



ZONING BOARD OF APPEALS
WHATELY, MASSACHUSETTS

Updated 04/11/2013

APPLICATION FOR VARIANCE, SPECIAL PERMIT, OR APPEAL

To: Town Clerk
Whately, Massachusetts

Application fees: Residential/Agricultural Use: \$175
Commercial/Industrial Use: \$225

Review and/or legal fees can and will be assessed for the Zoning Board of Appeals to evaluate the project at the sole and absolute discretion of the Zoning Board of Appeals.


Pursuant to the provisions of Chapter 40A of the General Laws of the Commonwealth of Massachusetts and the Zoning By-Laws of the Town of Whately, application is hereby made to the Zoning Board of Appeals for:

(check one) _____ Variance Special Permit _____ Appeal

to do the following: _____

on premises located at 3 River Road A-R/1
(street address) (Zone, if-known)
Map 7, Parcel 3
(Map and Parcel No.)

Owned by Carol L. Annis and Al S. Annis, Jr. of 5 River Rd. Whately, MA
(name of owner) (address of owner)

Signature of applicant: 

Name of applicant: Debilitating Medical Condition Treatment Centers, Inc.
(print or type)

Mailing address of applicant: _____
11-13 Hampden St. Springfield, MA 01103

Telephone Number of applicant: 617-564-1017

The Petitioner must list all owners' names and current addresses of property abutting the premises, and the owners' names and current addresses of land immediately adjoining the land of the Abutters (within 300 feet). Also, the names and current addresses of the owners of land across all highways.

(PLEASE USE A SEPARATE PIECE OF PAPER FOR ADDITIONAL ROOM) SEE BACK- SIDE

INSTRUCTIONS FOR PETITIONERS FILING TO APPEAR BEFORE THE ZONING BOARD OF APPEALS

1. Familiarize yourself with sections of the Zoning By-Law pertinent to your petition. You may represent yourself or have someone represent you.
2. One copy of the application with the correct fee: \$175 for Residential/Agricultural Use; \$225 for Commercial/Industrial Use is to be given to the Town Clerk. Each petitioner is urged to discuss the application with the Building Commissioner first. At that time the Building Commissioner may inform the petitioner of the requirement that all plans must have the stamp of the registered engineer or surveyor (this may be waived).
3. Be informed that review fees and/or legal fees can and will be assessed for the Zoning Board of Appeals to evaluate the project, at the sole and absolute discretion of the Zoning Board of Appeals.
4. The Petitioner must list all owners' names and current addresses of property abutting the premises, and the owners' names and current addresses of land immediately adjoining the land of the Abutters (within 300 feet). Also, the names and current addresses of the owners of land across all highways.
5. If the petition is an appeal from a decision of the Building Commissioner, the Board of Selectmen or any other permit granting authority, such appeal to the Zoning Board of Appeals shall be taken within 30'days from the date of the order or decision that is being appealed.
6. To be granted a variance, a Petitioner must establish that special conditions exist affecting the parcel of land or building, that literal enforcement of the Zoning By-Law would involve substantial hardship, financial or otherwise, and that the variance may be granted without detriment to the public good and without nullifying or substantially derogating from .the intent of the By-Law. Be prepared to present this data at the public hearing. It is strongly suggested that this data be prepared in writing and submitted to the Board at the hearing. It is emphasized that all of the foregoing requirements must be satisfied before the Board of Appeals is authorized under the laws of the Commonwealth to grant a variance.

In order to expedite consideration of your petition, include all factors that may be relevant to the question of hardship, financial or otherwise, including, but not limited to, purchase price, when purchased, mortgage indebtedness, expenses of maintenance and upkeep, income, taxes, etc. The Petitioner should present all facts indicating why a hardship exists and how it may be overcome by the granting of the variance.

7. If your petition before the Zoning Board of Appeals requests a Special Permit rather than a Variance, be prepared to present data that tends to indicate that the public convenience and welfare will be substantially served by granting the petition requested; that the petition requested will not tend to impair the status of the neighborhood; that .the permission requested will be in harmony with the general purposes and intent of the regulations in the Zoning By-Laws. You should also include in your application any copies of existing Special Permits for the parcel of which you have knowledge.

ZONING BOARD OF APPEALS
TOWN OF WHATELY

Copies of the Zoning By-Laws are available at the Town Clerk's office for a small fee. The petition must be filed with the Town Clerk together with the filing fee. It is the petitioner's responsibility to get a receipted copy of the petition to the Zoning Board of Appeals, either by mail or in person.



300 foot Abutters List Report

Whately, MA
April 14, 2021

The business is at 3 River Rd but the parcel address is 5

Subject Property:

Parcel Number: 07-0-03
CAMA Number: 07-0-03
Property Address: 5 RIVER RD

Mailing Address: ANNIS AI S JR CAROL L
PO BOX 146
WHATLEY, MA 01093

Abutters:

Parcel Number: 07-0-02
CAMA Number: 07-0-02
Property Address: W/S RIVER RD

Mailing Address: THE CHANG FAMILY TRUST CHANG
TSO-CHENG + ROSE C
PO BOX 191
S DEERFIELD, MA 01373

Parcel Number: 07-0-04
CAMA Number: 07-0-04
Property Address: E/S RIVER RD

Mailing Address: NOURSE REALTY, LLC
41 RIVER RD
S DEERFIELD, MA 01373

Parcel Number: 07-0-05
CAMA Number: 07-0-05
Property Address: W/S RIVER RD

Mailing Address: PASIECNIK JAMES M
207 RIVER RD
S DEERFIELD, MA 01373

Parcel Number: 07-0-08
CAMA Number: 07-0-08
Property Address: E/S RIVER RD

Mailing Address: NOURSE REALTY, LLC
41 RIVER RD
S DEERFIELD, MA 01373

Parcel Number: 07-0-09
CAMA Number: 07-0-09
Property Address: 7 RIVER RD

Mailing Address: RAWLS LAWRENCE STE MARIE C/O
RAWLS BEN & NICOLE
15 DESPERADO DR
LARAMIE, WY 82070

Parcel Number: 07-0-10
CAMA Number: 07-0-10
Property Address: 13 RIVER RD

Mailing Address: SMITH TIMOTHY N
13 RIVER RD
S DEERFIELD, MA 01373



www.cai-tech.com



April 14, 2021

Whately Zoning Board of Appeals
4 Sandy Lane
Whately, MA 01373

**RE: DMCTC, Inc.
Application for Special Permit for Marijuana Manufacturer
3 River Road, Whately, MA**

Dear Board Members:

On behalf of our client, Debilitating Medical Condition Treatment Centers, Inc. (DMCTC), we respectfully submit this application for Special Permit for a Marijuana Manufacturer at an existing engine repair shop at 3 River Road. The portion of the property that includes the shop building will be leased. The property also contains 5 River Rd., a single-family house which will remain occupied by the property Owner.

The property is currently owned by the Annis family. DMCTC will be the Marijuana Product Manufacturer licensed by the Massachusetts Cannabis Control Commission (CCC) and proposes to lease the site through a separate legal entity, MIDCO CHY MA, LLC, that is affiliated with DMCTC. The exact lease area is shown on the attached plans.

The property is located in the Agricultural/Residential (A/R1) zone and the existing land use is allowed in the A/R1 zone by the Whately Zoning Bylaw but predates the adoption of that restriction.

DMCTC intends to convert the interior of the existing repair shop, without expanding the building footprint, into a marijuana processing building. Alterations to the existing site include adding a new stabilized, porous gravel employee parking lot along the south end of the existing building, adding porous gravel pads for storage of mobile refrigeration units, cleaning the site of all debris and invasive plant species, planting disturbed areas with new loam and low-water-use seed, and planting native, draught tolerant shade trees with a dense row of evergreen shrubs along the southern and eastern edges of the lease lot. Existing parking areas will remain as-is and two new signs will be added at the 3 River Rd. entrance, as required by the Bylaw and shown on the attached set of plans. The existing single-family home at 5 River Rd. will continue to be occupied by the current owner.

This letter discusses how the proposed project complies with the requirements of the Whately Zoning Bylaw. A set of site plan drawings is enclosed.

Site Overview

The site totals approximately 2.1 acres, with the existing repair shop within a proposed 1.31 acre lease area. The lease area limit divides the site into two areas, each with an existing dedicated curb cut and parking areas that will remain. The northern half of the site contains a single-family home and shed, with open lawn area to the west. No work is proposed within this area of the site. The southern half contains the existing repair shop and is littered with existing vehicles and debris, which extends beyond the southern property line.

The property contains an existing repair shop within the Agricultural/Residential Zoning District, which does not comply with the zoning bylaw in the existing condition. This is described in a later section of this letter.

A portion of the site, not including the existing building, is located on the Hatfield side of the town line. The project team is working with the Town of Hatfield to determine if additional land use permitting in Hatfield will be required.

Zoning District/Land Use

The entire property is zoned Agricultural/Residential. The land is located within 400' of River Road, which puts the property within the A/R1 zoning district.

Under the Whately Zoning Bylaw (§171-8), the land use of Marijuana Manufacturer is not a permitted use in zone A/R1. However, under §171-12 Nonconforming Uses, an existing non-conforming use can be replaced by a different non-conforming use by special permit if ZBA determines that: 1) the new use is not "substantially more detrimental" to the neighborhood than the existing use, and 2) the new use is not likely to contribute to the pollution of groundwater.

All structures that house cannabis, and all activities that involve handling of cannabis would occur within the secure building of the existing repair shop, or locked, mobile refrigeration units. Perimeter security fencing is not proposed because the building will be always locked, open only to employees, only open to employees.

Nonconformance

The property is zoned Agricultural/Residential, and is located within 400' of River Road, which puts the property within the A/R1 zoning district.

The property includes an existing engine repair shop within the A/R1 zoning district, which under the Whately Zoning Bylaw (§171-8) is a nonconforming use. As per §171-12 of the Whately Zoning Bylaw, the Board may grant a Special Permit for the proposed use on the existing non-conforming lot if it finds that the proposed use *"will not be substantially more detrimental to the neighborhood than the existing nonconforming use and that it will not increase the danger of groundwater pollution or contamination."*

The existing repair shop building encroaches into the 50' front yard setback by approximately 18.7'.

The applicant requests that ZBA grant a special permit to convert the existing non-conforming land use and structure to the proposed land use. The existing nonconforming setback is proposed to remain and the non-conformance will not be increased. The impacts to the neighborhood of the proposed project are significantly less than those of the existing engine repair shop in terms of noise and curb appeal. The purpose of use restrictions is to ensure a consistent level of development with similar uses and visual quality within a given zone. In this case, the noisy and littered repair shop is out of place. The proposed plan intends to improve the existing site by cleaning all existing debris, vehicles, and invasive plant species, and replacing the disturbed areas with a seed with new lawn, shrubs, and trees.

The proposed site layout provides for access by employees, deliveries, and emergency vehicles. Sightlines from the driveway are excellent in both directions, and we are not aware of any traffic issues at the site. The project proposes to utilize the site for an agricultural use related to marijuana production, which is consistent with the surrounding properties of 7 River Road, and another marijuana cultivation on Pilvinis Road on the opposite side of the street in Hatfield. Marijuana production is strictly controlled by the CCC. Operations will not be visible from the exterior. Strict security measures will be implemented. The final products for sale must meet food and/or pharmaceutical level standards of quality. The operation must be extremely clean and carefully managed to achieve production of a saleable product. For illustration purposes, we have enclosed images of an existing

marijuana manufacturing operation. Overall, it is our opinion that there will be no increase in impact due to change in use of the property.

The types of marijuana manufacturing that are proposed to take place on site will be entirely closed loop, with no anticipated water discharges other than normal domestic use by employees. In terms of use, marijuana manufacturing poses much less risk of groundwater contamination than an engine repair shop, where spillage and leaks of petroleum products are a frequent possibility, especially in old vehicles and mowers stored on bare earth for extended periods of time.

The existing repair shop is located approximately 18.7' over the required 50' setback. The project proposes to continue using the existing building in its current location with a changed use and stated previously. The proposed change in use would have no impact on the setback non-conformance.

For these reasons, we respectfully request that the Board grant a special permit for the proposed non-conforming use.

General Zoning Requirements

Dimensional Regulations

The proposed project complies with the dimensional regulations under §171-8, except as noted in the previous section describing the existing nonconformances. A summary of how the proposed site complies is included on the site plan drawings.

Parking and Loading

The proposed site will have approximately 10-12 year-round employees. The site plan area within the Lease Area includes 5 existing parking spaces within a bituminous lot, with one accessible parking space at the building entry. The 7 existing parking spaces outside of the lease area limit are reserved for 5 River Road.

Loading for deliveries will take place at the northwest and southwest sides of the existing building, where the areas for mobile refrigeration units are shown on the attached plans. Cannabis product will be assembled into fully compliant plastic bags, cardboard boxes, glass jars, tins, and plastic bottles, and cartridges in preparation for wholesale / delivery. Product pickup is performed by small un-marked vehicles, typically cargo vans or sport utility vehicles. Pickups, which are expected to occur up to 20 times per week but will typically occur 1-2 times per day depending on demand. Pickups are scheduled at variable times to prevent tracking. All cannabis product is transported by a state-licensed transport company, which may or may not be the same entity that operates the facility. Storage of cannabis materials will be located inside either the locked building, or locked mobile refrigeration units.

Signs

Proposed signs will be located along the driveway entrance to 3 River Road (existing repair shop). Signage will list the address of the property and prohibit unauthorized entry to the site. Neither the name of the owner/operator, nor the nature of the grow operation will be identified on the signs.

Environmental Performance Standards

The project is designed to meet the standards established by §171-15. Specifically:

1. No unusual noise-producing equipment is proposed. Extraction equipment will be enclosed within the interior of the building and will not be audible at the exterior. Exterior refrigeration units will have compressors and fans, and consist of newer, modern equipment.
2. Odor control is discussed in more detail later in this letter.
3. The cannabis manufacturing processes proposed are entirely closed loop and does not generate dust or fumes. The Odors will be addressed in more detail later in this letter.
4. Flammable materials will include butane, alcohol, and ethanol used for the extraction process of cannabis. Small amounts of flammable materials will be stored on site within the secure storage area as shown on the plan. All flammable materials will be stored in containers compliant with current regulations. The storage area will be protected by bollards and enclosed in a locked cage.
5. The project does not propose any alterations that would add additional reflected light or glare. Site lighting is proposed for parking areas for employee safety. Proposed lights are full-cutoff-style to prevent light spill at the property line and are zero up-light, dark sky compliant fixtures.
6. Radioactivity: Not Applicable
7. The site will be accessed from the existing 3 River Road curb cut. Sightlines from this driveway are excellent, and it is sufficiently separated from the nearest intersection at Pilvinis Road. The small existing parking lot within the lease area limit containing 5 typical parking spaces and one accessible parking space will be reused. An additional porous gravel parking lot will be located to the south of the existing building and will be screened by a dense row of shrubs and shade trees.
8. Groundwater infiltration will be increased after the site is cleaned and prepared with new loam in seed, within the existing debris storage areas. The porous aggregate paved areas will also promote infiltration. No other alterations are proposed that would increase surface water runoff from the existing condition.
9. Disturbance will be required for the cleanup of the debris storage area at the south and west sides of the site. Silt fence and/or straw wattle will be used at the downslope edges of the site to prevent sediment from leaving the site. The enclosed site plan shows minimum erosion controls and requires the contractor to protect areas beyond the limit of work from sediment.

Landscaping

Landscaping will include: The removal of existing invasive plant materials and debris on site, new shade trees along the south side of the existing building, and a dense row of evergreen shrubs for screening of the new parking area.

Requirements Specific to Marijuana Establishments

Allowed Locations

Setbacks from Certain Land Uses

The enclosed Neighborhood Plan identifies the land uses present within 1,000 feet of the site and shows the limit of the 500' buffer around the proposed Marijuana Establishment (measured from the property line of the parcel, for simplicity). None of the restricted land uses are located within 500' of the project.

Residential Units

No residential units exist within the area of the lease limit. The land owner will continue to occupy the existing home.

Additional Setback

As noted previously, all operations containing cannabis will occur within the secure building or mobile refrigeration units. There is an existing nonconformance where the building extends into the 50 front yard setback, which is described earlier in this letter.

Permitting Standards

The project is designed to meet the marijuana-specific design standards established by §171-28.6.D. Specifically:

1. Dimensional Requirements: Dimensional requirements are met, except for the existing nonconformances noted above. All manufacturing processes will take place within the locked building of 3 River Rd. Cannabis product will be stored on a temporary basis within mobile refrigeration units which are located within the required 50' setbacks.
2. Parking and Loading Requirements: Parking and loading will be provided as described in an earlier section of this letter. A small parking lot is provided for year-round employees, and the existing parking spaces will be used by visitors.
3. Site Screening: Site screening will be improved by adding a dense row of evergreen shrubs and shade trees along the southern end of the building.
4. Lighting & Security: Exterior lighting is shown on the site plan and consists of the minimum lighting necessary employee safety. Exterior lighting will be dark sky compliant and programmed to turn off after employees leave for the evening and remain off overnight. Security cameras will be infrared low-light cameras that function with ambient light and do not require additional site lighting.

Details of the proposed security plan are confidential. A meeting with the Chief of Police is scheduled to review the site plan and discuss the security plan prior to our meeting with the Board. Cameras will be infrared, capable of operation based on ambient light and do not require artificial lighting. Secure areas of the site will be surrounded by an 8' chain-link fence with privacy screen. Security personnel will be at the site any time employees are working and will monitor the site 24-hours per day.

5. Noise & Odors: Noises produced from the site will be consistent with typical commercial activity, including occasional trucks which will pick up and move mobile refrigeration units. Mobile refrigeration units will have new modern refrigeration equipment. We note that noise is likely to be reduced as compared to the noise associated with the small-engines associated with the current repair facility.

The cannabis manufacturing processes proposed will be entirely closed loop and located within the existing building. During the manufacturing process, there are no fumes produced from solvents or manufacturing materials, and odors will be undetectable outside of the building. Raw cannabis product will be transported in sealed containers from 7 River Rd. to 3 River Rd. and loaded into the mobile refrigeration units. Raw material will be stored in a cool environment for preservation and odor control. The project will upgrade interior HVAC equipment to include carbon filtration to scrub odors from indoor air prior to exhaust. SAME AS GREENHOUSES

6. Energy Efficiency: The proposed project is for indoor cannabis manufacturing, which processes will require an equal energy draw to the current engine repair shop. The proposed project will utilize high-efficiency equipment and fixtures wherever possible.

The applicant has engaged with the electric utility to upgrade service at the site from single-phase to three-phase power to ensure reliability.

7. Water Efficiency: The marijuana manufacturing process has minimal water demand. Water use at the site is limited to domestic use by employees. There are no water inputs to manufacturing process.

Drought tolerant trees, shrubs, and lawn are proposed, and no irrigation system is proposed. All new plantings will be hand watered until established. The use of a porous aggregate paving system will promote infiltration.

8. Hazardous Materials:

DMCTC anticipates having limited quantities of alcohol, ethanol, and butane for use in the manufacturing of cannabis. All materials that have toxicity or potential to be hazardous will be stored in accordance with applicable regulations and any requirements imposed by the Whately Fire Department. Materials will be handled in accordance with the directions of the product label and MSDS. All materials will be in accordance with stringent CCC guidelines and stored and labeled clearly. These materials will also be locked and secured to ensure limited access by personnel. Cleaning materials and waste will be stored in designated areas with clear guidelines on disposal and storage.

The project team will meet with the Fire Chief to have an initial conversation about the safety plan for 3 River Road and will be meeting again with the Chief prior to the ZBA hearing to review the site plan in detail.

9. Signs: The proposed signage is indicated on the plan and discussed in an earlier section of this letter. Signage will comply with all pertinent regulations.

10. Greenhouses: N/A

11. Buildings: No new buildings or building additions are proposed. An existing single-family house and shed will remain occupied by the owner.

12. Marketing: The proposed facility will not engage in consumer marketing activities. Products are sold to licensed marijuana manufacturers or retailers. The facility will not be open to the public.

13. Hours of Operation: General operation will occur during normal business hours (anticipated as 7:00am to 6:00pm). Security personnel may be at the site at any time, up to 24-hours per day.

14. Retailer Limits: Not applicable.

15. Applications:

- a. Land Owner:
Carol L. Annis and Al S. Annis, Jr.
5 River Rd. Whately, MA

April 14, 2021
DMCTC, Inc.
Marijuana Cultivation
7 River Road
Page 7 of 7

Licensee:
Debilitating Medical Conditions Treatment Centers, Inc.
11-13 Hampden Street
Springfield, MA 01103

- b. See Attached
 - c. John Hanmer
36 Hickory Lane
Hampden, MA 01036
 - d. Employees: 12 full-time year-round with additional seasonal employees peaking at 60 during fall harvest.
 - e. Security precautions are summarized above. The project team has scheduled a meeting to review security with the Chief of Police prior to the ZBA hearing.
16. Site Plan Review: A site plan review application is in process. It is anticipated that the site plan will be submitted to the Planning Board at their meeting on 4/27/21. A traffic summary is attached to this Special Permit application and will be provided to the Planning Board as well.
17. Reporting: Noted. The applicant will comply with the reporting requirements.
18. Change in License or Owner: Noted. The applicant will comply with the notice requirements.
19. Change in Ownership: Noted. The applicant does intend to eventually purchase the property from the current landowner.
20. Host Community Agreement: The signed HCA is attached.

Conclusion

In summary, the applicant request the following actions by the ZBA:

- 1. Grant a Special Permit for an outdoor marijuana manufacturing facility at 3 River Road, inclusive of the conversion of an existing non-conforming land use and structure.

We are confident the proposed plan addresses the requirements of the Whately Zoning Bylaw and will gladly incorporate additional comments from the Board and Town departments. We look forward to presenting this site plan to the Board at your next meeting.

Sincerely,

Berkshire Design Group



Christopher Chamberland, P.E.
Principal

cc: Jared Glanz-Berger, DMCTC, Inc.

Images of an existing marijuana manufacturing operation for reference:







Debilitating Medical Condition Treatment Centers, Inc.

Shareholders

Englewood Management LLC

63 Deerfield Avenue, Longmeadow, MA 01106

Samuel Hanmer, Manager

DMC Management, LLC

46 Atwater Street, Springfield, MA 01107

Heriberto Flores, Manager

Carol McCarthy

40 Battery St., Apt # PH07, Boston, MA 02109

Ronald Krupke

700 Berkshire Ave, Apt#A, Springfield, MA 01109

Jin Yang MA, LLC

29 Florence Avenue, Arlington, MA 02476

Grant Guelich, Manager

Placate Holdings, LLC

200 State Street, 7th Floor, Boston, MA 02109

Joseph Timmons, James Sullivan and Gene S. Raymond, Jr., Managers

Directors

Tonia Butler Perez, Heriberto Flores and Mary E. Frey – 11 - 13 Hampden Street, Springfield, MA 01103

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