

**Freetown Zoning Board of Appeals**

Wednesday, February 22, 2017  
Town Hall – Assonet, Mass.

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**Present:** James Frates, Bradford Paiva, Nicolas Velozo.

**Absent:** Christopher Chapin (associate) and James Sarcia (associate).

**Call to order:** James Frates called the meeting to order at 6:30 p.m.

**Case #569 – Liberty Compassion Center, Inc. – 0 South Main Street, Assonet (Map 233, Lot 30.04)**

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to open the public hearing. The motion carried unanimously. A motion was made by Mr. Velozo, seconded by Mr. Paiva, to waive the reading of the public hearing notice. The motion carried unanimously.

Mr. Frates asked the applicant to allow Keven Desmarais, chairman of the Planning Board, to speak first as he had another engagement. Without objection, Mr. Desmarais addressed the board by reading into the record a letter received earlier in the day from the Planning Board [copy attached to these minutes]. In addition, Mr. Desmarais stated that when the Planning Board promoted zoning this type of facility into the Industrial/2 district only, they did not foresee the rapid growth of the medical marijuana industry nor that the first applicant would take up all available real estate in that relatively small zone. In light of those facts, the Planning Board would be addressing additional zoning options at a future town meeting. Mr. Desmarais stressed several times that the Planning Board was working toward the accommodation of medical marijuana, not recreational marijuana.

Following this, Atty. Bill Landry addressed the board representing Riverfront Business Park, LLC, property owner, and Liberty Compassion Center, Inc., applicant. Atty. Landry first reiterated Mr. Desmarais' emphasis that this was for a medical marijuana facility, not a recreational marijuana facility. He stated that although it was referred to in some instances as a dispensary, this was due to state terminology and not a reflection of an intent to actually dispense marijuana at this facility. He likened the facility more to a 500,000-square-foot warehouse.

As a hardship, Atty. Landry cited the difficulty in meeting timelines and deadlines established by the state for their permitting process. For about the past year, Liberty Compassion Center has been vetted by the state in various ways as the first stage of their application process. Now, deadlines for the second stage have approached, and necessary zoning accommodations must be in place by February 26th; practically speaking, the deadline is February 24th since February 26th is a Sunday. Also stated as a hardship, the applicants have paid a \$50,000 application fee to the state that they will lose if they are not able to fully apply by February 26th. They would instead have to wait at least a year and pay another \$50,000 application fee, and it was unlikely they would pursue the project if such a delay were to occur.

Atty. Landry stated that the applicant had executed a host community agreement that the Town Administrator and Town Counsel had agreed to and which the Board of Selectmen was expected to sign the following morning. The agreement, modeled after and similar to the previous agreement with AmeriCann on Ridge Hill Road, would call for the town to receive payments of \$1.00 per square foot (\$500,000) per year over and above regular property taxes on which no discount would be sought.

Atty. Landry added that this application was not being made on the merits of the project, as that would still be dealt with by the Planning Board through the site plan review process and town meeting for future zoning changes. Instead, this variance would just allow the applicant to submit its application and continue in the standard application process.

To the conditional nature of the variance applied for, Atty. Landry stated they would like to revise their application to remove the conditional references, as case law in Massachusetts is not supportive of variances conditioned on future events.

Mr. Paiva asked if there would be a retail component to the facility. Ray Lavey, representing Riverfront Business Park, stated that it was specified several times in the host agreement that there would be no retail operation. Mr. Paiva asked if Mr. Lavey would object to that being a condition of the variance. Mr. Lavey did not see a problem with that.

Bob Jose, a member of the Board of Selectmen, addressed the board to recount the votes taken and agreements made at the previous evening's selectmen's meeting. He stated that board was in favor of this project and reiterated that the host agreement prohibits retail sales.

Mr. Paiva asked if any sort of licenses needed to be obtained. Mr. Jose replied that they would need licenses from the state. Mr. Paiva asked what sort of oversight the town would have, and Mr. Jose replied that this was spelled out in the host agreement. Mr. Frates added that the Planning Board is still working out how to address retail and recreational operations.

Mr. Jose stated that the lack of available real estate in the I/2 district was a hardship to be considered.

Mr. Paiva stated he was having difficulty viewing the hardship in this situation. He referenced the recent application for 64 Howland Road where the property owner purchased the property unable to divide it the way he wanted to, but then sought relief anyhow. He likened it to this present situation, where the property was vetted knowing that the zoning did not allow for the use. Mr. Velozo stated he was also having difficulty with identifying a hardship.

Atty. Landry spoke to some of the qualities of the site, including that it is near the expressway, has municipal water and sewer connections, is away from most residences, and that it is readily accessible by police and fire services. He also reminded the board that financial hardship – such as the \$50,000 application fee – is a hardship allowed to be considered under the law.

Mr. Paiva clarified that his concerns are less about retail operation and more about determining a hardship.

Mr. Lavey stated that Riverfront Business Park originally approached this with the view that cultivation of crops is permitted in the Industrial zone, and that cultivation of marijuana should be seen as cultivation of a crop. After discussing this was Mr. Desmarais, Lauren Moreau, and Jack Healey, determination was made that the state does not take the same view of the matter. Following this, the town fathers were amenable to making necessary changes to the zoning map and protective by-laws, but the timetable just would not work out as needed. He emphasized that the variance sought is for the ticket to ride, not the ride itself.

Mr. Paiva asked if this would use all of the available property. Mr. Lavey estimated that there is 400 acres remaining undeveloped, and that when wetlands are deducted there was about 270 acres useable. This facility would be on 54 acres, and the building itself would be 10 or 11 acres. They would also be conducting required archaeological studies in the Peace Haven Indian settlement area.

Atty. Landry believed that the legislature had written the law with a catch-all mentality as far as variances are regulated, and that that law had not kept up with changing times and uses. He noted as an example that ten years ago, nobody would have even considered applying for a marijuana-related use of a property in Massachusetts. He doubted that it was likely any other party would appear before the board seeking the same or similar variance.

Mr. Frates noted that many uses of the property would not require variances or any significant oversight by the town. This was an unusual opportunity.

Mr. Velozo stated that this not being a retail facility was a positive.

Mr. Frates opened the floor to members of the public.

Al Lima, representing the Green Futures group based out of Fall River, addressed the board with concerns about the archaeological process to be undertaken in the Peace Haven area. Although the board shared his concerns, Mr. Velozo advised him that that was not applicable to the present application.

Anne O'Donnell, Cliff Drive, Assonet, asked about the difference between Industrial and Industrial/2 districts and what would happen if the variance did not pass. Mr. Jose explained the differences between the zones using the zoning map displayed in the hall, and Mr. Frates stated that the Planning Board would pursue zoning amendments in the future whether the variance passed or not. Not granting the variance would only obstruct the current project.

Mrs. O'Donnell asked about the acreage as she hadn't heard the previous answer. Mr. Velozo restated the previous information.

Donna Amarantes, High Street, Assonet, stated that if this variance was granted, she believed all variances for this type of facility would have to be granted or the town would face lawsuits. She cited past issues with Excel Recycling on Ridge Hill Road as an example of a problem property.

Mary Rezendes-Brown, South Main Street, Assonet, and chairman of the Historical Commission, acknowledged arriving late and asked for clarification on the exact location and the host agreement. Atty. Landry restated the information previously provided. Mrs. Brown also reviewed the site plan provided.

Mrs. Brown stated that she felt Meditech, a previous potential occupant of this site, would have been good for the town and that she hoped this project would as well. She also spoke to the importance of addressing boards during the permitting process to protect the town's interests and help shape the town in the image that we as the residents want it to maintain and have.

Mr. Velozo asked for clarification on the conditional nature of approval. Atty. Landry asked that the conditional language be stricken from consideration and viewed instead as an acknowledgement by the applicant that they have a long path to travel.

Mr. Velozo stated he felt the location was one of the better locations in town for this type of facility, and that it seemed the Planning Board was moving in this direction anyway.

Atty. Landry noted that the variance would apply only to the area highlighted on the plan.

Mr. Frates asked if there were any more questions or comments from the board members, and there were none.

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to close the public hearing. The motion carried unanimously.

**DISPOSITION:** A motion was made by Mr. Velozo, seconded by Mr. Paiva, to grant the variance as requested, limited to the area outlined on the plan presented, and conditioned that no retail operation would be conducted on the site. The motion carried unanimously.

Following the hearing, Atty. Landry and Mr. Lavey agreed to provide clearer permanent and file copies of the plan. Additionally, Mr. Lavey and Atty. Landry spoke with Mr. Lima, Mrs. Brown, and Barry French regarding the Peace Haven site and archaeological concerns.

**Approve Wording Changes to Application**

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to approve minor wording changes to the application form as recommended by the Town Clerk.

**Other Business Properly Before the Board**

No other business was raised.

**Minutes of Previous Meeting**

Minutes of October 4, 2016; January 11th, and January 25th were received.

**Meeting Adjourned**

A motion was made by Mr. Velozo, seconded by Mr. Paiva, to adjourn the meeting at 7:50 p.m. The motion carried unanimously.

This is a True Record by me.

Attest: \_\_\_\_\_  
Michael T. McCue, Senior Clerk



TOWN OF FREETOWN  
OFFICE OF THE  
PLANNING BOARD  
TOWN HALL, 3 NORTH MAIN STREET  
ASSONET, MASSACHUSETTS  
508-644-2270 ext. 1402



February 22, 2016

Zoning Board of Appeals  
Town of Freetown  
3 N. Main Street  
Assonet, MA 02702

Honorable Board of Appeals,

It has come to the Board's attention that representatives of Liberty Compassion Center are seeking a variance for use on property located at 170 S. Main Street owned by Riverfront Business Park LLC. The use in question is for the cultivation and growing of medical marijuana, which is currently prohibited in the Industrial Zone.

The medical marijuana industry in Massachusetts has been experiencing rapid growth. It is these members of the Board's opinion that the Town could further accommodate for this new and growing industry; currently the use is allowed by right in only the I2 district, where available parcels have already become scarce due to the approvals given to AmeriCann Inc and Republic Services. Currently, the Board has discussed crafting a Medical Marijuana Overlay District bylaw for Town Meeting that would incorporate this area, among others, as additional areas that would be suitable for the operation of medical marijuana facilities.

It is the opinion of these members of the Board that on this large parcel of land, medical marijuana cultivation would produce less truck traffic than a typical warehouse use would. Members of this Board, listed below, take no exception to the granting of this variance.

On behalf of Board members:

Keven Desmarais  
Debra Robbins  
Mark Rogers

Best Regards,

Lauren Moreau  
Planning Technician