

AS ACTED UPON DURING A DULY NOTICED OPEN MEETING OF THE TOWN BOARD OF THE TOWN OF HENRIETTA, COUNTY OF MONROE, STATE OF NEW YORK, HELD AT THE HENRIETTA TOWN HALL AT 475 CALKINS ROAD, HENRIETTA, NEW YORK ON JULY 13, 2022 AT 6:00 P.M.

RESOLUTION #16-229/2022

To approve the Special Use Permit for a Rise Cannabis Medical and Retail Cannabis Dispensary.

On Motion of
Supervisor Schultz

Seconded by
Councilmember Sefranek

WHEREAS, Green Thumb Industries, Inc. (the "Applicant") has applied for a Special Use Permit (application #2022-024) under Henrietta Town Code §295-14[B](13) for a cannabis medical and retail dispensary (the "Application") to be located in a Commercial B-1 District at 556 Jefferson Road, Rochester, New York 14623 (the "Property"), or as more particularly described in plans on file in the Town Clerk's Office; and

WHEREAS, the Property meets the requirement of §295-14[B](13) of having street frontage to Jefferson Road due to its immediate proximity to the Jefferson Road right-of-way, its primary vehicular entrance being on the plaza road (Jay Scutti Boulevard) that comes from Jefferson Road, and its main entrance being within 500' of the Jefferson Road right-of-way; and

WHEREAS, the Property does have a property whose primary business is directed towards minors, specifically the Clubhouse Fun Center located at 70 Jay Scutti Boulevard, that lies within the 1,000' buffer as part of the additional Special Use Permit requirements detailed in §295-54.1[B](2), the Town Board has considered the proposed signage as well as the dual nature of the proposed use as both a medical and retail cannabis dispensary in its determination that this buffer distance may be reduced to allow this application to be approved; and

WHEREAS, a public hearing was duly advertised and held relative to the same on July 13, 2022 at 6:00 p.m.; and

WHEREAS, the Town Board has carefully considered all information relevant to the Application, including but not limited to the Application, correspondence and oral testimony from the public, and correspondence and oral testimony from the Applicant; and

WHEREAS, the Town has referred the application to the Monroe County Planning Board pursuant to NY General Municipal Law Section 239 and the Town has incorporated any comments and feedback from the Monroe County Planning Board; and

WHEREAS, the Town Board has considered each of the factors for assessing the requested special use permit approval, all as set forth in Town Code Section 295-54.

THEREFORE, BE IT RESOLVED, that pursuant to the State Environmental Quality Review Act ("SEQR") at Section 617.5(c)(18), and consistent with the EAF Part 1 submitted, the Application is a Type II action not subject to further review pursuant to SEQR.

BE IT FURTHER RESOLVED, that, in considering the special use permit factors, including in considering all information based on the record, including feedback from the Monroe County Planning Board and other interested or involved County or State agencies, public comments, those reasons discussed at the public meeting related to the same, and all materials submitted related to such Application,

and based upon applicable law, and in consideration of any conditions set forth herein, the Henrietta Town Board makes those findings attached hereto and entitled "Rise Cannabis Special Use Permit Assessment by Henrietta Town Board for Proposal at 556 Jefferson Road," thus finding that the special use permit factors support approval of the Application.

BE IT FURTHER RESOLVED, that based upon the aforementioned, the Town Board hereby grants approval for the Application to operate a cannabis medical and retail dispensary, subject to the following condition(s):

1. Prior to operating the medical portion of the dispensary, that the Applicant obtain all necessary governmental approvals required to operate said medical cannabis dispensary, including a medical cannabis dispensary license from the New York State Office of Cannabis Management.
2. Prior to operating the retail portion of the dispensary, that the Applicant obtain all necessary government approvals to operate said retail cannabis dispensary, including a retail cannabis dispensary license from the New York State Office of Cannabis Management.
3. That all cannabis sale activity shall take place within the interior of the building. No sales may occur outside, under tents, or under a portico or similar physical structure. It is noted that a pick-up window or curbside delivery does not violate this restriction as long as all proper customer identification procedures are observed.
4. That the retail portion of the dispensary may only be operated in conjunction with the medical dispensary. Should the Applicant desire to operate the retail portion independently, without the corresponding operation of the medical dispensary, that this Special Use Permit would not permit that operation and a new approval would need to be obtained from the Town of Henrietta.
5. That due to the proximity to properties whose primary business is directed towards minors, the Applicant refrain from any external signage that glorifies or encourages the use of marijuana, as determined by the Town Board or the Director of Building and Fire Prevention. It is specifically noted that in the opinion of the Town Board, the "Rise Cannabis" name and proposed signage does not glorify or encourage the use of marijuana.
6. That the operation continues its diligence with respect to child-proof containers, packaging that does not entice children, buyer identification procedures, monitoring the facility inside and out, and other procedures and protocols to ensure the legal sale of the cannabis products and to help prevent the cannabis products from falling into the hands of minors. The failure to maintain adequate safeguards or a material departure from what was presented to the Town Board during the application process could result in the revocation of this Special Use Permit by the Town Board.

Duly put to a vote:

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|------------------------|-----|
| Councilmember Sefranek | Aye |
| Councilmember Bolzner | Aye |
| Councilmember Page | Aye |
| Councilmember Bellanca | Aye |
| Supervisor Schultz | Aye |

RESOLUTION ADOPTED

Rise Cannabis Special Use Permit Assessment by Henrietta Town Board for Proposal at 556 Jefferson Road

§ 295-54 **Granting or denial of special use permits.**

In considering an application for a special use permit, the Town Board shall make its decision based upon the following factors. The Town Board may impose conditions, including in order to resolve any issues identified via its assessment of said factors.

- A. Whether the proposed use is substantially consistent in its scale and character with those uses permitted and the existing built permitted uses in the subject zoning district and neighborhood or will otherwise impair such uses due to inconsistency.

In reviewing the application, the proposed use is substantially consistent in its scale and character as this is both a medical retail facility (medical cannabis dispensary) and a traditional retail facility (retail cannabis dispensary) with the latter use requiring a Special Use Permit. The store lies in the “retail corridor” of Jefferson Road where there are retail stores, restaurants, drug stores, medical facilities, and other retail and commercial facilities. The proposed location lies within the area specifically called out as a subset of the Commercial B-1 zone where adult-use retail cannabis dispensaries may be located. The building is a stand-alone building well suited for this use, especially with respect to any potential impacts such as traffic. As the building which would house the dispensary is already constructed, the scale and character of the built environment will remain unchanged.

- B. Whether the proposed use aligns with the vision, goals and recommendations of the Comprehensive Plan and other applicable plans and studies conducted by or on behalf of the Town.

The Comprehensive Plan identifies this area for commercial use, and this is one of the primary commercial areas in the Town.

- C. Whether the proposed use aligns with the purpose, intent, and applicable design and development standards of the zoning district(s) in which the use is proposed to be located.

The proposal is to reuse an existing, empty commercial building as a medical and retail dispensary. While a new façade will be applied to the building, the proposed design is consistent with the design and development standards of the zoning district in which the building is located. Moreover, from the medical dispensary standpoint, numerous retail pharmacies, urgent care clinics, and other medical offices legally exist throughout the Town’s Commercial B-1 and B-2 zones.

- D. Whether the proposed use will be a nuisance in law or in fact due to its being materially noxious, offensive or injurious by reason of the production of or emission of dust, smoke, refuse, poisonous

substances, odors, fumes, noise, radiation, vibration, unsightliness or similar conditions, or will contaminate waters.

The proposed use presents no nuisance in law or in fact with regards to any of the conditions listed. The proposed use and the impact are at the same or lesser level than the previous tenant or adjacent tenants in the same plaza. The one potential nuisance the proposed use presents that the previous use did not is the potential of cannabis and cannabis products from ending up in the hands of minors, especially younger children for whom the cannabis products represent a significant health risk. The Town Board was satisfied by the child-proof packaging, the “non-enticing to children” nature of the proposed packaging, and the buyer identification requirements and additional safeguards proposed by the applicant. The continued diligence in this regard would be required to continue to operate as a cannabis dispensary, medical or retail.

- E. Whether the proposed use will create material hazards or dangers to the public or to persons in the vicinity from fire, explosion, electricity, radiation, traffic congestion, crowds, parking of vehicles, or other causes.

The proposed use presents no material hazards or dangers to the public or persons in the vicinity from any of the listed conditions or other causes. The proposed use will make it easier for Town residents to obtain required medical cannabis.

- F. Whether the proposed use will create materially adverse impacts that cannot be adequately mitigated, such as to adversely impact natural resources or the environment, agriculture, community services or other areas required to be addressed by the State Environmental Quality Review Act (SEQRA).

The proposed use presents no materially adverse impacts under SEQRA – it is a Type II action. There will be minimal external disturbance: a change in the sign on the building, a change in the building’s façade, and a change in the layout of the parking lot. The interior of the suite will need to conform to any requirements of the New York State Office of Cannabis Management for medical use when operating as a medical cannabis dispensary and for retail use when operating as a retail cannabis dispensary, with the requirement any Special Use Permit approval be conditioned upon obtaining the necessary licensure and/or approvals from the State Office of Cannabis Management.

- G. Whether the physical conditions and characteristics of the site are suitable for the proposed use considering site size, configuration, location, access, topography, vegetation, soils, and hydrology for effective stormwater management and, if necessary, the ability to be screened from neighboring properties and public roads.

The site previously operated as a restaurant and has adequate size, configuration, location, access, parking, and other parameters that make it suitable for the proposed use. As all the adjacent uses

are commercial uses, there is no requirement to provide screening. Due to the proximity of a business establishment that caters to minors, limitations on external signage will be imposed through the conditions of the Special Use Permit. More details can be found below.

- H. Whether there are adequate utilities, public infrastructure, community facilities and emergency services, either existing or to be provided by the applicant or others, to effectively serve the proposed use. A proposed use shall not create or contribute to an existing inadequacy.

The proposed use represents a similar or lesser impact on public infrastructure, utilities, community facilities, and emergency services as compared to the prior use, which is to say, a minimal impact at most. There is no existing inadequacy at this site nor will the proposed use create one. See also response to "G," above.

- I. Whether the proposed use will provide, maintain, or enhance, as necessary, safe and efficient vehicular traffic patterns, nonmotorized travel, and pedestrian circulation as well as, where feasible, access to public spaces, parks, recreation, and open space resources.

The proposed use does not include any modification to the site plan's traffic or pedestrian travel patterns and therefore, the existing vehicular traffic patterns, nonmotorized travel, and pedestrian circulation remains at the same safe and efficient levels they are at today. There is no impact on access to public spaces, parks, recreation, or open space resources by this project.

[Additional Considerations Specific to Cannabis Retail Dispensaries](#)

§295-54.1[B](1) State approvals. Any approval of a cannabis retail dispensary shall be conditioned upon proof of any required state or other governmental approvals, including but not limited to licensure by the Cannabis Control Board.

The proposed use will initially operate as a cannabis medical dispensary and shall be conditioned upon proof of the required state or other governmental approvals, including but not limited to medical cannabis dispensary licensure by the New York State Office of Cannabis Management. At a future date, the proposed use will also include the simultaneous operation as a cannabis adult-use retail dispensary and shall be conditioned upon proof of the required state or other governmental approvals, including but not limited to retail adult-use cannabis dispensary licensure by the New York State Office of Cannabis Management. Due to considerations of the site (see next response), the use as a cannabis adult-use retail dispensary will also be conditioned upon the continued simultaneous operation as a cannabis medical dispensary.

§295-54.1[B](2) Increased buffer.

(a) Cannabis retail dispensaries may be established no less than 1,000 feet from any: a) school or school grounds; b) park or playground; c) church/house of worship; d) residence; or e) business

which is primarily focused on providing services/products to children, including, for example, child-care facilities or recreational facilities with a significant youth component. Whether a use qualifies as one of the aforementioned, and thus requires an increased buffer, shall be assessed by the Town Board as part of the special use permit process. Such 1,000-foot setback shall be measured from the closest portion of the dispensary premises (inclusive of the dispensary building or leased tenant space, as well as any exterior portions where the actual dispensing might take place, such as outdoor sales locations or a drive through window) to the nearest portion of the buffered use (inclusive of, for example, outdoor spaces utilized by schools, for parks, etc.).

(b) This buffer requirement may be reduced by the Town Board by up to any lesser minimums otherwise required by the state. In considering whether the reduction may be appropriate and the extent to which it may be reduced, the Town Board shall consider: whether there is a sufficient physical barrier between the dispensary and the buffered use; whether and to what extent advertising, signage, and/or other activity associated with the same which would be visible from the buffered use; and to what extent any reduced buffer might otherwise negatively impact the buffered use.

The proposed location is located approximately 500-feet away from a business which is primarily focused on providing services/products to children, namely the Clubhouse Fun Center located at 70 Jay Scutti Boulevard. When considering whether to reduce the buffer requirement, the Town Board considered the fact that the proposed use is initially and continually as a medical cannabis dispensary, aka a retail pharmacy. Because pharmacies are strictly governed and risk losing their pharmacy license as well as other punitive actions should they violate their legal or ethical requirements as a pharmacy, the Town Board has considered that this operation will be more diligent than most with respect to protecting against the illegal distribution of cannabis products to minors for whom they can represent a significant health risk. The Town Board was satisfied by the child-proof packaging, the “non-enticing to children” nature of the proposed packaging, and the buyer identification requirements and additional safeguards proposed by the applicant. The continued diligence in this regard would be required to continue to operate as a cannabis dispensary, medical or retail. In addition, the existing operation of the medical facility, which is proposed to be relocated to this location from another location in Monroe County, and the proposed operation at his new location do not glorify or encourage the use of cannabis especially with regards to minors. During their presentation to the Town Board, they highlighted their requirement, as a Medical Cannabis Dispensary, that they must monitor their facility inside and out, including the majority of their parking lot. This can help discourage minors from loitering in the parking lot in the hopes of finding someone to purchase cannabis for them. This could also help prevent the consumption of recently purchased cannabis products in their cars, resulting in the potential of a customer driving under the influence. All of these added security measures and safeguards that are part of the responsibility of being a Medical Cannabis Dispensary, play a large portion as to why the Town is willing to reduce the standard 1,000’ buffer with respect to the nearby Clubhouse Fun Center. Due to this, it must be noted that the failure to maintain adequate safeguards or a material

departure from what was presented to the Town Board during the application process could result in the revocation of this Special Use Permit by the Town Board.

§295-54.1[B](3) In no event shall any buffer be any less than otherwise required by state law or any other governmental agency with jurisdiction over the dispensary.

The proposed location is consistent with the requirements of state law and the New York State Office of Cannabis Management, as currently presented. While the New York State Office of Cannabis Management has yet to complete the full legal requirements for an adult-use retail cannabis dispensary, as the Special Use Permit is conditioned on the Applicant obtaining the necessary licensure, it will be ensured that this site meets all such requirements prior to licensure and therefore, prior to the Special Use Permit taking effect due to those conditions.

§295-54.1[B](4)

Additional special use permit factors. In considering a special use permit for a cannabis retail dispensary, the Town Board shall additionally consider how the § 295-54 special use permit factors apply specifically to any surrounding properties within a 250-foot distance, measured door-to-door. When measuring door-to-door, the nearest doors shall be used (not including emergency exit only doors).

The surrounding properties are fast-food restaurants (McDonalds and Wendy's) and a sit-down restaurant (Seafood Harbor). No representative from one of the surrounding properties has expressed any reservations about the addition of a medical or retail cannabis dispensary.