily interspersed with residential, industrial, and light industrial properties. Pursuant to § 11.3 of the Hopedale Zoning By-Laws, a marijuana cultivation facility is a use permitted in a light industrial zone provided that a special permit is approved by the ZBA.

“The primary purpose of zoning with reference to land use is the preservation in the public interest of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods.” Circle Lounge & Grille, Inc. v. Board of Appeal of Boston, 324 Mass. 427, 431 (1949). Special permit procedures have long been used to bring flexibility to zoning classifications by providing for specific uses “which are not allowed as of right because of their potential for incompatibility with the characteristics of the district.” SCIT v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 109 (1984).

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, § 9. Conditions may consider “protection of the neighborhood, the Town, and the natural environment” and may include limitations and restrictions designed to address specific features of the proposed use. Hopedale Zoning By-Laws § 10.6(e). Based upon the governing standard, the Hopedale Zoning By-Laws, the report of the Planning Board, and the facts presented at the hearings in the instant case, the ZBA exercises its discretion in favor of issuing a special permit with conditions.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearings, the ZBA

concludes that if the applicant abides by the Hopedale Zoning By-Laws as amplified by the special permit conditions outlined by the ZBA, the special permit criteria will be satisfied.

The facility will not have “detrimental effects which outweigh its benefits to the neighborhood, town or zoning district in which it is located.” Hopedale Zoning By-Laws § 10.6(1). The facility is well-suited for the other properties on Condon Way. Condon Way, combined with Rosenfeld Drive, creates a horseshoe loop through a business park. The proposed use, though unique as a marijuana cultivator, is consistent with other uses in the business park, and the site plan is consistent with the other properties in the area. While there is at least one nearby residence on Plain Street, the proposal and conditions establish ample screening, setback, noise, odor, and light restrictions to minimize the negative impact to other properties. Given the nature of the business park, the conditions of the ZBA, the conditions of the Planning Board, the conditions of the Conservation Commission, and the lack of any objections by the Hopedale Police, Fire, Highway, and Health Departments, the use will not “materially endanger or be hazardous to the public health and safety.” Hopedale Zoning By-Laws §10.6(3). Notably, there was no opposition by residents, abutters, or other interested parties.

The plans submitted demonstrate sufficient off-street parking. Hopedale Zoning By-Laws §10.6(4).

The proposed use will be sufficiently served by municipal water based upon the condition limiting municipal water consumption to 1000 gallons per day. Hopedale Zoning By-Laws §10.6(5).

There is no proposed or authorized connection to a municipal sewer, and the use is conditioned on the approval of the Board of Health for a septic system for domestic use. Hopedale Zoning By-Laws §10.6(5). Conditions expressly prohibit the applicant from discharging any wastewater or hazardous material of any kind from the growing operation into a septic system, surrounding landscape, or groundwater. The applicant will maintain a 5,000-gallon holding tank inside the facility to collect liquid waste from the water treatment equipment within the growing operation. All wastewater from the growing operation will be removed on a monthly basis and transported to an appropriate facility outside of Hopedale for disposal as authorized by law. A septic system, approved by the Hopedale Board of Health, may be used solely for normal domestic liquid waste from bathrooms and washrooms, but may not accept any liquid waste from the growing operation itself. Especially given the proximity of wetlands and the nearby groundwater protection overlay district, the applicant must strictly comply with all requirements of the Conservation Commission and the Board of Health relative to storm water runoff, and must not contaminate ground water, wells, streams, ponds, watercourses, or wetlands. Hopedale Zoning By-Laws §10.6(6).

While there is some concern about the condition of the private road and the lack of sidewalks, the proposed use will not “create undue traffic congestion or impair pedestrian safety” given the proposed circumscribed nature of the business in a very limited geographic area. Hopedale Zoning By-Laws §10.6(8).

The Master Plan is being developed and is not a factor that militates against a special permit. Hopedale Zoning By-Laws §10.6(2).

Based upon the foregoing, the ZBA hereby allows the application for a special permit with the following 16 conditions. Note that the ZBA is also incorporating the Planning Board's recommendations and conditions in this decision pursuant to Hopedale Zoning By-Laws § 18.4.

1. Compliance with Planning Board Conditions

The applicant shall comply with all Planning Board conditions as set forth in the report of the Planning Board and transmitted to the Zoning Board of Appeals (unless specifically modified herein).

2. Hours of Operation

Hours of operation shall be daily from 7 a.m. to 8 p.m.

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14. Compliance with State Law

The applicant shall comply with all laws of the Commonwealth of Massachusetts and all regulations of the Cannabis Control Commission.

15. Compliance with Host Agreement

The applicant shall comply with all provisions of the Host Agreement entered into with the Hopedale Select Board.

16. Compliance with Conservation Commission Orders

The applicant shall comply with all orders issued by the Hopedale Conservation Commission.

Copies of this decision will be filed with the Town Clerk and sent to the applicant, abutters, interested parties, Planning Board, Board of Health, Water and Sewer Commission, Conservation Commission, and Building Commissioner.