

SECTION XXV. SPECIAL PERMIT GRANTING AUTHORITY.

(Editor's Note: Amended 7/9/2014 to reflect amendments approved under Article 34 at 2014 ATM)

A. General Authority and Conditions.

This Zoning Bylaw provides for specific types of uses which shall only be permitted in specified districts upon the granting of a special permit, as provided herein. Special permits may be granted only for uses which are in harmony with the general purpose and intent of this Zoning Bylaw, and shall be subject to general or specific provisions as set forth herein, and such permits may also impose conditions, safeguards, and limitations on time or use, in order to further the objectives of this Zoning Bylaw.

B. Specific Powers.

1. Scientific Development, Research or Related Production.

The Special Permit Granting Authority may grant a special permit for uses accessory to activities permitted as a matter of right, whether or not on the same parcel as activities permitted as a matter of right, which activities are necessary in connection with scientific development, research or related production, provided that the Special Permit Granting Authority finds that the proposed accessory uses do not substantially derogate from the public good.

2. Findings.

The Special Permit Granting Authority is empowered to make findings in accordance with Section XVII. PRE-EXISTING NON-CONFORMING USES, STRUCTURES AND LOTS. and G. L. Chapter 40A, Section 6.

3. Project Approval.

The Special Permit Granting Authority is empowered to review and approve plans in accordance with the requirements of Section XVIA. PROJECT APPROVAL. and this SECTION XXV. The provisions of Part C. of this section shall apply to the review and approval of plans for Major Construction Projects as defined in SECTION XVIA. PROJECT APPROVAL. of this Zoning Bylaw. The approval of plans by the Special Permit Granting Authority in accordance with SECTION XVIA. PROJECT APPROVAL. shall constitute the granting of a special permit.

4. Special Permits and Special Use Permits.

The Special Permit Granting Authority may grant special permits subject to any conditions or limitations as specifically provided in this Zoning Bylaw.

5. Adult Uses.

The Special Permit Granting Authority is empowered to review and approve applications for Adult Uses as defined in Section IA. subject to the provisions of D. Special Use Permit Standards below and subject to all of the following additional conditions and limitations:

- a. The Special Permit Granting Authority shall not grant a special permit for an Adult Use where there is another Adult Use located within a one half mile radius;
- b. The Special Permit Granting Authority shall not grant a special permit for an Adult Use where there is a school, day care center, family day care home, parkland, playground, library or branch library, religious use, funeral home or cemetery located within 350 feet.
- c. The Special Permit Granting Authority shall not grant a special permit for an Adult Use where there is a residential zoning district located within 350 feet;
- d. Special permits granted shall be subject to annual renewal.

An application to the Special Permit Granting Authority for an Adult Use shall include the following information:

- a. Name and address of the legal owner of the proposed adult Use;
- b. Name and address of all persons having lawful, beneficial, equity or security interests in the Adult Use;
- c. Names and addresses of the manager(s) and assistant manager(s);
- d. The number of employees;
- e. Proposed security precautions; and
- f. The physical layout of the premises showing, among other things, the location or proposed location of the adult books, adult paraphernalia or adult videos.

The legal owner of an Adult Use having received a special permit shall promptly notify the Special Permit Granting Authority of any changes in the above information within 10 days and failure to do so will be grounds for revocation of the special permit.

6. Registered Marijuana Dispensaries

- a. Purpose - The purpose of this subsection is to regulate the siting, design, placement, security, safety, monitoring, and modifications of Registered Marijuana Dispensaries (“RMDs”) within the Town of Wellesley to ensure that such uses are operated in a manner consistent with the overall health, welfare and safety of the Town in compliance with Chapter 369 of the Acts of 2012, *An Act for the Humanitarian Medical Use of Marijuana*, and 105 CMR 725.000: *Implementation of an Act for the Humanitarian Medical Use of Marijuana*, and to minimize the adverse impacts of RMDs on adjacent properties, residential neighborhoods, schools and other places where children congregate, and other land uses potentially incompatible with said RMDs.

- b. Compatibility with State Laws - These regulations pertaining to RMDs are not intended to supersede state laws and/or regulations, including but not limited to Chapter 369 of the Acts of 2012, *An Act for the Humanitarian Medical Use of Marijuana*, and 105 CMR 725.000: *Implementation of an Act for the Humanitarian Medical Use of Marijuana*; rather, these regulations shall take precedence where they are more stringent, and where a matter is not addressed herein, compliance with 105 CMR 725.000 shall be required. Terms used herein not defined within the Zoning Bylaw shall be as defined in 105 CMR 725.000.
- c. Applicability and Authority
 - i. Applicability:
 - (1) No RMD use shall commence unless permitted by the issuance of a special permit as authorized by this Section and subsection.
 - (2) No special permit for an RMD use shall be issued unless the use is located in one of the zoning districts established within the Zoning Bylaw specifically authorizing such use.
 - (3) The establishment and operation of RMDs shall be subject to continued compliance with all special permits, including any conditions thereof, the provisions of this Section and subsection, any other applicable requirements of the Zoning Bylaw, and local and state laws and regulations.
 - (4) The commercial cultivation, production, processing, assembly, packaging, retail or wholesale sale, trade, distribution or dispensing of marijuana is prohibited unless permitted as an RMD as required and authorized by the Zoning Bylaw.
 - (5) Nothing in this Bylaw shall be construed to supersede federal and state laws governing the sale and distribution of narcotic drugs.
 - ii. Authority: The Special Permit Granting Authority is empowered to review and take action on special permit applications for Registered Marijuana Dispensaries consistent with the procedures established in subsection C. of this Section; the Special Permit Granting Authority may deny, grant, or grant with conditions all such applications.
- d. General Regulations - All RMDs shall be subject to the following conditions and limitations:
 - i. Location:
 - (1) No special permit for an RMD shall be granted where such use would be located within 500 feet of a:

- a. Public or private elementary school, middle school, or high school;
 - b. Child care facility, including family daycare homes, daycare centers, and/or nursery schools; or
 - c. Any establishment catering to or providing services primarily intended for minors, as determined by the Special Permit Granting Authority.
- (2) The 500 foot distance shall be measured in a straight line from the nearest point of the structure within which the RMD would operate (from the nearest point of the exterior of the tenant space if the RMD is located in a structure occupied by multiple tenant spaces), to the nearest point of any property on which a public or private elementary school, middle school, or high school is located, or to the nearest point of any structure containing or associated with other uses noted above.
 - (3) The commencement of one or more of the above uses within 500 feet of a proposed RMD location during the review of a special permit application for an RMD (beginning on the date of submittal), following the issuance of a special permit, or following the commencement of the RMD use shall not invalidate the RMD use, the special permit issued therefor, or the ability to renew any unexpired or unrevoked special permit.

ii. Configuration and Operation:

- (1) An RMD shall be located in, and conduct all operations within, an enclosed building; this shall not prohibit operations involving the delivery or receiving of permitted goods and products, which may involve transfer to or from a motor-vehicle outside of an associated building.
- (2) All publicly accessible entrances shall be visible from a public way.
- (3) Drive-through windows and/or any interactions or sales to customers within vehicles are prohibited.
- (4) No RMD shall be located inside a building containing residential dwelling units, including transient housing, group housing, hotels, motels, lodging houses, and/or dormitories.
- (5) The hours of operation of RMDs shall be set by the Special Permit Granting Authority, but in no event shall an RMD be open to the public, performing deliveries, and/or otherwise operating between the hours of 8:00 PM and 8:00 AM; there

shall be no exemptions to the prohibited hours of operation for emergencies.

- (6) No person under the age of eighteen (18) shall be permitted on the premises of the RMD unless he or she is a qualified patient or primary caregiver, or is accompanied by a parent or legal guardian.
- (7) No marijuana shall be smoked, ingested, or otherwise consumed on the premises of an RMD; the term “premises” includes all buildings, accessory structures, parking lots or parking areas, walks and/or other immediate surroundings located on the same lot/parcel as the RMD use.
- (8) All RMDs shall be ventilated in such a manner that no pesticides, insecticides or other chemicals or products used in cultivation or processing are dispersed into the outside atmosphere, and so that no odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the RMD or at any adjoining use or property.

iii. Signage:

- (1) All signs associated with RMDs shall comply with 105 CMR 725.000 and Section XXIIA, *Signs*.
- (2) All special permit applications for RMDs shall include a proposed exterior sign package, which may be included as a condition of issuance of the special permit.
- (3) For every publicly accessible entrance there shall be at least one (1) sign that includes the language “Registration card issued by the MA Department of Public Health required” with a minimum text height of two (2) inches.
- (4) Temporary signs and standard informational signs, as defined in Section XXIIA, *Signs*, shall be prohibited.

iv. Security:

- (1) RMDs shall provide the Wellesley Police Department, Inspector of Buildings and the Special Permit Granting Authority with the names, phone numbers and email addresses of all management staff and keyholders to whom one can provide notice if there are operating problems associated with the establishment; this information shall be updated when staff of the RMD changes.
- (2) No operator and/or employee of an RMD shall have been convicted of any felony under state or federal law.

- (3) Trash dumpsters shall be locked and enclosed by a screening enclosure so as not to be accessible to the public.
- (4) The exterior grounds, including the parking lot and landscaped areas, shall be lighted in such a manner that all areas are clearly visible at all times during business hours; all light fixtures shall have full cut off shields.
- (5) The RMD shall be equipped with, and the operators of such RMD shall maintain in working order at all times, burglary/robbery alarms.
- (6) A video surveillance system in compliance with 105 CMR 725.000 shall be installed and maintained; the system shall monitor all areas that may contain marijuana, parking lot areas, main building entrances and exits, and any and all transaction areas for the dispensing of marijuana.
- (7) Procedures and protocols for the delivery and transport of marijuana and MIPs shall be in compliance with 105 CMR 725.000 and approved by the Chief of Police.

e. Procedures and Findings

- i. Procedures: In addition to the procedures established in subsection C. of this Section, special permits issued for RMDs shall be:
 - (1) Limited to the current applicant and shall lapse if the permit holder ceases operation of the RMD; and
 - (2) Renewed annually.
- ii. Findings: In addition to determining compliance with the above General Regulations, all other applicable Sections of the Zoning Bylaw, and the applicable Special Use Permit Standards contained in subsection D. of this Section, the Special Permit Granting Authority in their review of any special permit application for an RMD shall find that the proposed Registered Marijuana Dispensary:
 - (1) Meets a demonstrated local and regional need based on the proximity of other RMDs serving the Town's qualifying patients;
 - (2) Meets all other applicable requirements of the Zoning Bylaw and the permitting requirements of all applicable agencies of the Commonwealth of Massachusetts and the Town of Wellesley, and will otherwise comply with all applicable state and local laws and regulations;
 - (3) Is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest;

- (4) Provides a secure indoor waiting area for patients;
- (5) Provides adequate pick up/drop off area;
- (6) Provides adequate security measures to ensure that no individual participants will pose a 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;
and
- (7) Adequately addresses issues of vehicular and pedestrian traffic, circulation, parking and queuing, especially during peak periods at the RMD.

f. Severability - The provisions of this subsection (6. Registered Marijuana Dispensaries) are severable. If any provision, paragraph, sentence, or clause of this Section, or the application thereof to any person, establishment, or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of this Section or the Zoning Bylaw.

C. Procedures.

The Special Permit Granting Authority shall adopt and from time to time amend rules relative to the granting of special permits, and shall file a copy of said rules in the office of the Town Clerk. Such rules may prescribe the size, form, contents, style, and number of copies of plans and specifications, and the procedure for the submission and approval of such permits.

Each application for a special permit shall be filed by the petitioner with the Town Clerk and a copy of said application, including the date and time of filing certified by the Town Clerk, shall be filed forthwith by the petitioner with the Special Permit Granting Authority. The Special Permit Granting Authority shall hold a public hearing, for which notice has been given, on any application for a special permit within sixty-five (65) days from the date of filing such application.

The Special Permit Granting Authority shall act within ninety (90) days following a public hearing for which notice has been given by publication and posting as provided within this Zoning Bylaw, and by mailing to all parties in interest. Failure by a Special Permit Granting Authority to take final action within ninety (90) days or extended time, shall be deemed to be a grant of the special permit. The petitioner who seeks such approval by reason of the failure of the Special Permit Granting Authority to act within such time, shall notify the Town Clerk, in writing within fourteen (14) days from the expiration of the time period of such approval and that notice has been sent by the petitioner to parties in interest. The petitioner shall send such notice to parties in interest, by mail, and each such notice shall specify that appeals, if any, shall be made pursuant to Mass. General Laws Chapter 40A and shall be filed within twenty (20) days after the date the Town Clerk received such written notice from the petitioner that the Special Permit Granting Authority failed to act within the time prescribed. After the expiration of twenty (20) days without notice of appeal, or if appeal has been taken, after receipt of

certified records indicating that such approval has become final, the Town Clerk shall issue a certificate stating the date of approval, the fact that the Special Permit Granting Authority failed to take action and that the approval resulting from such failure has become final, and such certificate shall be forwarded to the petitioner.

The required time limits for a public hearing and action, may be extended by written agreement between the petitioner and the Special Permit Granting Authority. A copy of such agreement shall be filed in the office of the Town Clerk.

Special permits granted by a Special Permit Granting Authority shall require a two-thirds vote of boards with more than five (5) members, a vote of at least four (4) members of a five (5) member board, and a unanimous vote of a three (3) member board.

Upon the granting of a special permit, or any extension, modification, or renewal thereof, the Special Permit Granting Authority shall issue to the owner, and to the applicant if other than the owner, a copy of its decision, or, in the event of a failure of the Special Permit Granting Authority to act within ninety (90) days from the date of the aforesaid public hearing, a copy of the application for a special permit accompanied by the certification of the Town Clerk stating the fact that the Special Permit Granting Authority failed to act within the time prescribed and no appeal has been filed and that the grant of the application resulting from such failure to act has become final or that if an appeal has been filed, that it has been dismissed or denied, is recorded in the registry of deeds for the county and district in which the land is located 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. No special permit nor any extension, modification, or renewal thereof shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty (20) days has elapsed and, pursuant to the applicable provisions contained within Chapter 40A, Mass. General Laws, as amended, no appeal has been filed, or that if such appeal has been filed that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located 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 fee for recording or registering shall be paid by the owner or applicant.

The Special Permit Granting Authority shall cause to be made a detailed record of its proceedings, indicating the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and setting forth clearly the reason for its decision and of its official actions, copies of all which shall be filed within fourteen (14) days in the office of the Town Clerk and shall be deemed a public record, and notice of the decision shall be mailed forthwith to the petitioner, applicant or appellant, to the parties in interest, and to every person present at the hearing who requested that notice be sent to him and stated the address to which such notice was to be sent. Each such notice shall specify that appeals, if any, shall be made pursuant to Mass General Laws Chapter 40A and shall be filed within twenty (20) days after the date of filing of such notice in the office of the Town Clerk.

Petitions for special permits shall be submitted to the Special Permit Granting Authority and referred within seven (7) days by it for review to the following: The Board of Health, the Planning Board (except when the Planning Board is the Special Permit Granting Authority), the Town Engineer, the Wetlands Protection Committee, and any other Town agency or board designated by the Special Permit Granting Authority. Any such board or

agency to which petitions are referred for review shall make such recommendations as they deem appropriate and shall send copies thereof to the Special Permit Granting Authority and to the applicant; provided, however, that failure of any board or agency to make recommendations within thirty-five (35) days of receipt by such board or agency of the petition shall be deemed lack of opposition thereto.

No application or petition which has been unfavorably and finally acted upon by the Special Permit Granting Authority shall be acted favorably upon within two (2) years after the date of final unfavorable action unless:

1. Said Special Permit Granting Authority finds, by a unanimous vote of a three-member Board, specific and material changes in the conditions upon which unfavorable action was based, and describes such changes in the record of its proceedings; and
2. All but one of the members of the Planning Board or Board of Selectmen, when serving as Special Permit Granting Authority, consents thereto; and
2. After notice is given to parties in interest of the time and place of the proceedings when such consent will be considered. Any application for a special permit which has been transmitted to the Special Permit Granting Authority may be withdrawn, without prejudice, by the petitioner prior to the publication of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the Special Permit Granting Authority.

A special permit shall lapse within two (2) years of the effective date of grant of such special permit, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause.

D. Special Use Permit Standards.

The Special Permit Granting Authority may grant a special permit in accordance with this Section only if it finds that, in addition to all other conditions which may otherwise be required under this Zoning Bylaw, all of the following conditions are met:

1. Vehicular Circulation

That the circulation patterns for motor vehicles which would result from the proposed use or structure which is the subject of the special permit do not create conditions that add to traffic congestion or accident potential on the site or in the surrounding area.

2. Driveways

That new driveways are not less than 50 feet from street intersections; and that new driveways have widths not less than the width of driveways specified in Section XXI. of this Zoning Bylaw; and that Special Permit requests for uses which would increase the number of vehicle trips, where the property is served by an existing driveway less than 50 feet from a street intersection, are not granted without a favorable

recommendation from the Town Traffic Engineer that the special permit use will not create conditions referred to in subparagraph 1. above.

3. Vehicle Queuing Lanes

That vehicle queuing lanes, including those for drive through facilities, have a width equal to or greater than nine feet; and that vehicle storage capacity and separation are provided so that vehicles will not encroach onto sidewalk areas or designated fire lanes, or interfere with the travel or maneuvering of other vehicles into and out of parking spaces, driveways or within the public way.

4. Compatibility with Surroundings

That any modification of a premises resulting from the proposed use or structure which is the subject of the special permit is made compatible, to the extent required by the Special Permit Granting Authority with the existing natural and man-made features of the site and with the characteristics of the surrounding area; and that consideration is given to the protection of trees and other natural features.

5. Pedestrian Safety

That pedestrian and bicycle circulation is provided, in accordance with nationally recognized safety standards; and that separation, such as curbing, bollards or landscaped buffer areas, is provided between pedestrian areas and all areas open to vehicular traffic, such as parking spaces, vehicle queuing lanes and driveways.

6. Noxious Uses

That the proposed use or activity is consistent with the provisions of Paragraphs A. and B. of SECTION XVI. RESTRICTIONS AFFECTING ALL DISTRICTS.

7. Intensity of Use

That any increase in: the number of vehicle trips, the number of employees or visitors, the number of parking spaces, the amount of energy used, or the volume of liquid or solid waste produced, likely to result from the proposed use or activity will not adversely affect the character of the site and its surrounding area.

For the purposes of this Part D. the term "surrounding area" shall mean the area within which owners of land surrounding the site are defined as parties in interest in accordance with SECTION XXVIA. part B., unless otherwise specifically determined by the Special Permit Granting Authority.