

**Town of Hopedale  
Amended Decision of the Hopedale Zoning Board of Appeals  
July 21, 2021**

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**Case: 03-2020**

**Applicant(s):** High Hopes, LLC  
Russell Bogartz, Jay Lum

2021 JUL 26 P 1:00

**Property Owner:** Hopedale Industrial Park, Inc.  
1 Airport Drive, Hopedale, MA 01747

HOPEDALE TOWN CLERK

**Property:** 1 Menfi Way, Unit 9  
Hopedale, MA 01747

Application Filed: September 22, 2020

**Hearing Held: October 21, 2020**

**Relief Sought:** Applicant is seeking a special permit for locating and operating a retail marijuana establishment at 1 Menfi Way, which is zoned commercial.

**Decision:** Following a hearing, the Board voted 4 to 1 to approve the special permit to locate and operate a retail marijuana establishment at 1 Menfi Way, Hopedale MA with the following conditions: that High Hopes must stay compliant with the host agreement, compliance with applicable laws and licenses, maintain 24/7 surveillance cameras and the hours of operation to be 10 am to 9 pm.

**Hearing Held July 21, 2021**

**Amended Decision:**

On July 16, 2021, the ZBA learned of a clerical written error that did not reflect all conditions voted and approved on October 21, 2020, omitting the condition limiting retail operations to "in store sales only." On July 21, 2021, the ZBA voted unanimously to amend the above-written decision to limit retail operations to "in store sales only" as originally voted and approved on October 21, 2020. The two-page amended decision approved by the ZBA is attached and made part of this record.

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 July 26, 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. Hodgens, Chairman**

*"20 day appeal date August 14, 2021"*



TOWN OF HOPEDALE  
ZONING BOARD OF APPEALS  
TOWN HALL  
78 HOPEDALE STREET  
HOPEDALE, MA 01747

Christopher P. Hodgens, Chairman  
Nicholas A. Alexander, Member  
Sandra E. Biagetti, Member  
Louis J. Costanza, Member  
Scott M. Savage, Member  
Mary T. Arcudi, Alternate

**Town of Hopedale**  
**Amended Decision of the Hopedale Zoning Board of Appeals**  
**July 21, 2021**

1. On October 21, 2020, the Hopedale Zoning Board of Appeals (ZBA) conducted a public hearing and public meeting on an application for a special permit regarding retail marijuana sales at 1 Menfi Way, Unit 9.
2. The hearing and meeting were audio/video recorded on townhallstreams.com between time markers 55:50 and 1:38:32.
3. Applicants Russell Bogartz and Jay Lum attended the hearing and participated in the discussion.
4. Police Chief Mark Giovanella attended the hearing and expressed public safety concerns about proposed sales of marijuana in the parking lot.
5. The ZBA voted to issue a special permit for the operation of a retail marijuana business at 1 Menfi Way, Unit 9.
6. The ZBA vote included the following conditions: (1) compliance with host agreement, (2) compliance with state law, (3) compliance with licensing, (4) surveillance cameras 24/7, (5) limit sales to "in store sales only," and (6) limit business hours from 10 a.m. to 9 p.m.
7. On October 26, 2020, ZBA Chairman Stephen Gallagher filed a 3-page decision with the Town Clerk.
8. Through a clerical error, the written decision neglected to include the condition regarding "in store sales only."
9. The ZBA learned of this error on July 16, 2021, after being forwarded an email by Russell Bogartz who expressed an intent to commence marijuana sales in the parking lot.
10. The ZBA immediately scheduled a public meeting for July 21, 2021, to address the clerical error.

11. Massachusetts appellate courts have addressed situations such as the one presented where a condition, approved by a vote, is not recorded in a written special permit.
12. The ZBA has "inherent administrative power" to amend decisions. Dion v. Board of Appeals of Waltham, 344 Mass. 547, 553 (1962).
13. The law "does not preclude a public board from showing that a clerical error was made or from correcting it." Board of Selectmen of Stockbridge v. Monument Inn, Inc., 14 Mass. App. Ct. 957, 958 (1982).
14. Russell Bogartz and Jay Lum had actual notice of the condition at issue where both individuals were present when the ZBA discussed, deliberated, and voted.
15. The written decision inadvertently failed to reflect the vote of the ZBA to include the condition at issue.
16. Cannabis Control Commission regulations do not mandate curbside sales. The regulations authorize these sales so long as they are consistent with local regulations. See Cannabis Control Commission Final Administrative Order Allowing Curbside Operations, March 27, 2020, ¶ 6 ("Licensees must remain in compliance with the terms of their host community agreements and all local rules, regulations, ordinances, and by-laws, including any municipal public health order."); Id. at ¶ 7 (licensees "shall comply with any applicable orders issued by state or local authorities").
17. The ZBA has taken expeditious corrective action within just days of learning of the inadvertent clerical error.

Therefore, the written ZBA decision of October 21, 2020, filed on October 26, 2020, is hereby amended to include the condition limiting sales to "in store sales only," and the minutes of the meeting of October 21, 2020, are hereby amended to reflect that the ZBA voted to include this condition in the special permit.

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

**Case: 03-2020**

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**Meeting Proceedings**

Meeting Date: July 21, 2021

On July 21, 2021, the Hopedale Zoning Board of Appeals (ZBA) held a public meeting regarding a clerical error in a special permit. The meeting, which was convened following notice and posting pursuant to the provisions of M.G.L. c. 30A, section 20, was opened by the chairman at 7:00 pm.

The following Board Members noted as present were in attendance throughout the hearing:

Chairman:	Chris Hodgens
Voting Member:	Sandra Biagetti
Voting Member:	Lou Costanza
Voting Member:	Scott Savage
Voting Alternate Member:	Mary Arcudi

Member Nick Alexander was not present and did not participate in the proceedings.

Discussion details:

Chairman Chris Hodgens opened the meeting by reading a chronology of events that followed from a public hearing held on October 21, 2020.

At that public hearing, the ZBA addressed an application of High Hopes, LLC, requesting permission to conduct marijuana retail sales. That public hearing was video recorded on townhallstreams.com between the time markers 55:50 and 1:38:32, and the applicants Russell Bogartz and Jay Lum were present. Police Chief Mark Giovanella attended that public hearing on October 21, and expressed public safety concerns about proposed sales of marijuana in the parking lot.

Following the close of that public hearing, a motion to approve the special permit passed favorably with six conditions: (1) compliance with the host agreement, (2) compliance with state law, (3) compliance with licensing, (4) surveillance cameras 24/7, (5) limit sales to "in store sales only," and (6) limit business hours from 10 am to 9 pm.

On October 26, 2020, Chairman Stephen Gallagher filed the decision with the Hopedale Town Clerk. Through a clerical error, the written decision neglected to include the condition regarding “in store sales only.”

The ZBA became aware of this error on July 16, 2021, after being forwarded an email by Russell Bogartz who expressed an intent to commence marijuana sales in the parking lot. The ZBA immediately scheduled a public meeting for July 21, 2021, to address the clerical error.

Massachusetts’ appellate courts have addressed situations such as this where a condition approved by a vote is not recorded in the written special permit. The ZBA has “inherent administrative power” to amend decisions as in the case of Dion v. Board of Appeals of Waltham, 344 Mass. 547, 553 (1982). The law “does not preclude a public board from showing that a clerical error was made or from correcting it.” Board of Selectmen of Stockbridge v. Monument Inn, Inc., 14 Mass. App Ct. 957, 958 (1982).

Cannabis Control Commission regulations do not mandate curbside sales. The regulations authorize these sales so long as they are consistent with local regulations.

The ZBA provided Russell Bogartz and Jay Lum with an opportunity to address the issue of the clerical error. A discussion followed, and Russell Bogartz and Jay Lum participated in that discussion. Russell Bogartz stated that his company was requesting curbside sales due to wishes of investors.

ZBA members voiced their affirmation of the original vote and motion that was made on October 21, 2020. Members agreed that the omission of the condition regarding “in store sales only” constituted an inadvertent clerical error that failed to reflect the actual vote taken by the ZBA.

Chairman Chris Hodgens presented a draft of a two-page amended decision and entertained a motion to accept the draft as an amendment to the written ZBA decision of October 21, 2020, filed on October 26, 2020. Member Scott Savage made a motion to accept the amended decision that includes the condition limiting sales to “in store sales only” for High Hopes, LLC, at 1 Menfi Way. Member Sandra Biagetti seconded the motion and the roll call vote was as follows:

Sandra Biagetti	yes
Scott Savage	yes
Lou Costanza	yes
Mary Arcudi	yes
Chris Hodgens	yes

Chairman Hodgens declared the motion passed unanimously, thus amending the prior ZBA decision and meeting minutes.

At 7:25 pm., through a motion by Member Lou Costanza, and duly seconded, the ZBA unanimously voted to adjourn.