

10-18-22



# FAIRHAVEN PLANNING BOARD

Town Hall • 40 Center Street • Fairhaven, MA 02719  
Telephone (508) 979-4023 ext. 9

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: October 18, 2022

Linda Fredette  
Linda Fredette, Town Clerk

Town Clerk/Registry of Deeds

FAIRHAVEN TOWN CLERK  
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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 12, 2022. The July 12, 2022 public hearing was heard and continued to August 23, 2022. The August 23, 2022 public hearing was heard and continued to September 13, 2022 and closed on that date.

- PETITIONER:** Andre Arzumanyan (Elevation Retail II, LLC)  
385 Great Road  
Bedford, MA 01730
- OWNER:** Michael Panagakos  
133 Faunce Corner Road  
Dartmouth, MA 02747
- LOCATION:** 240 Bridge Street  
Fairhaven, MA 02719  
Book: 7409 Pages: 278-281 January 12, 2005
- PETITION:** Request for Special Permit approval to locate a new retail marijuana dispensary in Unit 1 at 240 Bridge Street on the northeast corner of Alden and Bridge Streets.
- PLANS:** The applicant submitted a site plan, floor plans and offers in support of their application for a Special Permit as detailed below illustrating compliance with the Town of Fairhaven Zoning Bylaw.
  - "Site Plan" for Elevation Retail II, LLC for a Special Permit for Marijuana Establishment consists of one 24" by 36" sheet with building location, parking, access, signage and monuments. Prepared by Green Seal Environmental LLC, 114 State Road, Sagamore Beach, MA 02562. Scale 1" = 20'. Dated Revised September 19, 2022.

Andre Arzumanyan 75 Weybosset St. Prov. 02903

- The Site Plan was supplemented on September 13, 2022 with a list of 26 Conditions in a document titled "Conditions for Elevation Retail Special Permit – 240 Bridge Street (v.3.0 - 2022.09.13) (1) from Andre Arzumanyan.
- The designated representatives of Elevation is Andre Arzumanyan.
- As part of the Application, Elevation Retail LLC. also provided the following plans which are incorporated into the Plan Set:
  - Security Plan with Policies and Procedures;
  - Interior Floor Plans indicating public areas, security and sales. Preparer unknown dated October 13, 2021.
  - Staffing and Personnel Plan;
  - Maintenance and Financial Records Plan;
  - Transportation and Disposal of Marijuana Plans;
  - Host Community Agreement with Fairhaven; Agreement to include Adult Use Recreational Marijuana, signed April 26, 2021 by Daniel Freitas, Chair of the Fairhaven Select Board;
  - Property Lease Agreement with Michael W. Panagakos dated June 2, 2021;
  - Cannabis Control Commission approved provisional license (with conditions) dated November 18, 2021;
- Traffic Impact Study prepared for Proposed Retail Marijuana Dispensary at 240 Bridge Street in Fairhaven by McMahon Transportation Engineers & Planners dated, May 2022 consisting of 27 pages and an a 94-page appendix;

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 12; August 23, and September 13, 2022
- Staff Report date July 8, 2022.
- Staff Slide Show dated July 12; revised August 23, and September 13, 2022.
- Recorded Planning Board Meetings on fairhaventv.com of July 12; August 23, and September 13, 2022.
- Public Hearing Notice for July 12, 2022 and Fairhaven Planning Board Meeting Agendas for July 12; August 23, and September 13, 2022 with remote participation addresses.
- Offsite Parking MOU with Michael Rocha, President of Southeastern Fire Equipment, 117 Alden Road, dated September 8, 2022.
- Offsite Parking MOU with Victor Pereira, Construction and General Laborer's Union, 115 Alden Road, dated August 23, 2022.
- Correspondence received with concerns for the project from Tim Keogh, Christian Powers, Dolores Oneale, Gary Souza, Morgan Oneale and Patricia Shaw.
- Petition of Support with numerous signatures submitted by the applicant.

### **FINDINGS OF FACT:**

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

- The proposal is for to locate a new retail marijuana dispensary in Unit 1 at 240 Bridge Street on the northeast corner of Alden and Bridge Streets.
- Hours of operation are proposed to be 9:00 am to 9:00 pm.
- There are no major changes to the exterior of the building or the existing site.
- No change to the existing landscape is proposed.
- There are no major changes to the existing lighting.
- There is no change to the amount of impervious surface. Application says existing stormwater controls consist of two catch basins and two trench drains that flow to an existing Stormceptor system that keeps runoff on the site.
- 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.
- In November 2016, Fairhaven voted to legalize marijuana and allow recreational marijuana sales (4,692 to 3,817 or 55% - 45%).
- 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.
- Elevation Retail, signed a new Host Community Agreement for Adult Use Recreational Marijuana with the Fairhaven Board of Selectmen on April 26, 2021.
- The Cannabis Control Commission granted Elevation Retail, a provisional license with conditions to operate at 240 Bridge Street in Fairhaven on November 18, 2021.
- Once approved for a Special Permit Elevation Retail 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 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 major changes to improve or beautify the town with the exception that signage and information should help cut down on the number of illegal left turns in and left turns out of the Bridge Street egress.

**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 within the Marijuana Overlay District.

**I. Does the design preserve and increase amenities.**

- For those that enjoy or benefit from the product.

**§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):**

- 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.
- The design provides adequate access for fire and service equipment.
- The design provides adequate utility services and drainage facilities consistent with the Fairhaven Zoning Bylaws.
- The intent of the performance standards of Section 198-24 will be met.
- The proposed use will not adversely affect the continued operation or development of adjacent uses; and
- 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 second 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 commercial plaza 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.**

- 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 approved in this decision and incorporated herein by reference.

**§ 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 6 members in favor and 1 opposed. Those in favor: *Chair Wayne Hayward; Cathy Melanson; Jessica Fidalgo; David Braga; Sharon Simmons and Kevin Grant.* Those opposed: *Rene Fleurent Jr.* Those absent: *Jeffrey Lucas.*

**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. The Planning Board's Special permit approval shall be conditional subject to a transportation review of the development's curb cuts. The transportation review will be conducted by an independent Traffic Engineer chosen by the Planning Board at the owner's expense, one year after the development has been operational at full occupancy. Should revisions to the site plan including curb cuts be warranted, the applicant shall be required to make all modifications within a reasonable amount of time determined by the Planning Board after receipt of the transportation review.

3. Prior to the start of site construction and/or the issuance of a building permit, the applicant shall submit to the Planning Department \$5,000.00 to be held in the Planning Board Guarantee Deposit Account for the transportation review. The balance of any funds not expended shall be refunded to the applicant.
4. Elevation Retail 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. Elevation Retail, or its successors, will also provide this information to the Town of Fairhaven and the Fairhaven Police Department to post or share at its discretion.
5. Elevation Retail will implement the four (4) phase opening plan as detailed here and in the FAIRHAVEN OPENING TRAFFIC AND PARKING MANAGEMENT PLAN 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 Security Detail provided by the Applicant at the Alden Road and Bridge Street entries 7 days a week;
    - ii. A Parking Lot Attendant provided by the Applicant to manage the lot and any overflow issues 7 days a week;
    - iii. Employee Parking at 115 and/or 117-119 Alden Road as required;
    - iv. Virtual 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. A Security Detail provided by the Applicant at the Alden Road and Bridge Street entries Thursday (PM), Friday (PM), and Saturday (All Day) and potentially other days/times identified by the working group;
    - ii. A Parking Lot Attendant provided by the Applicant to manage the lot and any overflow issues on Thursday pm, Friday pm and Saturday;
    - iii. Pre-Ordering/Order Ahead Announcements through social media, website, and local media;
    - iv. Employee Parking at 115 and/or 117-119 Alden Road as required;
    - v. Virtual 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. A Security Detail at the Alden Road and Bridge Street entries provided by the Applicant Friday (PM) and Saturday (Mid-Day) or as needed;
    - ii. A Parking Lot Attendant provided by the Applicant to manage the lot and parking queue as needed;
    - iii. Employee Parking at 115 and/or 117-119 Alden Road as required;
    - 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.

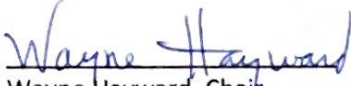
- (d) **Phase 4** will begin when the Working Group agrees unanimously that the operation is ready to begin Phase 4 and a majority vote of the Planning Board. Phase 4 Program Elements will consist of:
- i. Employee Parking at 115 and/or 117-119 Alden Road as required;
  - ii. Quarterly meeting with Town 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.
6. 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 is contributing to a dangerous situation, after a Finding of Fact by the Planning Board that a nuisance condition exists.
  7. The hours of operation for Elevation Retail for Adult Use Marijuana at 240 Bridge Street will be 9:00 am to 9:00 pm, and approval to extend hours will not be unreasonably withheld should other Marijuana Establishment operators in Fairhaven be granted operating hours extension.
  8. There shall be no cultivation or manufacturing marijuana at this location.
  9. There shall be no 3rd party consumer delivery from the location unless approved by the Board.
  10. The revised plan relocates the strip mall's dumpster in order to create a fenced in secure delivery area per the revised Site Plan. The Applicant has contracted with a private waste disposal firm which services the cannabis industry. The dispensary will have a 32-gallon lock tote stored inside the facility. The tote will be serviced on an as needed, but in no case less than monthly basis for secure disposal of cannabis waste product. All cannabis waste disposal will be in accordance with CCC rules and regulation and a waste log will be maintained per 935 CMR 500.00.
  11. 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. No new lighting is proposed as part of this permit.
  12. Waste management shall be consistent with the Narrative dated August 3, 2022 provided by the Applicant.
  13. Elevation Retail 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.
  14. 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
  15. Prior to the start of site construction, the applicant shall submit site and utility construction plans, should they be applicable, for approval and schedule a pre-construction conference with the Board of Public Works.

16. There will be no changes to utility services.
17. Landscaping changes will include general cleaning and refresh/upkeep of existing Landscaping at the site and all landscaping approved by the Board shall be installed and maintained as approved.
18. 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.
19. 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.
20. The parking spaces/layout shall be striped per accepted industry standards. 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.
21. The Applicant will use commercially reasonable best efforts to ensure that there shall be no parking on neighboring properties by customers.
22. The dumpster area shall be maintained in accordance with the Applicant's updated Site Plan and Narrative dated August 3, 2022.
23. 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.
24. 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.
25. 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.
26. After the 20-day appeal period, and if no appeal is filed, a certified copy of the Special Permit Decision from the Town Clerk's 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.



27. Special Permit approval shall be void after two years from the date of approval unless a substantial use thereof or construction has begun.
28. The previous Special Permit Decision and its conditions on this property (Book 7409 Pages 278-281 recorded in the Bristol County Registry of Deeds on February 14, 2005) is incorporated herein. If the approved retail marijuana use is not implemented the existing 2005 Special Permit and Conditions cited shall continue to be in force.

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.

  
Wayne Hayward, Chair  
Fairhaven Planning Board