



Fairhaven Planning & Economic Development
40 Center Street, Fairhaven, Massachusetts 02719

Special Permit: SP 2020-03 Bask Recreational Marijuana
Staff Report: July 24, 2020

1. DESCRIPTION

- 1.1 Applicant:** Bask, Inc. (formerly known as Coastal Compassion), Attorney Robert B. Feingold & Associates, P.C. (Agent). The designated representatives of Bask are listed as: Timothy Keogh; Melanie Dixon; JoAnne Leppanen; Chapman Dickerson; and Pequod Practical Solutions LLC.
- 1.2 Project Location:** 2 Pequod Road in Fairhaven, MA (Map 36 Lot 14 – 1.6 acres). The property is owned by the David and Thelma L Sylvia Trust. The Lease Agreement was submitted.
- 1.3 Proposal:** To expand current operations at 2 Pequod Road from a Medical Marijuana Treatment Center to include adult-use recreational marijuana sales.
- 1.4 Zoning:** Industrial (I) and within the Marijuana Overlay District.
- 1.5 Permits:** Planning for Special Permit; Building; Bask already has Host Community Agreement with Select Board. The Cannabis Control Commission approved a provisional license with conditions on January 9, 2020. The conditions include that the final License is subject to compliance with local codes and bylaws. Adult-use marijuana is not allowed until they receive a final CCC License.
- 1.6 Surrounding Land Uses:** The site is wholly within the Industrial (I) and within the Marijuana Overlay District. It is bounded by Lambeth Park Drive to the north, Pequod Road to the south, United States Postal Service (USPS) to the east, and Alden Road to the west.
- 1.7 Project History:**
- In 2012, the State of Massachusetts voted to allow Medical Marijuana.
 - A Special Permit with conditions was approved on April 1, 2015 for Coastal Compassion for a Medical Marijuana Treatment Facility (Bristol County Registry of Deeds, Book 11333, page 56).
 - In November 2016, Fairhaven voted 4,692 to 3,817 to legalize marijuana and allow recreational sales (55% - 45%).
 - Coastal Compassion changed their name to Bask, Inc.
 - Bask commenced medical marijuana operations at this location in July 2017 and has been continuously operating ever since.
 - The term “Marijuana Establishment” is defined as “a Marijuana Retailer, Marijuana Product Manufacturer, Cultivator, Craft Marijuana Cultivator Cooperative, Independent Testing Laboratory, Standards Laboratory, Research Facility, Marijuana Micro-business, Marijuana Transporter, or any other type of Marijuana-related business, including a Medical Marijuana Treatment Center that has been duly licensed by the Massachusetts Cannabis Control Commission or relevant State Agency.”
 - The Town voted to amend the Zoning Bylaw (§ 198-29.7) to permit recreational Marijuana sales in November 2018. An effort to reverse the vote to legalize marijuana was unsuccessful.
 - § 198-29.7(B)(4) says special permits issued prior to November 13, 2018, allowing the use of premises for a Medical Marijuana Treatment Center shall remain in effect subject to its own terms and conditions. Additional uses are subject to a new Special Permit.
 - A new Host Community Agreement to include Adult Use Recreational Marijuana was signed January 29, 2019 with the Fairhaven Board of Selectmen. The Cannabis Control Commission approved a provisional license with conditions on January 9, 2020.

1.8 Project Summary:

- To expand current operations at 2 Pequod Road as a Medical Marijuana Treatment Center to include adult-use recreational Marijuana sales.
- 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.
- There are no major changes to the exterior or Site Plan.
- As part of the Application, Bask has provided the following plans: a Security Plan; Management Plan; Business and Resource Plan; A Traffic Impact Assessment; an Opening Day Traffic and Parking Plan; the Host Community Agreement with Fairhaven; a letter to the Planning Board regarding steps they have taken in response to Covid-19; and existing and proposed site plans. They have also provided proposed “Findings” on how they meet the requirements for a Special Permit.
- 2015 Special Permit conditions for the Medical Marijuana included the following conditions beyond the standard conditions:
 - The Facility shall be limited to the hours of operation for patient services from 10AM to 6PM, Monday through Sunday.
 - The dumpster area shall be secured and locked to prohibit the general public from gaining access.
 - The Applicant shall provide the Police Department, Building Commissioner, Board of Health and the Planning Board with the names, phone numbers and email addresses of all management staff and key holders to whom one can provide notice if there are operating problems associated with the establishment.
 - The Applicant shall provide the Planning Board and Town Clerk an Annual Report no later than January 31st, 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.
- The Building is 120’ by 90’ or approximately 10,800 gsf. Plans show 10,300 gsf with app. 2,000 publically assessable.
- The existing site hours are 10:00 AM to 6:00 PM.
- Bask ceased growing marijuana at this site earlier this year. They want to reserve the right to do so though.

2. ADMINISTRATIVE SUMMARY

2.1 Complete Filing Received: June 30, 2020.

2.2 Advertisement: The project was advertised in the New Bedford Standard Times on Monday July 13 and July 20, 2020.

2.3 Routing Sent: July 10, 2020.

2.4 Public Hearing: July 28, 2020

3. Environment

3.1 Habitat: The site is not in an NHESP Priority Habitat.

3.2 Lighting: No change to the lighting is proposed. The Applicant narrative says exterior lighting is downcast and located to ensure site security and safety and to 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.

- 3.3 **Landscaping:** No change to the approved landscape is proposed. Herb gardens not installed.
- 3.4 **Noise:** Should not be an issue, particularly in the Industrial District.
- 3.5 **Odors:** The applicant has offered to prepare an odor study before a Certificate of Occupancy.
- 3.6 **Bicycle/Pedestrian/Trails:** There are no sidewalks on Pequod or Alden in this vicinity. Alden has some potential for a bike lane in the future.
- 3.7 **Energy/Sustainability:** As required by the CCC, Bask will develop policies and procedures for energy efficiency such as:
 - o Identification of potential energy use reduction opportunities;
 - o Consideration of opportunities for renewable energy generation; However, there is no indication that solar photovoltaic is considered on the roof.
 - o Strategies to reduce electric demand;
 - o Engagement with energy efficiency programs;
- 3.8 **Waste Management:**
 - The site plan shows an enclosed dumpster pad along the one-way exit to Alden Road.
 - The Management Plan says, “Any inventory that becomes outdated, spoiled, damaged, deteriorated, mislabeled, or contaminated will be segregated from other products and destroyed, and any such waste will be stored, secured, and managed in accordance with applicable state and local statutes, ordinances, and regulations...”
 - “No fewer than two Bask agents will witness and document how the marijuana waste is disposed or otherwise handled (recycled, composted, etc.). When marijuana products or waste is disposed or handled, Bask will create and maintain a written or electronic record of the date, the type and quantity disposed or handled, the manner of disposal...”
- 3.9 **Water/Wastewater/Stormwater:**
 - **Water Source:** Town water.
 - **Storm water:** No significant change to existing site plan did not trigger stormwater report.

4. Transportation

Greenman-Pedersen Inc. (GPI) prepared the Traffic Impact Assessment. Staff asked that they prepare additional information including assessing the sightlines and accident history was submitted July 24, 2020. Additionally, information about the overflow parking plan has been requested.

- **Access:**
 - o Three curb-cuts on Pequod Road; one accesses the front (west) of the building and the other two access the back (south and east) of the building.
 - o One exit-only curb-cut on Alden Road north of Pequod.
 - o Access and egress to the site will remain the same as currently operated with Medical
 - o Pequod is a two-block long dead-end with one-lane each way and no pavement markings or sidewalks.
 - o Alden Road is a minor arterial with a posted speed limit of 35 mph in the vicinity.
- **Sight Lines:** Submitted Friday July 24, 2020.
- **Safety/Accidents:** Submitted Friday July 24, 2020.
- **Trip Generation:** To estimate proposed Trip Generation GPI used the Institute of Transportation Engineers (ITE) *Trip Generation Handbook*, for ITE Land Use Code 882 (Marijuana Dispensary) using 3,000 sf. The Total Building Area is over 10,000 sf but Publicly Accessible Area for both Medical and Adult use is approximately 2,000 sf.
 - o **Existing:** Based on transaction data provided by the Client in three typical weeks; in 11/2019, 12/2019, and 1/2020.

- **Weekday Daily Trips:** 195
 - **Weekday PM Peak Hour Trips:** Total 26 (13 in and 13 out)
 - **Saturday Daily Trips:** 265
 - **Saturday Midday Peak Hour Trips:** Total 42 (21 in and 21 out)
- **Proposed:** Medicinal and Recreational Dispensary Trips based on 3,000 SF.
 - **Weekday Daily Trips:** 760
 - **Weekday PM Peak Hour Trips:** Total 65
 - **Saturday Daily Trips:** 780
 - **Saturday Midday Peak Hour Trips:** Total 109
- The Traffic Impact Assessment qualifies this assuming a 25% pass-by trip rate.
- **Estimated Total Trip Increase:** Not using GPI assumed 25% pass-by.
 - **Weekday Daily Trips:** $760 - 195 = 565$.
 - Over 8 hours = average of 71 more trips per hour.
 - Over 8 hours = average of 95 total trips per hour.
 - **Weekday PM Peak Hour Trips:** $65 - 26 = 39$ more trips during WD PM Peak
 - 65 equals 1.1 trip per minute during Weekday PM Peak
 - **Saturday Daily Trips:** $780 - 265 = 515$ more Saturday Daily Trips
 - Over 8 hours = average of 64.5 more trips per hour.
 - Over 8 hours = average of 97.5 total trips per hour
 - **Saturday Midday Peak Hour Trips:** $109 - 42 = 67$
 - 67 additional Saturday Peak Hour Trips
 - 1.1 Additional Saturday Midday Peak Hour Trip per minute.
 - 1.8 Total Saturday Midday Peak Hour Trips per minute.
- **Vehicular Volume of Road:**
 - Traffic Counts done by SRPEDD on Alden Road just to the north of I-195 in May 2019 counted 12,544 vehicles per day.
 - Using the projected increase in the number of Weekday Daily Trip above (565) and the SRPEDD Vehicular Volume Count of 12,544, the proposal will account for a 4.5% increase in the volume on Alden Road north of Bridge Street.
 - Using traffic count data from the Massachusetts Department of Transportation (MassDOT), GPI concludes that approximately 55 percent of the site-generated traffic will travel to and from the south and 45 percent to and from the north on Alden Road.
- **Parking:**
 - **Existing:** 41
 - **Proposed:** 41.
 - 23, including four handicapped spots, on the east and south sides of the building closest to the public entrances (Medicinal and Recreational).
 - 18 on the west side closest to Alden Road.
 - **Overflow:** Going to need an overflow plan in case demand is higher than projected.
- **Vehicular Circulation:**
 - The three curb cuts on Pequod are in and out.
 - The two towards the rear (East – closer to USPS) of the building connect to the parking for both the Medicinal entry (east) and the recreational entry (south).
 - The parking lot closer to Alden does not have a vehicular connection to public entries.
 - It has an in and out on Pequod but is exit only to Alden.

- **Mass Transit:** No mass transit currently services this site. SRTA Route 11 runs several blocks south on Bridge Street.
- **Pedestrian:** No sidewalks on either side of Pequod Road or Alden Road in the vicinity.
- **Traffic Summary:** The proposal will add a significant number of trips to this section of Alden Road. Alden Road should be able to handle the project increase. The only concern is if the demand significant exceeds projections. Contingency plans for too much success should be prepared.

5. Economic Impact

- Bask expects to employ approximately 30-35 full-time jobs at the retail facility.
- They have also said they will hire qualified, local contractors and vendors; prioritize the hiring of Fairhaven residents for its operations; and rely on local legal, architectural, engineering, and construction groups to provide assistance throughout the local permitting process.
- Potential Tax Impacts:
 - Fairhaven will receive direct payments of three percent (3%) of the gross revenues derived from sales at the location as a Community Impact Fee.
 - Fairhaven will also receive an additional three percent (3%) of the gross revenues of the sales through a Local Option Sales Tax.
 - For example, if Bask Inc. grosses \$3,000,000 in a year, the 3% Community Impact Fee would be \$90,000 and the 3% Local Option Sales Tax would be \$90,000. Therefore, Fairhaven would collect \$180,000 in sales taxes that year.

6. Scenic Values

- **Building:** The non-descript building in the Industrial District will not change visibly.
- **Architectural Detailing:** Same.

7. Local Impact on Abutters and Correspondence

- No complaints have been reported to the Planning Department about the current use.
- If traffic projections exceed the estimate there could be some impact at the USPS office.
- No Correspondence received as of Friday July 24, 2020.

8. Comment from Town Departments

- Fire Department:
 - Reviewed the plans and have no concern.
- Police Department:
 - Reviewed the plans and have been in communication with the Director of Security. No concern.
- Public Works Department:
 - Highway Department: No concern
 - Sewer: No concern
 - Water:
 - Keep existing 2" service;
 - Tap and Sleeve new 4" Sprinkler.
 - BPW:
 - Preconstruction meeting with Utility Contractor;

- Fees: Sewer, Water, Driveway, Trench Permit, Inspection Services and As-built plans.
- Finance/Treasurer/Collector, Wendy Graves:
- Assessor (Def Garcia):
 - Reviewed the documentation pertaining to Bask Recreational and there are no comments at this time
- Conservation Agent (Whitney McClees):
 - The project is not within the jurisdiction of the Conservation Commission.
- Board of Health:

9. ZONING AND SPECIAL PERMIT CRITERIA AND PLANNING CONCERNS

- **Zoning Criteria: § 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.

Special Permit Criteria: §198-29(1): 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): Does design assure safety with respect to internal circulation and egress of traffic.**
 - The site is currently a medical marijuana dispensary and before that was the lottery building. The site plan is not making any major changes. Circulation and egress will depend on trip generation.
- **§198-29(1)(b): Does design provide adequate access for fire and service equipment.**
 - The Fire Department has reviewed the site plan and have approved it for fire access.
- **§198-29(1)(c): Does design provide adequate utility services and drainage facilities ...**

- This is an existing developed site and will not be adding any impervious area; therefore, not triggering the storm drainage regulations. The site is already served by all utilities.
 - **§198-29(1)(d): Does Landscape design conform to § 198-27C of this chapter.**
 - No changes are proposed to the landscape that was approved in 2015. Some herb beds shown on the approved plan were never planted.
 - **§198-27C(1): No off-street parking area for five or more cars shall be located within the required front, side or rear yard setback. If no setback is required minimum parking setback shall be 6’.**
 - One existing spot on the plans appears to be within the setback but the plans do not show an existing planter that meets the set back and buffer requirements.
 - **§198-27C(2): Required parking areas paved, unless exempted by Special Permit.**
 - The parking lot is paved.
 - **§ 198-27C (3): Backing onto a public way?**
 - There is no backing into a public way.
- §198-27C (4): Perimeter landscaping requirements. Parking for 5 or more cars include the following:**
- **§ 198-27C (4) (a): A landscaped buffer strip shall be provided adjacent to any public road...**
 - Two planters on along Pequod Road serve as the buffer.
 - **§ 198-27C (b): A landscaped buffer strip shall be provided adjacent to any adjoining uses...**
 - There is no landscaped buffer between this location and the USPS but there is a retaining wall with a grade change.
 - **§ 198-27C (c): Plantings shall include the incorporation of evergreen and deciduous plantings ...**

§ 198-29.7.H(1-9) Additional Findings required for Marijuana Establishments

- **§ 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.**
 - 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.**
 - 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 and will be conditioned 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.
- **§ 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 have been submitted addressing many scenarios.
- **§ 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.
 - An overflow parking and circulation plan should be reviewed and approved by the Planning Board before a Certificate of Occupancy is issued for the Recreational Use. The site is appropriate for the projected numbers but the Town should be prepared and the Applicant should 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 submitted a number of energy efficiency measures that they will consider. There is no plan for photovoltaics at this time.

Other Planning Concerns

- **Wetlands:** N/A
- **Historic:** N/A
- **Traffic:** The main concern is if the trip generation is significantly higher than projected. No pun intended.
- **Other:** Marijuana was illegal for many years and many people have reservations about the impact legalizing it will have on society and particularly on children. Edible marijuana has become popular and the packaging of it should ensure that it is not confused with candy.