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Case #: ZBA 2016-143
Site: 240 Elm Street
Date of Decision: March 1, 2017
Decision: *Petition Approved with Conditions*
Date Filed with City Clerk: March 2, 2017

ZBA DECISION

Applicant Name:	Sage Cannabis, Inc./Michael Dundas
Applicant Address:	13 Commercial Way, Milford, MA 01757
Property Owner Name:	Alexander Argiros/Davis Square Realty Venture Trust
Property Owner Address:	P.O. Box 262, Norwood, MA 02062
Agent Name:	Sean T. O'Donovan, Esq.
Agent Address:	741 Broadway, Somerville, MA 02144
 <u>Legal Notice:</u>	 Applicant, Sage Cannabis, Inc., and Owner, Davis Square Realty Ventures Nominee Trust, seek a Special Permit under SZO §7.15 to establish a Medical Marijuana Facility in the basement of the building.
 <u>Zoning District/Ward:</u>	 CBD Zone and Medical Marijuana Overlay District. Ward 6.
<u>Zoning Approval Sought:</u>	§7.15
<u>Date of Application:</u>	November 16, 2016
<u>Date(s) of Public Hearing:</u>	1/18, 2/1, 2/15 & 3/1/17
<u>Date of Decision:</u>	March 1, 2017
<u>Vote:</u>	5-0

Appeal #ZBA 2016-143 was opened before the Zoning Board of Appeals at Somerville City Hall on January 18, 2017. Notice of the Public Hearing was given to persons affected and was published and posted, all as required by M.G.L. c. 40A, sec. 11 and the Somerville Zoning Ordinance. After one hearing of deliberation, the Zoning Board of Appeals took a vote.



CITY HALL • 93 HIGHLAND AVENUE • SOMERVILLE, MASSACHUSETTS 02143
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DESCRIPTION:

Background: In 2012, Massachusetts voters approved a statewide medical marijuana initiative petition. This ballot question received overwhelming support by voters in Somerville. Shortly after the adoption, the City of Somerville placed a moratorium on medical marijuana dispensaries while it developed guidelines for appropriate siting of dispensaries and a rigorous procedure for review and license. The process was designed to serve the community and reflect proposed new citywide zoning regulations. However, the zoning overhaul was delayed and the moratorium expired.

Therefore, the Planning Division recommended that the City establish a medical marijuana dispensary ordinance to permit dispensaries in appropriate locations in the City. Planning Division staff further proposed that a special permit would be required for final approval. This action would allow dispensaries to move forward in Somerville. The medical marijuana dispensary ordinance was adopted by the Board of Aldermen on February 25, 2016.

The ordinance incorporates an overlay district and map, indicating specific lots where a medical marijuana facility can locate. Based upon extensive research and feedback with the community and the Board of Aldermen, the staff undertook a strategy to: 1) permit dispensaries in vibrant business and mixed-use districts, with convenient access by public transportation; 2) treat dispensaries as a pharmaceutical operation; and 3) encourage dispensaries to locate in retail spaces that will complement the neighborhood and the City's neighborhood planning and development goals. While many other communities have encouraged dispensaries to be far from urban activity, the Somerville community embraced this approach as being consistent with the vision and character of the SomerVision plan.

Sage Bio Tech: This proposal is to establish a registered medical marijuana dispensary (RMD) of 4,785 square feet in the basement, to be operated by Sage Cannabis, where office space was previously approved under Case No. ZBA 2014-88. The proposal is limited for the dispensing of medical marijuana to patients that are certified by a qualified health care provider and registered with the Commonwealth of Massachusetts Department of Public Health (DPH). The product will be manufactured and pre-packaged at the Sage cultivation facility in Milford, Massachusetts and there will be no consumption of the product on site. The hours of operation will be restricted to Monday through Saturday 9am to 9pm and Sunday from 9am to 6pm.

The retail dispensing area will include: (1) an entry trap where patients will demonstrate that they are current registrants in the DPH Medical Use of Marijuana Program in order to gain access to the facility; (2) a reception/waiting area so patients will not have to wait outside the facility; (3) a private consultation room; (4) a dispensing area; (5) a sales and transaction area; (6) a packaged products fulfillment area that is separate and secure from the dispensing area where patient orders will be filled, packaged in child-proof exit bags, and labeled with important health and safety information; and (7) an exit trap to allow for secure exit from the facility. The remainder of the facility will include: back office administrative functions and a secure storage area.

A typical patient will go through the following steps:

Step 1: Initial ID Check at the Exterior of the Building

Prior to entering the facility, a patient will be required to present their DPH issued Marijuana Program ID card to a dispensary security agent at the exterior of the front entrance. Only patients that present a valid DPH ID will be admitted to the facility.

Step 2: Verification of Patient Registration in the Security Trap

If the patient presents a valid DPH-issued ID upon arrival the facility, the patient will be admitted to the secure entrance trap area where his/her credentials are verified by contacting the DPH interoperable



database to confirm two pieces of information: (1) that the patient registration is active; and (2) that the patient still has an allotment of medicine remaining on their certification and is eligible to receive medicine.

Step 3: Admission to Secure Waiting Area

Once verified, patients will be admitted to a secure reception area before being called into the dispensing area. The reception area is staffed at all times by a dispensary employee, and includes a seating area. When a qualified patient visits a Sage dispensary for the first time, he/she will be given a brief orientation to the facility. Patient records will be originated from a questionnaire that may include summary biographical data, as well as a scanned copy of the patient's physician-issued certification, DPH-issued ID card, and state-issued ID card. The system automatically generates a unique Customer ID for every patient record.

Step 4: Admission to the Sales Area

Patients will be admitted to the dispensing area as space allows. The Sage process provides for one-on-one interaction between a dispensary agent and a patient throughout the dispensing process. A dispensary agent will call the next patient from the waiting room and escort him/her to an individual display pedestal where all products are arrayed in a glass jeweler's display case. The patient will be able to choose from among a variety of forms of medicine such as cannabis flowers and marijuana infused products.

Step 5: Payment and Fulfillment

Once a patient has placed an order with a dispensary sales agent, he/she will move to the fulfillment area where payments will be processed and the medicine will be sealed in a childproof exit bag and given to the patient.

Step 6: Exit the facility

Once the medicine has been received, the patient is required to exit the facility through the secure exit trap. Patients are required to exit the facility as soon as their order has been filled. They are not allowed to administer their medicine on the premises or loiter around the exterior of the dispensary.

FINDINGS FOR SPECIAL PERMIT (SZO §7.15):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied:

The Board finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Pursuant to Section 7.15 of the SZO, Medical Marijuana Facilities shall only be permitted under the following circumstances:

- a. *A Medical Marijuana Facility shall be permitted by special permit in the Medical Marijuana Overlay Districts.*

The proposed location is within one of the Medical Marijuana Overlay Districts.

- b. *Medical Marijuana Facilities shall comply with the siting requirements in the overlay districts set forth in the City of Somerville Zoning Map with respect to distance from schools, daycare centers, and facilities in which children commonly congregate. These siting requirements have been developed to incorporate adequate separation, in a manner that is appropriate for Somerville's urban context, from schools, daycares and places*



where children congregate. For this reason, the overlay districts shall serve as a local requirement to supersede the provisions of 105 CMR 725.110(A)(14).

The proposed location complies with the siting requirements of the Medical Marijuana Overlay Districts set forth in the City of Somerville Zoning Map.

- c. Medical Marijuana Facilities must be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and must comply with all applicable state and local public health regulations and all other applicable state and local laws, rules, and regulations.*

The proposed Medical Marijuana Facility is currently in the process of obtaining a Final Certificate of Registration (FCR) with the Commonwealth of Massachusetts's Department of Public Health. Successful municipal permitting is required to obtain a FCR. A condition of approval will be that Sage Cannabis obtains an FCR prior to the issuance of a Certificate of Occupancy from the City of Somerville Inspectional Services Department (ISD).

- d. The special permit granting authority shall be the same board that issues special permits for the underlying zoning district.*

The Zoning Board of Appeals is the Special Permit Granting Authority in the Central Business District.

- e. A special permit shall only be approved if the special permit granting authority determines that the use meets the findings of Section 5.1.4 of the Somerville Zoning Ordinance.*

The Board finds that the proposed use meets the findings of Section 5.1.4 of the Somerville Zoning Ordinance.

- f. A Medical Marijuana Facility shall be limited to ten thousand (10,000) square feet in net floor area.*

The proposed Medical Marijuana Facility contains 4,785 square feet in net floor area.

- g. A Medical Marijuana Facility shall be subject to the minimum parking requirements under Article 9 of the ordinance. The number of required parking spaces shall be set based upon the requirement for a Retail Sales/Rental or Retail and Service uses of this ordinance.*

Case No. ZBA 2014-88 (approved in November 2015) granted the approval of 4,770 square feet of office space that was approved for a future tenant. The space is now being proposed to be used by Sage Cannabis although the proposed net floor area is 4,785, which is an increase of 15 net square feet. The previously approved office space required 6.6 parking spaces and the entire proposal required 38, which was two spaces less than what the previous condition required. The requirement for a Retail Sales/Rental or Retail and Service use in the basement in the CBD zone would require 3.8 parking spaces and the entire building would be required to provide 36 parking spaces, which is two less spaces than what was previously approved under Case No. ZBA 2014-88.

- h. The applicant shall be required to submit a traffic and parking study to determine any traffic mitigation or additional parking needs.*

The Applicant has submitted a Parking Study and Trip Generation memorandum. Refer to Section II.6 of this report for Staff findings.

- i. Signage for the facility must:*

- a. Meet the regulations of the underlying zoning district.*

An awning currently exists on the Chester Street side of the building. Sage Bio Tech is proposing to affix their logo to the existing awning and a sign along Elm Street that will direct patients to the main entrance on Chester Street, which conforms to SZO Section 12.4.



b. *Incorporate no internal illumination.*

The proposed sign is not internally illuminated.

c. *Be subject to review and approval of the SPGA as a part of the special permit application.*

Staff finds that the proposed Chester Street sign fits in with the character of the neighborhood and is designed in such a way where no medical symbols, images of marijuana, related paraphernalia, and colloquial references to cannabis and marijuana are not used. The staff has recommended an alternative sign design for Elm Street as a condition, and that sign proposed by staff also meets findings.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to prevent the overcrowding of land; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the CBD district, which is, "to preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses." The proposal is also consistent with the purpose of the Medical Marijuana Overlay District, which is, "to establish area where Medical Marijuana Facilities may be permitted subject to Section 7.15."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

Surrounding Neighborhood: The site is located in the heart of Davis Square surrounded by numerous storefronts of made up of commercial, restaurants, and retail uses. There are also residential uses adjacent to the site and further down Chester Street.

Impacts of Proposal (Design and Compatibility): The proposed use will occupy space in the spaces and will not affect the design of the Elm Street streetscape. Patrons will enter the site via a door on the Chester Street side of the building and will exit via a door onto Elm Street. An awning currently exists on Chester Street, which Sage proposes to affix their logo to.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

Impacts of Proposal (Environmental): There will be no adverse environmental impacts on the surrounding area as a result of the proposed use. There will be no onsite consumption of the marijuana products nor is public consumption of medical marijuana products allowed in the Commonwealth of Massachusetts.



6. Vehicular and pedestrian circulation: *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

Impacts of Proposal (Circulation): A Parking Study and Trip Generation memorandum has been submitted as part of the application. The study concluded that there are adequate parking spaces. It found that there are 0.87 parked vehicles per parking space available at all five municipal parking lots at any given time, on average. The Study identified a lack of on-street parking within the vicinity of the project site. It is likely that if staff or a visitor cannot find an on-street parking space, they will park in a municipal parking lot within Davis Square. Due to the sites proximity to various modes of highly accessible public transportation trip generation calculations show that at least 32% of the patients and staff will travel to and from the site via public transportation.

Sage Bio Tech has expressed a commitment towards implementing the following transportation mitigation measures to encourage both patients and staff to use alternative modes of transportation:

- Encourage carpooling and use of ridesharing services (Uber, Lyft) for staff;
- Provide public transportation subsidies for MBTA passes for staff;
- Provide information on different transportation options for all new hires;
- Work with the landlord and surrounding businesses to schedule/manage deliveries to minimize conflicts;
- Promote the use of Hubway, a bike-sharing system. The nearest facility is approximately 750 feet from the project site at the Davis Square T-stop;
- Provide lockers on-site for staff; and,
- Promote public transportation accessibility for patients on their website and other advertising mediums.

6. Housing Impact: *Will not create adverse impacts on the stock of existing affordable housing.*

There will be no adverse impacts on the stock of existing affordable housing.

7. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville's neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

Davis Square is marked as a Urban Mixed Use area on the Future Land Context Map and as an area to Enhance in the SomerVision Map. The proposal will maintain the buildings appearance and add to the range of services provided in the Square.

<u>SomerVision Summary</u>	<i>Existing</i>	<i>Proposed</i>
<i>Commercial Sq. Ft.:</i>	4,770	4,785
<i>Estimated Employment:</i>	0	8 FT and 8-10 PT



DECISION:

Present and sitting were Members Orsola Susan Fontano, Richard Rossetti, Danielle Evans, Elaine Severino and Pooja Phaltankar with Josh Safdie and Anne Brockelman absent. Upon making the above findings, Richard Rossetti made a motion to approve the request for a Special Permit. Elaine Severino seconded the motion. Wherefore the Zoning Board of Appeals voted **5-0** to **APPROVE** the request. In addition the following conditions were attached:

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the establishment of a Medical Marijuana Facility. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>November 16, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>January 30, 2017</td><td>Plans submitted to OSPCD (A1.1 and Signage)</td></tr></table>				Date (Stamp Date)	Submission	November 16, 2016	Initial application submitted to the City Clerk’s Office	January 30, 2017	Plans submitted to OSPCD (A1.1 and Signage)
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	November 16, 2016				Initial application submitted to the City Clerk’s Office					
January 30, 2017	Plans submitted to OSPCD (A1.1 and Signage)									
Any changes to the approved plan, signs, or use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction, if necessary. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng							
3	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Eng.							
Construction Impacts										
4	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW							



5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Traffic & Parking				
6	The Applicant shall make best efforts to locate bike parking inside of the building for employees.	CO	Plng.	
7	Delivery trucks shall travel out of the area via Chester Street to Massachusetts Avenue.	Ongoing	Plng.	
8	The Applicant shall provide the following for their staff: public transportation subsidies for MBTA passes, provide information on different transportation options for all new hires, promote the use of HubWay or other bike sharing services, and provide lockers on-site.	Ongoing	Plng.	
9	The Applicant shall promote public transportation accessibility for patients on their website and other advertising mediums.	Ongoing	Plng.	
Miscellaneous				
10	The hours of operations shall be limited to 9 a.m. to 9 p.m. Monday through Saturday and 9 a.m. to 6 p.m. on Sunday.	Ongoing	ISD / Plng.	
11	The Applicant will abide by all provisions of the covenant with the City of Somerville that is signed prior to the ZBA approval .	Ongoing	Plng.	
12	Applicant must remain in compliance with all state regulations for medical marijuana and shall maintain the operational and security program as provided in the ZBA application and the submittal to the Medical Marijuana Advisory Committee	Ongoing	Plng.	
Signage				
13	Signage on Chester Street will be limited to the Chester Street awning, as shown in the application. Signage on Elm Street shall be limited to a blade sign near the exit door and shall require review and approval by Planning Staff. Applicant may also place lettering on the Elm Street door to indicate their business name and instructions to enter on Chester Street.	CO/Cont.	Plng.	
Public Safety				
14	The Applicant shall meet the requirements of the Fire Prevention Bureau.	CO/Cont.	Plng.	
Final Sign-Off				
15	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

Attest, by the Zoning Board of Appeals:

Orsola Susan Fontano, *Chairman*
Richard Rossetti, *Clerk*
Danielle Evans
Elaine Severino
Pooja Phaltankar (Alt.)

Attest, by the Administrative Assistant:

Dawn M. Pereira

Copies of this decision are filed in the Somerville City Clerk's office. Copies of all plans referred to in this decision and a detailed record of the SPGA proceedings are filed in the Somerville Planning Dept.
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CLERK'S CERTIFICATE

Any appeal of this decision must be filed within twenty days after the date this notice is filed in the Office of the City Clerk, and must be filed in accordance with M.G.L. c. 40A, sec. 17 and SZO sec. 3.2.10.

In accordance with M.G.L. c. 40 A, sec. 11, no variance shall take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title.

Also in accordance with M.G.L. c. 40 A, sec. 11, a special permit shall not take effect until a copy of the decision bearing the certification of the City Clerk that twenty days have elapsed after the decision has been filed in the Office of the City Clerk and either that no appeal has been filed or the appeal has been filed within such time, is recorded in the Middlesex County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed Special Permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone.

The owner or applicant shall pay the fee for recording or registering. Furthermore, a permit from the Division of Inspectional Services shall be required in order to proceed with any project favorably decided upon by this decision, and upon request, the Applicant shall present evidence to the Building Official that this decision is properly recorded.

This is a true and correct copy of the decision filed on _____ in the Office of the City Clerk, and twenty days have elapsed, and

FOR VARIANCE(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ any appeals that were filed have been finally dismissed or denied.

FOR SPECIAL PERMIT(S) WITHIN

_____ there have been no appeals filed in the Office of the City Clerk, or
_____ there has been an appeal filed.

Signed _____ City Clerk Date _____

