



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

## SPECIAL PERMIT DECISION

<u>Applicant:</u>	Holistic Industries d/b/a Liberty
<u>Property Owner:</u>	155 Northampton Easthampton Acquisition Partners LLC
<u>Property Address:</u>	155 Northampton Street
<u>Assessor Number:</u>	128/101
<u>Filing Date:</u>	October 15, 2019
<u>Decision Date:</u>	March 5, 2020
<u>Decision:</u>	Approved with Conditions

### Legal Description

**Holistic Industries, Inc (d/b/a Liberty)**- seeking a Special Permit under Section 10.10 and 12.7 of the Zoning Ordinance to convert an existing permitted Medical Marijuana Dispensary to an Adult Use Cannabis Retailer establishment under Table 5-1 (use #41) with minimal changes to the previously approved site development plans with the exception of a secondary parking area and exit onto Highland Avenue. Property is located at 155 Northampton Street (Map 128, Parcels 101 & 102) and is in the Highway Business zoning district.

### Description

This is the decision of the Easthampton Planning Board (“Board”) on the application of Holistic Industries d/b/a Liberty to grant a Special Permit to operate an Adult Use Cannabis Retailer pursuant to Sections 10.10 and 12.7 of the Easthampton Zoning Ordinance, at 155 Northampton Street (Parcel ID: 128/101).

The subject property is located at 155 Northampton Street, Easthampton, Massachusetts. The property currently contains a recently renovated building, new parking area and completed stormwater retention area. The site was formerly a dog grooming business until the applicant secured a Special Permit from the Planning Board (decision date September 11, 2018) and associated state approvals as a medical marijuana dispensary. All construction was completed for that use.

### Public Hearing – November 12, 2019

The initial public hearing was held on November 12, 2019. The applicant provided detailed overview of the entire project in terms of the plans and information submitted.

The following members of the public spoke:

- Sam Nelson, Highland Avenue, expressed concern and opposition with any customers entering, exiting, or people congregating on Highland Avenue due to its dead-end nature, frequent back ups during peak hours and many residents with children. A fence was requested to prevent potential for patrons to traverse the rear of the property onto Highland Avenue. He expressed general concern about the potential impacts from increased traffic flow.
- JP Kwiecinski, 47 Hannum Brook Drive, asked questions about traffic flow as it relates to customer entrance and exiting from the adjacent property.

The Board voted to continue the hearing to December 3, 2019.

### Public Hearing – December 3, 2019

On December 3, 2019, the Board convened and voted to approve the applicant’s request to continue the hearing to December 17, 2019.



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

## Public Hearing - December 17, 2019

On December 17, 2019, the Board convened and voted to approve the applicant's request to continue the hearing January 14, 2020.

## Public Hearing – January 14, 2020

On January 14, 2020, the applicant reviewed the following information with the Board:

- Sign Plan
- Open Day: Traffic, customer and queuing management plan
- Letter to abutters, dated December 1, 2019

The Board discussed parking and access. The Board determined that the proposed arrangement to provide 20 additional parking spaces on the adjacent parcel is beneficial. A review period is established to allow the applicant to review the need or lack of need to continue the lease of the adjacent parking spaces. The primary objective of the directional signage on the adjacent lot is to discourage the exiting of customers onto Highland Avenue.

The Board discussed other site features. The Board determined that a proposed split rail fence from the building to the front of the property, as shown on the site plan, is sufficient to prevent any potential pedestrian access across the property.

The Board discussed ownership. Specifically, the Board determined that the conditions of the Special Permit and the requirements of the CCC shall apply to any subsequent owners or operators of the establishment. However, given the novel nature of the industry, the Board determined that if the ownership changes in such a way that triggers any review/approval process at the CCC, the new owners shall appear before the Planning Board prior to operations to review the existing conditions of the permit and compliance therewith.

The Board discussed security. The applicant explained that they have met with the Chief of Police and have agreed to provide security camera footage if needed and install a Knox box in the event of an emergency. There were no members of the public who spoke.

The Board voted to continue the hearing to February 25, 2020. The Board did not achieve quorum on this date, the hearing was continued to March 5, 2020.

## Public Hearing – March 5, 2020

On March 5, 2020, the applicant reviewed the following information with the Board:

- Notice of Provisional License, dated February 8, 2020 issued by the Cannabis Control Commission

## Decision

Following their conducting of the Public Hearing, at a regularly scheduled meeting, the Board voted to grant the Special Permit:

Board Member	Roll Call	Vote
Jesse Belcher-Timme (Chair)	Present	YES
James Zarvis	Present	YES
Harry Schumann	Present	YES
Chris Cockshaw	Present	YES



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

This Decision incorporates the attached plans, specifications, and/or designs presented before the Board and as part of this Application with the understanding that the terms and conditions of this Decision supersede any conflicts between the plans, specifications, and/or designs and this decision. The minutes of November 12, 2019, December 3, 2019, December 17, 2019, January 14, 2020, and March 5, 2020 are hereby incorporated into this decision. Any significant departure from the attached plans, specifications, and/or designs, without approval by the Board, may result in the rescinding of this Decision.

This Decision applies only to the requested Special Permit. Other approvals or permits required under the Zoning Ordinance, General Ordinances, other governmental boards, agencies, or bodies having jurisdiction, shall not be assumed or implied by this Decision.

Any person, municipal officer, or municipal board aggrieved by this decision has the right to appeal pursuant to M.G.L. Chapter 40A, Section 17. Any such appeal must be filed within 20 days after the date the notice is filed with the Municipal Clerk.

## Findings

In accordance with M.G.L. Chapter 40A and Section 12.7 (Special Permit) of the Easthampton Zoning Ordinance, the Planning Board found:

1. *Conformance with the provisions of the ordinances of the City of Easthampton, the General Laws of Massachusetts and all applicable rules and regulations of state and federal agencies.* The Planning Board finds that the applicant has received a Provisional License from the Cannabis Control Commission, dated February 8, 2020, and the use is contingent upon the applicant securing final licensure prior to commencing operations.
2. *Protection of city amenities and abutting properties through the minimizing of any detrimental or offensive uses or destruction of unique or important natural, scenic or historic features on the site* – The Planning Board finds that the proposal constitutes a change in use from medical marijuana dispensary previously approved by the Planning Board and that all site improvements were constructed substantially in accordance with that Special Permit, as amended herein.
3. *Minimization of traffic and safety impacts of the proposed development on adjacent highways or roads, and maximizes the convenience and safety of vehicular and pedestrian movement within the site; The proposal does not affect any unique natural or scenic features* - The Planning Board finds that the applicant has provided a range of mitigation measures to minimize impacts to surrounding properties, including the provision to lease 20 additional parking spaces on the adjacent parcel and a sign and management plan to discourage customers from exiting onto Highland Avenue. The Opening Day plan includes provisions for use of paid police details on and offsite to direct patrons as needed.
4. *Adequacy of the methods of disposal of sewage and refuse and the drainage of surface and subsurface water, and, adequate means of protecting wetlands, watersheds, aquifers and well areas* – The Planning Board finds that the Conservation Commission has issued a Certificate of Compliance related to the site parking, drainage, and other improvements. Any cannabis related waste would be handled by a licensed supplier and other waste will be typical waste associated with a retail establishment.
5. *Mitigation of adverse impacts on the city's resources including the effect on the city's water supply and distribution system, sewage collection and treatment systems, fire protection and streets* – The Planning Board finds that no information has been submitted regarding any negative impacts to any of the City's resources listed under this provision.



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

6. *Provisions for the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, parking, lighting and internal traffic control* – The Planning Board finds that proposal exceeds the minimum number of parking spaces required for the use. Specifically, the proposal provides 25 parking space plus two Handicapped Accessible parking spaces which exceeds the minimum required parking spaces. In addition, the Board finds that the provision to lease 20 additional parking spaces on the adjacent property for staff and overflow parking will allow for the adequate handling of customer flow greater than may occur due to the novel nature of cannabis retail. The proposal includes provisions for lighting and security features around the building associated with product delivery protocol and procedures.
7. *Applicant's efforts to integrate the development into the existing landscape through design features such as vegetative buffers and retention of open space or agricultural land* – The Planning Board finds that the proposed landscaping is suitable and appropriate for this use situated within the Highway Business Zoning District.
8. *Minimization of the area over which existing vegetation is to be removed. Where tree removal is required, special attention is to be given to the planting of replacement trees.* The Planning Board finds that minimal vegetation removal was required to incorporate the site parking and drainage features.
9. *The consistency of the development with respect to setback, area, placement of parking, architectural style and landscaping of the surrounding buildings and development.* The Planning Board finds that the renovated building conforms to all required setbacks and is generally consistent with the design of other buildings in the area.
10. *Adequacy of the measures to prevent pollution of surface or groundwater to minimize erosion and sedimentation and to minimize changes in groundwater levels, increased run-off and potential for flooding.* The Planning Board finds that the proposed drainage system for the expanded parking area has met all applicable stormwater regulations and the Conservation Commission granted a Stormwater Permit for the project.
11. *Adequacy of the methods to ensure that the use will not constitute a nuisance by reason of unacceptable level of air or water pollution, excessive noise or visually flagrant structures and accessories.* The Planning Board finds that the proposal for a retail establishment is not anticipated to generate exterior odors from the transfer and storage of cannabis products. The reservation system and digital queue system is intended to prevent patron gathering on the exterior sidewalks.

In accordance with M.G.L. Chapter 40A and Section 10.10 (Adult Use Cannabis Establishment) of the Easthampton Zoning Ordinance, the Planning Board found:

1. *No Cannabis Establishment shall be located within 350 feet of pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, in operation at the time of application for a special permit or site plan approval. Distance shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the marijuana establishment is or will be located. In any case where the measurement is determined to be in question, the Planning Board may require verification of distances by a Registered Land Surveyor.* The Planning Board found that the proposed Cannabis Establishment is not within 350 feet of an existing “school”, as defined in Section 10.10 or CMR 935.500.110 (3).
2. *A Cannabis Establishment is permitted by Special Permit in Highway Business (HB), Downtown Business (DB), Mixed-Use / Mill Industrial (MI) and industrial (I) zoning districts. Refer to Table 5-1, Easthampton Table of Use Regulations. In the Highway Business (HB) and Downtown Business (DB), any Cannabis Establishment other than retail must be located within an existing building (s) and comply with the*



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

*requirements of Section 10.5 of the Zoning Ordinance.* The establishment is located on a property situated in the Highway Business Zoning District where the use is allowed with a Special Permit.

3. *Except in the MI and DB districts, no Cannabis Establishment shall be located within a building containing residential units, including transient housing and group housing.* The property does not contain any buildings with residential dwelling units.
4. *No more than six (6) Cannabis Retailers shall be allowed within the City. Special Permit applications will be considered in the order in which the Planning Department receives a completed Special Permit application and confirmation that a completed license application has been received by the Commission.* There are two requirements within this section. This application represents the fourth retail Special Permit granted in the City. The applicant has achieved both a complete application and a Provisional License with the Cannabis Control Commission as identified in CMR.935.500.102.
5. *No Cannabis Retailer shall be located within 200 feet of another Cannabis Retailer, except within the MI zone. Distance shall be measured by a straight line from the nearest point of the property line in question to the nearest point of the property line where the marijuana establishment is or will be located.* There are no other cannabis retail establishments within 200 feet of the subject property.
6. *No cannabis shall be smoked, eaten or otherwise consumed or ingested on the premises, except as may be allowed in a Cannabis Membership Club. All Cannabis Establishments permitted under this section shall comply with all state and local laws, rules and regulations governing the smoking of tobacco.* The proposal does not consider nor allow consumption of cannabis on the premises. The proposal provides specific security measures intended to prevent any consumption of cannabis anywhere within the subject property.
7. *Odor: No Cannabis Establishment shall allow the escape of noxious odors or gases. They shall incorporate odor control technology and provisions, and ensure that emission do not violate MGL Chapter 111, Section 31 C.* The Planning Board finds that as a retail-only use minimal odor mitigation measures are necessary.
8. *Signage: All signage shall comply with the requirements of 935 CMR 500, and Section 10.0 of this zoning ordinance.* All signs comply with Section 10.0 of the Zoning Ordinance. The proposed signs, including the potential mural, shall comply with the provisions of 935 CMR in that it does not contain any logos or designs that resemble marijuana.
9. *Hours: Cannabis Retailers shall be open to the public no earlier than 10:00 AM and no later than 11:00 PM.* This Special Permit limits the hours of operation to 10:00 a.m. to 11:00 p.m. seven days per week. The hours of operation apply only to retail sales open to the public and are not intended to restrict other employees or operations.
10. *Visual Impact: Cannabis plants, products, and paraphernalia shall not be visible from outside the building in which the cannabis establishment is located and shall comply with the requirements of 935 CMR 500. No outside storage is permitted. Any artificial screening device erected to eliminate the view from the public way shall also be subject to a vegetative screen and the Board shall consider the surrounding landscape and viewshed to determine if an artificial screen would be out of character with the neighborhood.* The Planning Board finds that the proposal contains a retail dispensary where the interior of the premises will not be visible from the street.
11. *Home Occupation: Cannabis Establishments are not permitted as a Home Occupation, as defined in Section 10.4 in the Easthampton Zoning Ordinance.* This is not applicable
12. *Community Host Agreement: No Special Permit shall be granted without first having an executed Community Host Agreement with the City of Easthampton.* The applicant has executed a Community Host Agreement with the City of Easthampton as required under CMR 935.500.101(b)(6) and has submitted the "certification form" to the Cannabis Control Commission.



## City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

13. *Community Outreach Meeting: No Special Permit application shall be deemed complete by the Planning Department until a Community Outreach Meeting in accordance with 935 CMR 500 has occurred. The applicant has held a Community Outreach Meeting as required under CMR 935.500.101 and has submitted a "proof" form to the Cannabis Control Commission.*
14. *State Law: Cannabis Establishment operations shall conform at all times to General Laws, Chapter 94G, and regulations issued thereunder. The Planning Board has conditioned the Special Permit on continuous licensure by the Cannabis Control Commission.*
15. *License requirements: The applicant shall submit proof that the application to the CCC has been deemed complete pursuant to 935 CMR 500.102. Copies of the complete application, to the extent legally allowed, shall be provided as integral component of the application to the planning board and no Special Permit application shall be deemed complete by the Planning Department until this information is provided. No person shall operate a cannabis establishment without having a license in good standing from the Commission.*

*No Special Permit shall be granted by the Planning Board to an applicant without the Cannabis Establishment first having been issued a Provisional License from the Commission pursuant to 935 CMR 500. The applicant has provided proof of a complete application by the Cannabis Control Commission. The applicant has provided a copy of the Provisional License dated February 8, 2020 for retail sales. The applicant will require a Final License from the CCC prior to operation. All local review and approvals will be required to be completed prior to opening.*
16. *Energy Use: All Cannabis Cultivators shall submit an energy use plan to the Planning Board to demonstrate best practices for energy conservation. The plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand. The Planning Board finds that this provision is not applicable to a retail-only use.*
17. *Line Queue Plan: The applicant shall submit a line queue plan to ensure that the movement of pedestrian and/or vehicular traffic along the public right of ways will not be unreasonably obstructed. The Planning Board finds the Opening Day plan provides adequate measures to control pedestrian and vehicular movement adjacent to the site, including but not limited to: provisions for an online ordering to facilitate shorter visits. The lobby is approximately 630 square feet which will provide areas within the building to queue customers inside the building. In the event that a line of patrons occurs, the line would run adjacent to the front of the building and out of the pattern of traffic and will be monitored by employees to maintain safety. In addition, the applicant has agreed to pay for a police detail (s) on an as-needed basis. A condition of the Special Permit requires the Planning Board to review and approve the adequacy of the Opening Day plan at a public meeting after 60 days. Said meeting shall include notice to abutters mailed by the applicant in accordance with Chapter 40A, Section 9.*
18. *Traffic Impact Statement: Any cannabis establishment open to the general public shall submit a detailed Traffic Impact Statement in accordance with Section 7.4104. A traffic impact statement, prepared by McMahon Associates dated July 2018, was provided. The Planning Board finds that pursuant to the submitted study that the proposed use will create minor increases in vehicle trip ends but will not adversely affect prevailing traffic conditions in the vicinity of the project. The Board also found that to minimize traffic impacts and to better moderate patron activity, the approved Opening Plan and approved Site Plans include provisions for 20 additional parking spaces on the adjacent property with signage and management to discourage customers from exiting onto Highland Avenue for at least the first 60 days of operations and additional measures thereafter.*
19. *Parking: Parking shall be in accordance with Section 10.1 (off-street parking and loading regulations) and Table 10.3 (off-street parking regulations). The Planning Board finds that the onsite parking meets the minimum requirements for the use. The Board further finds that the applicant's lease of 20 additional*



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

spaces, accessed by a gravel walkway, will provide parking for staff and potential overflow parking. The Board finds that the parking and sign plan will direct customers accessing the adjacent site to enter and exit from Route 10 rather than Highland Ave. This arrangement would be subject to review as part of the Open Day Plan to ensure that all efforts are employed to discourage the use of Highland Ave for exiting customers. One of the items for the Board to consider 60 days after opening is the need for additional leased parking on the adjacent property.

20. *Waivers: The applicant shall be required to submit specific information regarding any waivers from 935 CMR 500.000 granted by the Commission. The Planning Board shall approve or disapprove said waivers based on the following Commission criteria in 935.CMR.500. The Planning Board found that any waivers from the CCC should be reviewed and approved by the Planning Board during a public meeting.*
21. *Notice of Enforcement Order: Within twenty-four (24) hours of receipt of notice of it, a Cannabis Establishment shall file with the Mayor, Health Agent and the Building Commissioner any summary cease and desist order, cease and desist order, quarantine order, suspension order, revocation order, order limiting sales, deficiency statement, plan of correction, notice of a hearing, notice of any other administrative process or legal action, denial of a license, denial of a renewal of a license, or final action issued by a state agency (including, but not limited to, the Commission and Massachusetts Department of Public Health) regarding the Cannabis Establishment, the Cannabis Control Commission license, or the Department of Public Health Certificate of Registration. The decision includes a condition requiring that the applicant shall provide notice to the City of any enforcement order issued by a state agency in accordance with Section 10.10.7.12 of the Zoning Ordinance.*
22. *Annual Inspection: Any operating Cannabis Establishment within the City shall be inspected annually by the Building Inspector, or their designee(s), to ensure compliance with this Section and with any conditions imposed by the Planning Board as a condition of the Special Permit approval. The decision includes a condition requiring that the applicant shall coordinate and arrange an annual inspection with the Building Inspector each year. Said inspection should occur within a reasonable period of time of each anniversary of the first day of operation.*

## Conditions

After hearing from and questioning the applicant and members of the public at the Public Hearing, and in light of the proceeding, the Board therefore decided to grant the Special Permit under the Easthampton Zoning Ordinance with the following conditions:

1. All interior and exterior improvements, including the parking and traffic management on the adjacent parcel, shall be constructed and maintained substantially in accordance with the approved plans prepared by Heritage Surveyors, last revised on December 2, 2019, and shall be completed prior to the issuance of a Certificate of Occupancy. In any event that any exterior changes cannot be completed prior to the issuance of a Certificate of Occupancy, an alternative schedule shall be reviewed and approved by the Board at a public meeting.
2. The occupancy limits of the retail space shall be strictly enforced by the owner. In addition, the owner shall actively manage the exterior of the property and patrons to prevent the gathering, loitering, or line queuing on any public sidewalk.
3. Any change in ownership which is subject to review and/or approval by the Cannabis Control Commission shall appear before the Planning Board prior to operations to acknowledge the existing conditions of the permit and compliance therewith or changes thereto. A purpose of the public meeting shall be for the Planning Board to recognize the new ownership and determine if any change (s) is significant enough to require a modification of the Special Permit subject to a public hearing.



# City of Easthampton Planning Board

50 Payson Avenue Easthampton MA 01027

4. The Cannabis Establishment shall operate in accordance with an approved Operating Plan/Opening Plan for the management of patrons, parking, and security. Initially, the use shall operate in accordance with the Plan approved on March 5, 2020, including for the first 60 days of operation, as proposed by the applicant. Said Plan shall be reviewed by the Planning Board 60 days after opening, with input from the Chief of Police and/or other relevant City officials, at which point an additional interim and/or a final plan shall be reviewed and approved by the Planning Board for operations thereafter.
5. Any changes that significantly alter the general operation, significant changes to the interior floor plan, or changes that may significantly alter the nature of patron management shall be presented to the Planning Board at a public meeting. The purpose of the public meeting shall be for the Planning Board to determine if the change is significant enough to require a modification of the Special Permit subject to a public hearing.
6. The Cannabis Establishment shall not create a nuisance situation pursuant to the definition of nuisance under Section 10.10.5.7 of the Zoning Ordinance.
7. The Special Permit associated with the use is contingent upon continuous licensure by the Cannabis Control Commission.
8. The hours of operation of the retail dispensary shall be from 10:00 a.m. to 11:00 p.m. seven days per week.
9. All signs shall comply with Section 10.0 of the Zoning Ordinance. A frame signs and temporary signs on the adjacent property shall not be calculated as part of the subject property.
10. Any waivers granted by the Cannabis Control Commission associated with the operation shall be reviewed and approved by the Planning Board prior to implementation, except for any waiver granted for the sale of marijuana products tested by the Department of Public Health rather than the Cannabis Control Commission.
11. The applicant shall provide notice to the City of any enforcement order issued by a state agency in accordance with Section 10.10.7.11 of the Zoning Ordinance and shall coordinate and arrange an annual inspection with the building inspector each year from the date of opening in accordance with Section 10.10.7.12.

Respectfully submitted,

Jesse Belcher-Timme, Chair  
Easthampton Planning Board