

FINDINGS

Case Number:	322
Address:	110 Fawcett Street
Zoning:	Industry B-2 / Alewife Overlay District / Medical Marijuana Overlay District 1 / Flood Plain Overlay District
Applicant:	Cardiac Arrhythmia Syndromes (CAS) Foundation 9 Bartlet Street, #335, Andover, MA 01810
Owner:	Belam Realty, LLC 15 Ward Street, Somerville, MA 02143
Application:	Request for special permits for CAS Foundation, Inc. to operate a registered retail medical marijuana dispensary pursuant to Section 20.703 occupying approximately 4,740 square feet at 110 Fawcett Street, and Section 20.73 for building construction in the flood plain..

APPLICATION SUMMARY

The Applicant, CAS Foundation, Inc., is a registered marijuana dispensary (RMD) with a state-registered cultivating facility located in Fitchburg, Massachusetts. The Applicant proposes to establish a RMD location at 110 Fawcett Street in Cambridge, located in the existing single story warehouse building, approximately 4,740 square feet in gross floor area, which is currently unoccupied. The 110 Fawcett Street facility will only dispense products that are cultivated and processed at the Applicant's Fitchburg facility. The proposed facility will be designed and operated in accordance with state and local regulations for RMDs and will be subject to oversight by the Massachusetts Department of Public Health. Eight on-site parking spaces and four long-term and six short-term bicycle parking spaces are proposed. Loading and deliveries, which will take place using passenger vehicle, are proposed to occur on-site during off-peak periods. The Conservation Commission granted an Order of Conditions to approve this project pursuant to the Wetlands Protection Act.

FINDINGS

After review of the Application Documents and other documents submitted to the Planning Board, testimony given at the public hearing, and review and consideration of the applicable requirements and criteria set forth in the Zoning Ordinance with regard to the relief being sought, the Planning Board makes the following Findings:

1. Approval of a Registered Marijuana Dispensary (RMD)

The proposed site is located within Medical Marijuana Overlay District 1 (MMD-1). The Planning Board may grant a special permit approving an RMD within a Medical Marijuana Overlay District upon finding that the proposal meets the criteria set forth in Section 20.705. The Board finds that these criteria are met, for the reasons set forth below.

20.705 Special Permit Criteria. In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in Section 10.43 of this Ordinance, the Planning Board shall find that the following criteria are met:

(a) The Registered Marijuana Dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other Registered Marijuana Dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

There are no RMDs operating in Cambridge, and none in surrounding communities that would serve the same area as the proposed 110 Fawcett Street location.

(b) The site is located at least five hundred feet distant from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Planning Board to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the Registered Marijuana Dispensary.

The supplemental materials in the Application Documents provide ample evidence, based on a visual survey of the area and search of available online databases, that there are no facilities within 500 feet of the proposed RMD location in which children commonly congregate, such as children's schools, playgrounds, recreation centers, child care facilities or other facilities that offer programming distinctively oriented toward children, with the exception of a day care facility shown within 500 feet but buffered by the Fitchburg rail line, and is reportedly no longer presently in that location.

(c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users.

The facility is proposed to reuse the existing access to the site located off of Fawcett Street where they will have convenient access to sidewalks and public transportation within a mile. The customer entry and exit is through the existing garage door of the warehouse. A staff entry and exit is located in the front along Fawcett Street, which is partially screened with fence and vegetation. Two handicap-accessible parking spaces are available in front of the main the building entrance. All entrances and exits will be monitored for security purposes as required by state regulations. In addition, the RMD proposes to offer home delivery from an alternate dispensary location near Cambridge, thereby reducing the need for client trips to the site.

(d) Traffic generated by client trips, employee trips, and deliveries to and from the Registered Marijuana Dispensary shall not create a substantial adverse impact on nearby residential uses.

A transportation analysis prepared by Howard Stein Hudson Engineers + Planners has been provided with the Application, and has been reviewed by the Traffic, Parking and Transportation Department (TP&T). While little is known thus far about the expected traffic generated by an RMD, the expectation as presented in the traffic analysis is that the activity will not be significantly greater than a typical retail establishment of that size, given the expected client base and experience with RMDs elsewhere in Massachusetts. The Applicant has committed to implementing transportation demand management (TDM) measures and a monitoring program to mitigate any unexpected transportation impacts. The Parking and Transportation Demand Management Plan has been approved as is required to create the eight new parking spaces for this project.

(e) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

Loading and delivery operations specific to the RMD will occur using passenger vehicles that will either use the driveway access to the building. Loading is proposed to occur on-site through the main entrance to the facility during off-peak hours. Trash will be stored in wheeled bins indoors until picked up by a private hauler at scheduled times. All regulated material waste will be transported back to the Fitchburg facility for approved disposal.

(f) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

The existing structure will be renovated to create a facility that will complement the neighborhood aesthetics, including signage and security lighting, which will be in conformance with local requirements for signage and lighting as well as state regulations specific to RMDs. The sales area and regulated material handling area are not visible from the streetscape.

2. Approval of Parking, Bicycle Parking and Loading Requirements for an RMD

In approving an RMD, the Planning Board is responsible for determining the required amount of parking, bicycle parking, and loading in accordance with Section 20.703.6 of the Zoning Ordinance, as set forth below.

20.703.6 Parking and Loading. Notwithstanding anything to the contrary in Article 6.000 of this Ordinance, the required number of parking and bicycle parking (both long-term and short-term) spaces and the required number of loading bays for a Registered Marijuana Dispensary shall be determined by the Planning Board based on the transportation analysis and other information related to operational and security plans provided by the applicant. Except as set forth above, all parking, bicycle parking and loading facilities shall conform to the requirements set forth in Article 6.000.

The Application proposes car parking and bicycle parking on-site, and indicates that necessary loading activities will occur using a passenger vehicle that will be able to use the on-site parking area. Clients and staff can either walk, bike, use public transportation, or use on-site parking to access the facility.

The aforementioned transportation analysis provided by the Applicant and comments provided by TP&T indicate that the proposed use will likely have modest parking demand compared to a retail use of a similar scale, and that the loading needs of the facility can be reasonably accommodated. Therefore, the Board finds that it is appropriate not to require additional off-street parking and loading for the RMD, subject to the additional transportation demand management (TDM) and monitoring measures recommended by TP&T and agreed to by the Applicant. Since little is known about the expected parking demand for RMDs, TP&T has recommended allowing conversion of four parking spaces to green space if monitoring shows that those spaces tend to be unused.

For bicycle parking, the Board accepts the recommendation of TP&T that four long-term space and six short-term spaces are appropriate, as would be required for a retail establishment of the proposed size.

Requirements pertaining to the Board's determination of parking, bicycle parking and loading requirements are set forth in the Conditions of this Special Permit Decision.

3. Special Permit for building construction in Flood Plain Overlay District (Section 20.70)

20.75 Criteria. The Planning Board shall grant a Special Permit for development in the Flood Plain Overlay District if the Board finds that such development has met all of the following criteria in addition to other criteria specified in Section 10.43:

1. *No filling or other encroachment shall be allowed in Zone A areas or in the floodway which would impair the ability of these Special Flood Hazard Areas to carry and discharge flood waters, except where such activity is fully offset by stream improvements such as, but not limited to, flood water retention systems as allowed by applicable law.*

2. *Displacement of water retention capacity at one location shall be replaced in equal volume at another location on the same lot, on an abutting lot in the same ownership, on a noncontiguous lot in the same ownership, or in accordance with the following requirements.*
3. *All flood water retention systems shall be suitably designed and located so as not to cause any nuisance, hazard, or detriment to the occupants of the site or abutters. The Planning Board may require screening, or landscaping of flood water retention systems to create a safe, healthful, and pleasing environment.*
4. *The proposed use shall comply in all respects with the provision of the underlying zoning district, provisions of the State Building Code, Wetlands Protection Act, and any other applicable laws.*
5. *Applicants for development in the Alewife area shall be familiar with area-specific and general city-wide land use plans and policy objectives (e.g. Concord-Alewife Plan, A Report of the Concord Alewife Planning Study, November 2005; Toward a Sustainable Future, Cambridge Growth Policy, 1993, Update, 2007; Section 19.30 - Urban Design Objectives of this Zoning Ordinance) and shall demonstrate how their plan meets the spirit and intent of such documents in conjunction with the requirements of this Section 20.70 - Flood Plain Overlay District and Section 20.90 – Alewife Overlay Districts 1-6.*
6. *The requirement of Section 20.74(3) has been met.*

The flood zone certification provided by Joyce Consulting Group dated October 20, 2016 records that the project, located within the FEMA high hazard flood zone, will provide additional flood storage volume and will not increase the flood levels on-site or off-site during the 100-year flood events. A communication from the Department of Public Works (DPW) dated December 1, 2016 indicates that the proposed development will have the ability to meet all requirements associated with being located in the Flood Plain and will provide necessary flood plain mitigation and building resiliency associated with increased flood elevations presented in the November 2015 Climate Change Vulnerability Assessment. The project will be subject to ongoing technical review by DPW. The proposal has also received approval from the Conservation Commission, which voted to approve an Order of Conditions on December 12, 2016. Based on these reports, the Board finds that the proposal meets the criteria set forth in Section 20.75.

4. General Criteria for Issuance of a Special Permit (10.43)

The Planning Board finds that the proposal meets the General Criteria for Issuance of a Special Permit, as set forth below.

10.43 Criteria. Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:

(a) It appears that requirements of this Ordinance cannot or will not be met, or ...

With the requested special permit, the requirements of the Ordinance will be met.

(b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or ...

As set forth above in these findings, the proposed use is not expected to adversely impact traffic patterns.

(c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or ...

The proposed RMD will be operated in accordance with applicable state and local regulations, and in such a way that it will not adversely impact adjacent uses.

(d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or ...

The proposed RMD will be operated in accordance with applicable health and safety regulations, as well as state and local regulations particular to RMDs, which are specifically intended to prevent nuisance or hazard.

(e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and ...

The site is located within a Medical Marijuana Overlay District, which was created expressly to allow RMDs.

(f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.

The proposed new use will minimally impact the design of the building, and all exterior alterations will be conducted in accordance with applicable zoning and other regulations for RMDs. In addition, exterior alterations will be subject to ongoing review by Community Development Department (CDD) staff to certify compliance with applicable urban design objectives.

DRAFT CONDITIONS (to be included if the Board acts to grant the special permit)

1. This special permit shall authorize Cardiac Arrhythmia Syndromes (CAS) Foundation, Inc. to establish and operate a Registered Marijuana Dispensary (RMD) at 110 Fawcett Street, Cambridge, in substantial conformance with the Application Documents dated October 24, 2016, and supplemental documents and information submitted by the Applicant to the Planning Board as referenced above.
2. This special permit is not transferrable to any other RMD seeking to operate at 110 Fawcett Street, and shall not apply to any RMD operated by Cardiac Arrhythmia Syndromes (CAS) Foundation, Inc. at any other location within the City of Cambridge
3. This special permit is conditioned upon ongoing registration of the approved RMD with the Massachusetts Department of Public Health, and shall terminate if such registration is terminated or fails to be renewed.
4. The approved RMD shall be operated in accordance with all applicable state and local regulations, including but not limited to regulations set forth by the Massachusetts Department of Public Health as well as any additional regulations promulgated by local agencies.
5. The project shall be subject to continuing design review by the Community Development Department (“CDD”). Before issuance of each Building Permit for the project, CDD shall certify to the Superintendent of Buildings that the final plans submitted to secure the Building Permit are consistent with and meet all conditions of this Decision. As part of CDD’s administrative review of the project, and prior to any certification to the Superintendent of Buildings, CDD may present any design changes made subsequent to this Decision to the Planning Board for its review and comment.
6. The project shall be subject to continuing review through the Building Permit application by the Department of Public Works (“DPW”) to evaluate street and roadway restoration and options for utility connections; to review stormwater management; and to appraise flood mitigation measures.
7. External lighting to be installed on the site shall conform to the guidelines recommended in the proposed Cambridge Outdoor Lighting Ordinance, currently under review by the City, including use of full-cutoff fixtures, directing lighting toward the site and minimizing light trespass onto adjacent lots. Specifications and locations of proposed lighting fixtures shall be reviewed by CDD as part of continuing design review.
8. Eight (8) off-street parking spaces, four (4) long-term bicycle parking spaces, and six (6) short-term bicycle parking spaces shall be required for the approved RMD. However, if the monitoring procedures set forth below in these Conditions indicate a consistently lower parking demand than expected, or if it is demonstrated that sufficient alternative parking options are provided nearby, up to four (4) of the required parking spaces may be removed and converted to landscaped area upon mutual agreement by the Permittee and the Traffic, Parking and Transportation (TP&T) Department.

9. The Permittee shall be required to implement a transportation demand management (TDM) and transportation monitoring program including the following measures, at a minimum, which shall be certified by the TP&T and CDD prior to issuance of a Certificate of Occupancy for the approved RMD:
- a. Provide 65% MBTA T-Pass subsidies, up to the federal fringe benefit, to all employees (May pro-rate incentive for part-time employees).
 - b. Offer all employees Gold Level Hubway membership.
 - c. Provide showers and lockers in the break room for employees that walk or bike to work.
 - d. Have available an air pump and bicycle repair tools for employees and customers to use when needed.
 - e. Designate an employee of the facility as a Transportation Coordinator (TC) to manage the implementation of the TDM measures and a transportation monitoring program. The TC shall:
 - i. Post in a central and visible location (i.e. lobby for customers, break room for employees) information on available non-automobile services in the area, including, but not limited to:
 1. Available pedestrian and bicycle facilities in the vicinity of the Project site.
 2. MBTA maps, schedules and fares.
 3. "Getting Around in Cambridge" map (available from CDD).
 4. Locations of bicycle parking.
 5. Carsharing/ridematching programs.
 6. Hubway regional bikesharing system.
 7. Carpooling/vanpooling programs.
 8. Other pertinent transportation information.
 - Instead of or in addition to posting paper MBTA schedules, provide a real-time transit and Hubway display screen or tablet in a central location to help people decide which mode to choose for each trip.
 - ii. Compile and provide to all employees up-to-date transportation information explaining all commuter options. This information should also be distributed to all new employees as part of their orientation.
 - iii. Provide or describe to customers information on transportation options to access the site.

- iv. Provide and maintain information on the project’s website, newsletters, social media, etc. on how to access the site by all modes, with emphasis on non-automobile modes.
 - v. Participate in any TC training offered by the City of Cambridge or a local Transportation Management Association.
 - vi. Implement an annual transportation monitoring program which will involve surveying employees and customers on their travel modes and where they customarily park (cars and bicycles). The annual monitoring program shall continue for 10 years following the issuance of a Certificate of Occupancy for the RMD, at which time TP&T will work with the applicant to determine if it would be beneficial to continue the monitoring program.
 - 1. All surveys shall be designed and conducted in a manner approved by TP&T and CDD.
 - 2. The form of any survey instrument or monitoring method shall be approved before issuance of the Certificate of Occupancy.
 - 3. Surveying shall begin one year from the date of the first Certificate of Occupancy. If the Certificate of Occupancy is issued between September 1 and February 29, the monitoring should take place during the months of September or October and be reported to the City no later than November 30. If the Certificate of Occupancy is issued between March 1 and August 31, monitoring should take place during the months of April or May and be reported to the City no later than June 30.
10. No loading bays shall be required; however, a loading and service delivery management plan that includes all delivery activity to the facility shall be submitted to and approved by TP&T prior to the issuance of a Building Permit for any improvements associated with the approved RMD.
11. The Permittee shall contribute \$35,000 to the City toward funding for a Hubway Station to be located in the Quadrangle area and/or the continued feasibility studies and designs for Alewife bicycle and pedestrian bridge and commuter rail station. The final location of the Hubway Station shall be determined by the City. This contribution shall be made prior to the issuance of a Building Permit and the final allocation of the funds shall be determined by the City.
12. Prior to issuance of a Certificate of Occupancy for the approved RMD, CDD shall certify to the Superintendent of Buildings that all Conditions of this Special Permit Decision are met.
13. All authorized development shall abide by all applicable City of Cambridge Ordinances, including the Noise Ordinance (Chapter 8.16 of the City Municipal Code).