

**PLANNING BOARD**

City Hall, Room 303
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www.newbedford-ma.gov

OFFICE OF THE CITY CLERK
 NEW BEDFORD, MA

2021 DEC 29 PM 1:19

CITY CLERK

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number: 21-32				
Request Type: Site Plan Review				
Address: 366 Hathaway Road				
Zoning: Mixed-Use Business				
Recorded Owners: 366 Hathaway Realty Trust				
Owner Address: PO Box 70036, Dartmouth, MA 02747				
Applicant: Beacon Compassion				
Applicant Address: 12 Post office Square, 6 th Floor, Boston, MA 02109				
Application Submittal Date		Public Hearing Date(s)		Decision Date
August 12, 201		Sept. 22, Nov. 10, & Dec. 16, 2021		12/29/2021
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
94	20	8209	334	

Application: Request by applicant for Site Plan Review for the construction of a building for use as a medical marijuana dispensary and associated site improvements at 366 Hathaway Road (Map: 94 Lot: 20), an 18,750 square foot site in a Mixed-Use Business (MUB) zoned district. Owner: 366 Hathaway Realty Trust (PO Box 70036, Dartmouth, MA 02747). Applicant: Beacon Compassion (12 Post office Square, 6th Floor, Boston, MA 02109).

Action: **GRANTED, WITH CONDITIONS, as described in section four (4).**

A copy of this decision was filed with the City Clerk of the City of New Bedford on December 29, 2021. Any person aggrieved by this decision for Site Plan Approval has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 8 of Chapter 40A of the General Laws of Massachusetts and Section 5490B of the City of New Bedford Site Plan Review Ordinance.

12/29/2021

Date

Kathryn Duff, Chair
 City of New Bedford Planning Board

APPLICATION SUMMARY

Case #21-32: 366 Hathaway Road – Request by applicant for **Site Plan Review** for the construction of a building for use as a medical marijuana dispensary and associated site improvements at 366 Hathaway Road (Map: 94 Lot: 20), an 18,750 square foot site in a Mixed-Use Business (MUB) zoned district. Owner: 366 Hathaway Realty Trust (PO Box 70036, Dartmouth, MA 02747). Applicant: Beacon Compassion (12 Post office Square, 6th Floor, Boston, MA 02109).

1) MATERIALS REVIEWED BY THE PLANNING BOARD

Plans Considered to be Part of the Application:

The engineered plan submission is shown as “Site Plan, 366 Hathaway Road, Proposed Marijuana Establishment, New Bedford, MASS.” dated August 2, 2021, revised December 1, 2021, and prepared by Hayes Engineering Inc. of Wakefield, MA. The plans are stamped by Peter J. Orgren, PE. The plan set consists of the following sheets:

- C1 Cover & Index
- C2 Existing Conditions
- C3 Demolition and Erosion Control
- C4 Layout & Materials
- C5 Site Plan
- C6 Utilities
- C7 Landscape
- C8 Lighting
- C9 Details
- C10 Details

The architectural plan submission is shown as “M – New Bedford” dated 08/06/21, and prepared by Stack and Co. of Boston, MA. The plans are stamped by J. Catriel Tulian, RA. The plan consists of the following sheets:

- A100 Floor Plan
- A101 Roof Plan
- A200 Exterior Elevations
- A201 Exterior Elevations

Other Documents and Supporting Materials:

- ❑ Department of Public Infrastructure Memo, dated 12/15/21
- ❑ Traffic Peer Reviewer Response, dated 12/15/21
- ❑ Staff Memo, dated 12/6/21
- ❑ Applicant Response to Sept. DPI Memo, 12/1/21
- ❑ Applicant Traffic Review Response, 12/1/21
- ❑ Traffic Assessment Peer Review, 11/10/21
- ❑ Traffic Impact Assessment, 10/20/21
- ❑ DPI Comment Memo, 9/22/21
- ❑ Staff Report
- ❑ Application Packet
- ❑ Project Narrative
- ❑ Host Community Agreement

- Traffic Impact Statement
- Stormwater Management Report
- Deed
- Building Department Rejection Packet

2) DISCUSSION

September 22, 2021 Meeting

Due to the COVID- 19 outbreak, the following meeting were held fully remotely in accordance with the Governor of Massachusetts' March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law G. L. c. 30A, Section 20.

Board members Kathryn Duff, Arthur Glassman, Alexander Kalife, Kamile Khazan, and Peter Cruz attended the September 22 virtual meeting of the Planning Board. City Planner Jennifer Carloni and Staff Planner Michael McCarthy were also in attendance.

Case #21-32 was heard as part of new business. Chairperson Duff opened the case and invited a representative from the applicant team to present the proposal. Mr. Peter D'Agostino of Tenax Strategies introduced himself as the applicant's agent and introduced Mr. Anthony Capachietti, the project engineer. Mr. D'Agostino outlined the features of the proposed marijuana facility and how the business would operate. Mr. Capachietti detailed the engineering features of the site, such as drainage and landscaping.

The Board and the applicant discussed the traffic assessment that had been provided. Mr. D'Agostino remarked that because the facility would be medical marijuana only, the number of potential customers would be limited. Board member Glassman responded that he would still like to see a full traffic study and have it reviewed by the City's peer reviewer. After further discussion, the applicant agreed to provide an updated traffic study covering the nearby intersections and calculate the potential impacts of recreational sales.

The Board requested that the applicant provide landscaping for the area in the public right of way north of the site. Mr. D'Agostino responded that the state regulations may limit what could be done in this area, but agreed to provide the Board with a revised proposal for landscaping.

Board member Cruz asked the applicant to explain the site engineering related to drainage. Mr. Capachietti provided an overview of the stormwater and drainage system proposed. After further discussion, the applicant agreed to add an additional catch basin on the east parking area and to provide site plans that reflected this.

After discussing option with the Board, the applicant agreed to replace the bituminous curbing proposed for the site with concrete curbing.

The Board discussed the Department of Public Infrastructure's memorandum dated September 22, 2021 with the applicant. Mr. D'Agostino argued that they would not be able to address many of the comments in the memo because the roadway was under state jurisdiction. Chair Duff advised the applicant to work the DPI to address this conflict before the next meeting.

There was no response to Chairperson Duff's invitation to speak or be recorded in favor or opposition.

The Board review their comments with the applicant and agreed that continuing the case to November would provide them adequate time to conduct a traffic assessment and submit revised plans.

There being no discussion, a motion was made (AG) and seconded (PC) to continue Case #21-32 to the November 10, 2021 meeting.

ROLL CALL VOTE:

Board Member Glassman – Yes

Board Member Kalife – Yes

Board Member Cruz – Yes

Chairperson Duff – Yes

Board Member Khazan - Yes

Motion passes 5-0

November 10, 2021 Meeting

Due to the COVID- 19 outbreak, the following meeting were held fully remotely in accordance with the Governor of Massachusetts' March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law G. L. c. 30A, Section 20.

Board members Kathryn Duff, Arthur Glassman, Alexander Kalife, Kamile Khazan, and Shayne Trimbell attended the November 10 virtual meeting of the Planning Board. City Planner Jennifer Carloni, Staff Planner Rachel Mulroy, and Assistant City Planner Michael McCarthy were also in attendance.

Case #21-32 was heard as part of old business. Chair Duff reopened the case and notified the Board that the applicant had requested a continuance to the December meeting in order to complete plan revisions and a traffic assessment. Hearing no comments, the Chair asked for a motion.

Board member Glassman made a motion, seconded by Board member Kalife, to continue the Case #21-32 to the December meeting. The motion passed unanimously.

December 15, 2021 Meeting

Due to the COVID- 19 outbreak, the following meeting were held fully remotely in accordance with the Governor of Massachusetts' March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law G. L. c. 30A, Section 20.

Board members Kathryn Duff, Arthur Glassman, Shayne Trimbell, Kamile Khazan, and Peter Cruz attended the December 15, 2021 virtual meeting of the Planning Board. City Planner Jennifer Carloni, Staff Planner Rachel Mulroy, and Assistant City Planner Michael McCarthy were also in attendance.

Case #21-32 was heard as part of old business at the December 15, 2021 meeting. Chair Duff reopened the case and asked if a representative was there to present. Mr. Peter D'Agostino introduced himself as the applicant's agent and introduced Mr. Anthony Capachietti, the project civil engineer, and Mr. Daniel Mills, the project traffic engineer.

Mr. Capachietti reviewed changes to the site plan since the September meeting. He discussed how the site had been modified to accommodate vehicular circulation without using the adjacent property's access aisle. Mr. Capachietti noted that changes requested by the Department of Public Infrastructure had been made to the curb cut. He said the applicant was happy to accommodate DPI's requests but reminded the Board that this section of roadway was under MassDOT jurisdiction.

Mr. Capachietti described new site features, including bicycle racks and a screened dumpster area. He noted that the dumpster screen would be solid wood or vinyl fencing. Mr. Capachietti also noted that a catch basin had not been added to the east side of the site as requested by the Board at the September 22 meeting and said if the Board wished to condition approval on the addition of the basin, it could be added to the site without issue.

Mr. Capachietti discussed the memos from the City's traffic consultant and DPI and said the applicant team did not take issue with them. He continued, saying they were committed to working with DPI to resolve any outstanding issues.

At the Chair's request, Mr. Capachietti discussed the vehicle turning diagrams, the snow removal plan, and the details of the retaining wall proposed for the west side of the property.

Mr. Mills discussed the traffic impact assessment. He said City's traffic consultant had "no exception" to the applicant's most recent response to traffic peer review and noted that the only outstanding item, collision diagrams, had not yet been received from the Police Department, so they could not be included in the analysis.

Mr. Mills and Mr. Capachietti discussed emergency access with the Board.

At the Chair's request, Mr. Capachietti reviewed the site's landscaping and stormwater management. He identified where street trees had been added to the public right of way, as request by DPI, but noted that MassDOT had the final say on what could be planted there.

Chair Duff invited the Board members to comment. Board member Cruz said his major concerns—the missing catch basin and the turning diagrams—had been addressed. Chair Duff asked Board member Cruz his opinion on altering the curb at the southwest corner of site to allow for better turning for larger vehicles and reduce use of the adjacent access easement. Board member Cruz responded that he did not feel it was necessary.

After discussing curbing materials with the Board, the applicant agreed to use granite curbing for the area along the northern property line.

Chair Duff asked Mr. Capachietti about the parking space proposed for the northeast corner of the site, and after some discussion, the applicant agreed to designate it an employee parking spot.

Mr. Mills discussed the potential for a traffic light in front of the site on Hathaway Road. He said the volume of traffic coming off the highway could warrant a traffic light, but not the volume predicted coming off the site. The interim approach, Mr. Mills stated, was to stripe a left turn lane on Hathaway Road.

Chair Duff asked if Board member Trimbell had thoughts on the traffic study and he responded that he had no concerns and agreed that MassDOT might prohibit street trees.

Board member Glassman commented that he would like to see a traffic light, but he recognized that future development in the area would determine whether it was necessary. Board member Khazan agreed.

Hearing no more comments from the Board, Chair Duff opened the floor to public comments on the case, and hearing none, she closed the public hearing.

Chair Duff reviewed the proposed retaining wall with the applicant and requested that details be submitted to Planning staff for review. She also requested that the screening for dumpster should be a solid wood and that details should be submitted to Planning staff for review.

Chair Duff reminded the public that because the business was a cannabis establishment, it would be held to strict requirements for hours of operation and signage per the City ordinance and Host Community Agreement.

The Board then discussed the specific conditions they would impose. Assistant City Planner McCarthy requested the Board condition that the applicant submit documentation regarding their rights to the rear access easement for the case file, as none had been provided. After some discussion, Mr. D'Agostino and Mr. Capachietti agreed that they could provide.

Mr. D'Agostino requested that the submission of a MassDOT Access Permit be linked the issuance of a certificate of occupancy rather than a building permit. At the Chair's request, City Planner Carloni responded and said it could be done but the applicant would assume the risk of having to redesign the site after beginning construction if MassDOT did not approve of their access plan. Mr. D'Agostino said they were comfortable assuming that risk.

3) DECISION

Board Member Glassman made the motion, seconded by Board Member Cruz to approve Case #21-32: 366 Hathaway Road – Request by applicant for Site Plan Review for the construction of a building for use as a medical marijuana dispensary and associated site improvements at 366 Hathaway Road (Map: 94 Lot: 20), an 18,750 square foot site in a Mixed-Use Business (MUB) zoned district. Owner: 366 Hathaway Realty Trust (PO Box 70036, Dartmouth, MA 02747). Applicant: Beacon Compassion (12 Post office Square, 6th Floor, Boston, MA 02109).

The approval is subject to the following conditions:

The following SPECIFIC conditions:

1. In operating a marijuana establishment on site, the applicant shall abide by terms of their Host Community Agreement with the City of New Bedford and all applicable state and local ordinances, laws, and regulations.
2. The wall sign shall comply with the provisions of the Host Community Agreement.
3. Revised signage and lighting plans detailing proposed sign lighting shall be submitted the Department of City Planning for review prior to the issuance of a building permit.
4. Hours of operation are per the Host Community Agreement.
5. The applicant shall coordinate with the Department of Public Infrastructure to address all the items in their memorandums dated September 22, 2021, December 15, 2021, and all subsequent memos.
6. Signage and site lighting shall not be illuminated earlier than one hour prior to opening and no later than one hour after closing.
7. Revised plans that include a catch basin in the east parking area shall be submitted to the Department of City Planning for review prior to the issuance of a building permit.
8. Revised plans showing details of the dumpster pad and wood fencing for the dumpster enclosure shall be submitted to the Department of City Planning for review prior to the issuance of a building permit.
9. Revised plans showing the details for the retaining wall shall be submitted to the Department of City Planning for review prior to the issuance of a building permit.
10. Revised plans showing details for the bicycle racks shall be submitted to the Department of City Planning for review prior to the issuance of a building permit.
11. Revised plans showing granite curbing extending along the northern property line between the two curb cuts shall be submitted the to the Department of City Planning for review prior to the issuance of a building permit.
12. The applicant shall provide documentation granting them use of the access easement on the west and south sides of the property for the Department of City Planning's case file prior to the issuance of a certificate of occupancy.
13. The northeast parking spot shall be reserved for employees and marked appropriately prior to the issuance of a certificate of occupancy.

14. The applicant shall provide the Department of City Planning with a copy of the MassDOT access permit approval prior to the issuance of a certificate of occupancy.
15. Any changes to the approved plans made by or at the request of the Cannabis Control Commission relative to the building or site shall be submitted to the Department of City Planning for review as to whether the application needs to return before the Planning Board.
16. The applicant shall follow the appropriate state and local permitting process for Marijuana Establishments prior to expanding operations to include adult-use/non-medical retail.

With the following GENERAL conditions:

17. The project shall be completed according to the plans, notes, reports, and specifications submitted for consideration and final approval by the Planning Board.
18. The project shall be undertaken in a manner consistent with the Memorandum from the Department of Public Infrastructure (DPI) received in relation to plan and placed on file for Planning Board consideration. The conditions of the DPI memorandum shall be considered to be part of these conditions.
19. The applicant shall submit final plan revisions to the Department of City Planning in the following formats: one (1) -11" x 17" Plan Set and one (1) CD or USB with Plan Set in PDF format and shall ensure that these same plans are properly submitted to the Department of Inspectional Services.
20. The applicant shall ensure that a copy of the Notice of Decision, bearing the certification of the New Bedford City Clerk signifying no appeal has been made against the project's approval, be recorded at the Registry of Deeds and that a copy of the recorded decision is provided for the Planning Department Case file folder.
21. The applicant shall present any proposed modification from the approved plans for consideration to the Director of City Planning for determination as to whether the modified plan must return before this Board for further review.
22. The rights authorized by the granted approval must be exercised by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or they will lapse.
23. The developer and site contractor must schedule a pre-construction meeting with the Department of Public Infrastructure prior to the start of construction.

As a result of such consideration, the Board moves approval on the subject application with the conditions so noted. The motion being properly made and seconded, the Chair called for a roll call vote which was taken and unanimously approved five (5) to zero (0).

Board Member Duff - Yes
Board Member Glassman – Yes

Board Member Khazan – Yes Board Member Trimbell – Yes
Board Member Cruz – Yes

Filed with the City Clerk on:

12/29/2021

Date



Kathryn Duff, Chair
City of New Bedford Planning Board