

Sept 4, 2020



FAIRHAVEN PLANNING BOARD

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I certify that 20 days have elapsed since the date of filing with the Town Clerk and no appeal and no revisions have been made since the date of filing.

Date: _____

Carolyn Hurley, Town Clerk

Town Clerk/Registry of Deeds
FAIRHAVEN
MASS.

The Fairhaven Planning Board as required by Massachusetts General Laws Chapter 40A Section 9 and Town of Fairhaven Zoning By-Laws Section 198-29 requiring Special Permit Review held a Public Hearing on July 28, 2020. This hearing was continued to August 11, 2020 and closed on that date. Both Public Hearings were conducted through a remote participation platform due to the 2020 State of Emergency and were also televised live on Fairhaven TV and online at fairhaventv.com.

PETITIONER: Bask, Inc. (formerly known as Coastal Compassion)
2 Pequod Road (Map 36 Lot 14 – 1.6 acres).
Fairhaven, MA 02719

OWNERS: David and Thelma L Sylvia Family L.P. II Trust
263 State Road
Dartmouth, MA 02747

LOCATION: 2 Pequod Road (Map 36 Lot 14 – 1.6 acres).
Fairhaven, MA 02719
Book: 7874 Page: 269

PETITION: Request for Special Permit approval to expand current operations at 2 Pequod Road from a Medical Marijuana Treatment Center to include adult-use recreational marijuana sales.

PLANS: The applicant, Bask Inc., submitted drawings, plans, details and elevations in support of their application for a Special Permit as detailed below illustrating compliance with the Town of Fairhaven Zoning Bylaw.

- "Site Plan" for Bask, Inc. located at Assessors Map 36 Lot 14, 2 Pequod Road, Fairhaven, Massachusetts. Site Plan consists of one 24" by 36" sheet with building location, parking, contours, utilities, access, and monuments. Prepared by SITEC, Inc., Civil and Environmental Engineering and Land Use Planning, 449 Faunce Corner Road, Dartmouth, MA 02747. Scale 1" = 20'. Dated June 4, 2020.

- The Site Plan was supplemented on July 16, 2020 with a color-coded site plan distinguishing areas that are developed, parking, sidewalks and grass, and the direction of vehicular circulation.
- Interior Plan indicating public areas, security and division of medical and recreational sales. Preparer and date unknown.
- The designated representatives of Bask are Timothy Keogh; Melanie Dixon; JoAnne Leppanen; Chapman Dickerson; and Pequod Practical Solutions LLC.
- As part of the Application, Bask, Inc. also provided the following plans which are incorporated into the Plan Set:
 - Security Plan with Policies and Procedures, updated on May 12, 2020;
 - Management Plan (Received July 13, 2020);
 - Business and Resource Plan (Received July 13,, 2020), version 4823-7419-6633, v. 3;
 - Bask Traffic Impact Assessment prepared by Greenman-Pedersen Inc. (GPI) dated April 29, 2020;
 - Bask Supplemental Traffic Memorandum, prepared by Greenman-Pedersen Inc. (GPI) including assessing the sightlines and accident history, submitted July 24, 2020;
 - Four-Phased Opening Traffic and Parking Management Plan, revised August 7, 2020;
 - Host Community Agreement with Fairhaven; Agreement to include Adult Use Recreational Marijuana, signed January 29, 2019 with the Fairhaven Board of Selectmen;
 - Letter to the Planning Board regarding steps Bask Inc. has taken in response to Covid-19;
 - Property Lease Agreement with the David and Thelma L Sylvia Trust dated April 6, 2018;
 - Cannabis Control Commission approved provisional license (with conditions) dated January 9, 2020;
 - Annotated Aerial showing proposed locations of Police detail and parking and traffic attendants for the Traffic and Parking Management Plan prepared by Tim Keogh.

The entire record is on file at the Fairhaven Planning Department Office. Much of the record is posted on the Fairhaven Planning Board webpage.

OTHER EXHIBITS:

- Minutes of the Fairhaven Planning Board Meetings on the following dates: July 28, 2020 and August 11, 2020.
- Staff Report date July 6, 2020; revised July 24, 2020.
- Staff Slide Show dated July 27, 2020 and revised August 11, 2020.
- Recorded Planning Board Meetings on fairhaventv.com.
- Public Hearing Notice for July 24, 2020 and Fairhaven Planning Board Meeting Agendas for July 24 and August 11, 2020 with remote participation addresses.

FINDINGS OF FACT:

The Planning Board finds, based on the information submitted and testimony from the public hearing, that:

- The proposal is for a Co-located Medical Use and Adult Use Operation (CMO).
- An approximately 3,000 sf cultivation area has been removed off-site to Freetown.

- The Applicant wants to reserve the right to cultivate and manufacture marijuana products at this location in the future.
- Hours of operation are proposed to be expanded from the current 10:00 am – 6:00 pm to 9:00 am to 9:00 pm.
- There are no major changes to the exterior or Site Plan except overflow parking.
- The site is wholly within the Industrial (I) District and within the Marijuana Overlay District.
- The State of Massachusetts voted to allow Medical Marijuana in November 2012.
- A Special Permit with conditions was approved for Coastal Compassion at 2 Pequod Road in Fairhaven for a Medical Marijuana Treatment Facility on April 1, 2015. Coastal Compassion subsequently changed their name to Bask Inc.
- In November 2016, Fairhaven voted to legalize marijuana and allow recreational marijuana sales (4,692 to 3,817 or 55% - 45%).
- Bask Inc. commenced medical marijuana operations at this location in July 2017 and has been continuously operating since.
- The Town voted to amend the Zoning Bylaw (§ 198-29.7) with a 2/3 majority vote to permit recreational marijuana sales in November 2018.
- Bask Inc., signed a new Host Community Agreement for Adult Use Recreational Marijuana with the Fairhaven Board of Selectmen on January 29, 2019.
- The Cannabis Control Commission granted Bask Inc., a provisional license with conditions to operate at 2 Pequod Road in Fairhaven on January 9, 2020.
- Once approved for a Special Permit Bask Inc. must receive a final license from the Cannabis Control Commission to commence recreational sales of marijuana.

ZONING AND SPECIAL PERMIT CRITERIA

Subject to these findings, and the conditions set forth herein, the Planning Board finds that the project, as proposed in the full Plan Set submitted as part of the application, will be consistent with the general purposes and intent of the Fairhaven Zoning Bylaw and that the grant of the Special Permit is in the public interest and will preserve community values because, among other reasons:

§ 198-2. Purpose of Zoning: How does the proposal adhere to the following purposes of § 198:

A. Does design promote the health, safety, convenience and general welfare?

- The proposal provides a legal medicinal and recreational product in an appropriate location.

B. Does design lessen the danger from fire, flood, panic and other... disasters?

- The proposal and plans meet the stringent requirements set by the Cannabis Control Commission for handling, dispensing, transporting and disposing of product and waste.

C. Does design improve and beautify the town?

- The design makes no changes to improve or beautify the town.

D. Does design prevent overcrowding of land?

- Staff notes that if the business is more popular than the provided projections there could be occasional traffic congestion. The site is appropriate.

E. Does design avoid undue concentration of population?

- Same as above.

F. Does design facilitate the adequate needs of water, water supply, drainage, sewerage, schools, parks, open space and other public requirements?

- N/A.

G. Does the design conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment?

- N/A

H. Does the design encourage the most appropriate use of land throughout the town?

- The site is appropriate for the proposed use.

I. Does the design preserve and increase amenities.

- For those that enjoy or benefit from the product, yes.

§198-29(1): Special Permit Criteria: How does the proposal show Harmony with the general purpose and intent of the Special Permit chapter, and are the standards of Section 198-29(1) met by the use as designed: §198-29(1):

- A. The design assures safety with respect to internal circulation and egress of traffic and will not cause congestion, hazard or substantial change in established neighborhood character.
- B. The design provides adequate access for fire and service equipment.
- C. The design provides adequate utility services and drainage facilities consistent with the Fairhaven Zoning Bylaws.
- D. The intent of the performance standards of Section 198-24 will be met.
- E. The proposed use will not adversely affect the continued operation or development of adjacent uses; and
- F. The proposed use will not create a nuisance or hazard.

ADDITIONAL FINDINGS REQUIRED FOR MARIJUANA ESTABLISHMENTS § 198.29.7.H

§ 198.29.7.H (1): Does not contravene the limit on the number of special permits that may be granted.

- This will be the first of potentially three Special Permits for a Marijuana Establishment.

§ 198.29.7.H (2): Meets all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will as proposed be in compliance with all applicable state laws and regulations.

- Proposal appears to have addressed the requirements. The Cannabis Control Commission will review before issuing a final License.

§ 198.29.7.H (3): Meets all the applicable conditions and requirements as set forth in this chapter.

- Proposal appears to meet the requirements.

§ 198.29.7.H (4): Will provide copies of registrations and licenses and a copy of a signed host community agreement with the Town of Fairhaven, in accordance with MGL c. 94G and subsequent regulations, including 935 CMR 500.000, to the Building Commissioner prior to the issuance of a certificate of occupancy.

- Applicant has submitted copies previously and is hereby required to continue to do so.

§ 198.29.7.H (5): Is designed to minimize adverse visual impacts on abutters and other parties in interest.

- No change to exterior of the existing non-descript building in the Industrial District is proposed. Existing trees and vegetation will be retained and some landscaping will be added.

§ 198.29.7.H (6): Provides a secure waiting area, as required by state law or regulations.

- Numerous Security personnel will be on site at all times including at both public entries.

§ 198.29.7.H (7): Provides adequate security measures to ensure that no individual or group participant will pose a direct threat to the health or safety of other individuals, and that the storage and/or location of cultivation of marijuana is adequately secured in enclosed, locked facilities.

- Detailed security and handling plans addressing many scenarios including the handling, dispensing, transporting, securing and disposing of product and waste are included in the plans and this decision.

§ 198.29.7.H (8): Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the facility, and adequately mitigates the impacts of vehicular and pedestrian traffic on neighboring uses.

- A four (4) phased opening plan including employee parking, vehicular circulation and customer queuing is included in the approved plans. The site is appropriate for the projected numbers, but out of an abundance of caution, the Planning Board has required the Applicant to have a plan in place in case demand is significantly higher than projections. The area is in the Industrial District and does not have sidewalks or pedestrian facilities at this time.

198.29.7. H (9): Adequately demonstrates best practices with regard to the use of energy, water, waste disposal and other common resources, with no undue damage to the natural environment.

- The Applicant has committed to a number of energy efficiency measures.

ACTION: Petition for a Special Permit is **GRANTED** with the following conditions by 8 members in favor and 0 opposed. Those in favor: *Chairman John K. Farrell Jr.; Wayne Hayward; Geoff Haworth II; Jeffrey Lucas; Cathy Melanson; Rene Fleurent Jr.; John 'Jay' Malaspino and Jay Simmons.* Those opposed: none. Those abstaining: none. Those *absent: none.*

Conditions:

1. All site development including grading, drainage and landscaping shall be carried out in accordance with the approved plan set cited above on page 1 (On file at Town Hall).
2. Bask will post informational materials and updates about traffic and parking at the site inside the facility, on its website, through email and social media channels, and through the use of local media. Bask will also provide this information to the Town of Fairhaven and the Fairhaven Police Department to post or share at its discretion.
3. Bask will implement the four (4) phase opening plan as detailed here and in the FAIRHAVEN OPENING TRAFFIC AND PARKING MANAGEMENT PLAN dated August 7, 2020 to control trip generation, parking and circulation.

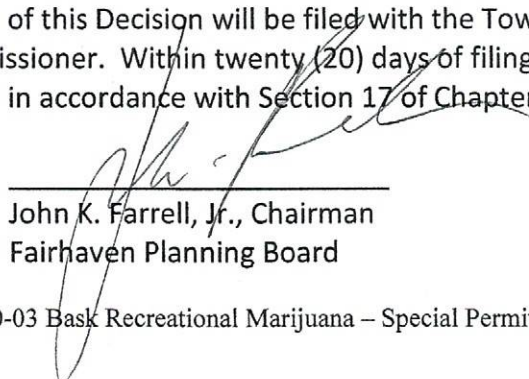
- (a) **Phase 1** will last from Opening Day until Phase 2. Phase 1 Program Elements will consist of:
 - i. A Police Detail at the corner of Alden and Pequod 7 days a week;
 - ii. Four (4) Parking Lot Attendants to manage lots and parking queue;
 - iii. Mandatory “Pre-Ordering/Order Ahead” and Soft Opening announcements through social media, website and local media;
 - iv. Employee Parking at 10 Pequod Road;
 - v. Working Group meeting(s) on Monday/Tuesday with Police, Fire/EMS, and Planning Department to discuss operations, traffic volumes, and address any issues until there is consensus that it is safe to proceed to Phase 2.
- (b) **Phase 2** will begin when the Working Group agrees unanimously that the operation is ready to begin Phase 2. Phase 2 Program Elements will consist of:
 - i. Police Detail Thursday (PM), Friday (PM), and Saturday (All Day) and potentially other days/times identified by the working group;
 - ii. Four (4) Parking Lot Attendants on Thursday pm, Friday pm and Saturday;
 - iii. Two (2) Parking Lot Attendants to manage lots and parking queue on Mon – Wed;
 - iv. Pre-Ordering/Order Ahead Announcements through social media, website, and local media;
 - v. Employee Parking at 10 Pequod Road;
 - vi. Working Group meeting(s) on Monday/Tuesday with Police, Fire/EMS, and Planning Department to discuss operations, traffic volumes, and address any issues until there is consensus that it is safe to proceed to Phase 3.
- (c) **Phase 3** will begin when the Working Group agrees unanimously that the operation is ready to begin Phase 3. Phase 3 Program Elements will consist of:
 - i. Police Detail Friday (PM) and Saturday (Mid-Day) or as needed;
 - ii. Two - Four (2-4) Parking Lot Attendants to manage lots and parking queue as needed;
 - iii. Utilize grassy areas and off-site parking for staff as needed;
 - iv. Working Group meeting(s) on Monday/Tuesday with Police, Fire/EMS, and Planning Department to discuss operations, traffic volumes, and address any issues until there is consensus that it is safe to proceed to Phase 4. Graduation from Phase 3 to Phase 4 will also require a majority vote of the Planning Board.
- (d) **Phase 4** will begin when the Working Group agrees unanimously that the operation is ready to begin Phase 4 and a majority vote of the Planning Board. Phase 4 Program Elements will consist of:
 - i. Utilize Overflow Parking Plan on an as needed basis for special events, holidays, and expected large volume traffic days;
 - ii. Quarterly meeting with Town Departments including Police, Fire/EMS, and Planning Department to discuss operations, traffic volumes and address issues.
 - iii. Annual Report to the Planning Board for Special Permits.

4. The approved Site Plan is subject to Planning Board review and approval for up to two years if the Board decides that the traffic situation has deteriorated and the approved site plan, particularly the direct exit onto Alden Road, is contributing to a dangerous situation, after a Finding of Fact by the Planning Board that a nuisance condition exists.

5. The hours of operation for Bask, Inc. Co-located Medical Use and Adult Use Operation (CMO) at 2 Pequod Road will be 9:00 am to 7:00 pm during Phases 1 and 2 and the hours of operation will be 9:00 am to 9:00 pm thereafter.
6. Bask Inc. reserves the right to cultivate and manufacture marijuana at this location. Bask shall notify the Planning Department if and when the resume cultivation and/or manufacture of products in Fairhaven.
7. Exterior lighting shall be downcast and located to ensure site security and safety and allow clear and identifiable video-capture of necessary objects, persons, and information while also preventing unnecessary light trespass onto any street or abutting property and eliminating direct or reflected glare.
8. Waste management shall be consistent with the Management Plan Received July 13, 2020.
9. Bask will develop policies and procedures for energy efficiency such as Identification of potential energy use reduction opportunities; consideration of opportunities for renewable energy generation; strategies to reduce electric demand; and engagement with energy efficiency programs.
10. Except as expressly allowed by this Special Permit, or by any other lawfully granted special permit, the applicant shall comply with all other applicable laws, including, but not limited to, the procedural, dimensional and use provisions of the zoning by-law
11. Prior to the start of site construction, the applicant shall submit site and utility construction plans for approval and schedule a pre-construction conference with the Board of Public Works.
12. The property owner shall maintain the grading, drainage, stormwater management facilities, snow removal and landscaping in accordance with the maintenance plans listed on the approved plans noted above on file in Town Hall. All notes on plans and conditions within the operation and maintenance and other plans within the approved plans cited above are incorporated herein by reference.
13. The post-development surface runoff patterns shall be consistent with the approved grading plans noted above on file at Town Hall.
14. All utility services shall be underground.
15. All landscaping approved by the Board in 2015 shall be installed except the herb gardens in front. Landscape installation shall occur prior to issuance of Final Occupancy Permits or the applicant shall provide the Planning Board a surety for 110% of the installation cost.
16. All landscaped areas indicated on the approved plans as clarified at the public hearing shall be installed and maintained. Shrubs and trees that die shall be replaced within one growing season.
17. The landscape maintenance plan shall be as follows:
 - (a) Tree, shrubs and groundcover shall be maintained by pruning, cultivation, watering, weeding, fertilizing, restoring planting saucers, tightening and repairing stakes and guy supports, and resetting to proper grade or vertical position, as required to establish healthy, viable plantings. Spray as required to keep trees and shrubs free of insects and disease.

- (b) Plants shall receive 1" of water per week either through a manual watering program or from natural rainfall during an establishment period of two years.
 - (c) Dead plant material shall be replaced as a condition of annual occupancy renewal and shall be planted at the first available planting season.
18. The parking spaces/layout shall be striped per accepted industry standards except where gravel or grass overflow is indicated on the plan. The parking lot shall be asphalt or other acceptable hard surface, except where gravel or grass overflow is indicated on the plan, and any places, which are worn, shall be repaired as necessary.
 19. There shall be no parking on the United States Post Office Service (USPS) property. Bask shall not allow anyone parking at the USPS to enter their building and will post information on parking procedures on their website and specifically inform customers not to park at the USPS property.
 20. The dumpster area shall be secured and locked to prohibit the general public from gaining access. The open end shall have a gate and shall screen the dumpster from public view.
 21. The engineer shall ensure that lighting is adequate and file the report with the Planning Department before a Certificate of Occupancy is issued.
 22. The Applicant shall provide the Police Department, Building Commissioner, Board of Health and Planning Board with the names, phone numbers and email addresses of all management and key holders to provide notice if there are operating problems associated with the establishment.
 23. The Applicant shall provide the Planning Board and Town Clerk an Annual Report no later than January 31 each year, providing a copy of all current applicable State Licenses for the Facility and/or its owners and demonstrate continued compliance with the conditions of the Special Permit and State Regulations. If there is a notice of deficiencies or violations said notice shall be included with the Annual Report.
 24. Building permits must be secured prior to construction. For further information regarding building permits and/or related building code issues, please contact the Building Department.
 25. After the 20-day appeal period, and if no appeal is filed, a certified copy of the Special Permit Decision from the Town Clerks Office shall be recorded by the applicant/owner at the applicant/owner's expense in the Registry of Deeds. The recorded Decision shall be indexed in the grantor index under the name of the owner of record and noted on the owner's certificate of title. The applicant/owner shall submit to the Planning Department proof of such recording within six months. The Building Inspector will not issue a Certificate of Occupancy without the recorded Special Permit Decision.
 26. Special Permit approval shall be void after two years from the date of approval unless a substantial use thereof or construction has begun.

A copy of this Decision will be filed with the Town Clerk of Fairhaven and the Fairhaven Building Commissioner. Within twenty (20) days of filing, any person aggrieved by the above Decision may appeal in accordance with Section 17 of Chapter 40A of Massachusetts General Laws.



John K. Farrell, Jr., Chairman
Fairhaven Planning Board