



Town of Simsbury

933 HOPMEADOW STREET

SIMSBURY, CONNECTICUT 06070

Office of Planning and Community Development

Memorandum

FROM: George K. McGregor, AICP, Director

TO: Town of Simsbury Zoning Commission

CC: Robert DeCrescenzo, Town Attorney

DATE: March 21, 2023

SUBJECT: ZC 22-32, Cannabis Text Amendment-Legal & Process Update

At your regular meeting on January 4, 2023, the Commission closed the public hearing on the above reference and forwarded it to the January 18, 2023 meeting for discussion, deliberation, and potential action.

Subsequent to this action, the Board of Selectmen (BOS), at its February 13, 2023 meeting, adopted a Town Ordinance prohibiting retail cannabis sales in the Town for a period of 18 months.

The BOS action supersedes any action related to retail cannabis taken by the Zoning Commission. The Commission may not adopt a zoning text amendment permitting the sale of retail cannabis.

Staff has discussed recommended options for the pending text amendment with the Town Attorney and offers the following:

- 1. Retail Cannabis.** Staff has amended the draft text to reflect that retail cannabis establishments are prohibited town wide (the special exception proposed for the B-3 zoning district was deleted and changed to a prohibited use). Regarding a *contingent* approach, such as keeping the allowed language in place along with a caveat that the use would only be allowed "IF" a referendum passed or the Board of Selectmen ordinance expired, the Town Attorney recommended against this approach.

Staff is confident the Commission would have time, with advance planning, to hold a new public hearing to address retail cannabis in the period between any referendum approval in November and a statute enabled December effective date. It would also have time to adopt language in advance of the current expiration date for the BOS retail prohibition in eighteen months.

2. **Manufacturing and Cultivation.** The Commission requested clarifying language regarding the approval requirements for Cannabis Establishments related to cultivation and production. The debate raised during the public hearing was whether existing operations that previously received a special exception for medical production would have to get a new special exception to permit retail production. Staff has added language at the Commission's direction stating that a new special exception is required for any establishment proposing to serve retail markets. To put the finest point on it: the revised language requires Curaleaf to get a new special exception for retail expansion.

Attached to this memo are the two public comments received during the public hearing related to this issue.

These changes are appropriate, even with the public hearing closed, as they are a direct response to issues raised at the hearing. A revised framework explaining the revisions by section, is attached.

As a reminder, the Zoning Commission adopted moratorium, which effects both retail and manufacturing related cannabis uses, expires on May 8, 2023.

GKM

Cannabis Establishments
Zoning Amendment Framework
Town of Simsbury, CT
March 21, 2023

I. Simsbury Center Code

- A. Section 4.2. Revise Section 4.2 Allowed Use Table (pg. 4.4)
1. Insert under the Commercial Tab: Cannabis Establishments (as defined in CG...)
 - a. Leave all Zoning category boxes blank -SC1 through OS. Note: the language of the Center Code use charts state that if the box is blank or unchecked, the use is expressly prohibited.
 2. Insert under the Industrial Tab: Cannabis Establishments (as defined in CG...)
 - a. Leave all Zoning category boxes blank -SC1 through OS. Note: the language of the Center Code use charts state that if the box is blank or unchecked, the use is expressly prohibited.

COMMENT: These changes would prohibit all categories of cannabis establishments from Simsbury Center.

II. Hartford-Simsbury Form Based Code

- A. Section 6.0. Revise Section 6.0 Schedule of Uses/Permitted Use Table 6.1 (pg.17)
1. Insert under F-3 Commercial Use new line #15: Cannabis Establishments (as defined in CG...)
 - a. Leave all Use categories blank. Note: the language of the Hartford-Simsbury states that a blank cell means the use is not permitted.
 2. Insert under F-4 Industrial Use new line #12: Cannabis Establishments (as defined in CG...)
 - a. Leave all Use categories blank. Note: the language of the Hartford-Simsbury states that a blank cell means the use is not permitted.

COMMENT: These changes would prohibit all categories of cannabis establishments from the Hartford-Simsbury Code.

III. Town of Simsbury Zoning Regulations

- A. Section 2.6A. Delete Section 2.6A. Temporary and Limited Moratorium on Cannabis Establishments (pg. 7).
- B. Section 2.6B. Move Section 2.6B. Definitions (pg. 8) to Section 17.4 Definitions (pg. 104).
- C. Section 2.6C. Delete Section 2.6C. Applicability (pg. 9).
- D. Section 2.6D. Delete Section 2.6D. Effective Date/Term (pg. 9)

Comment: The revisions remove the Moratorium language and relocate the definitions to the regular definition section of the regulations.

- E. Section 4.5. Amend Section 4.5 Permitted and Special Permit Uses (use matrix pg. 26-28).
 - 1. Delete entire “Licensed medical marijuana dispensary” entry (pg. 27).
 - 2. Replace with:

Business Permitted Uses	B-1	B-2	B-3	P-O
Cannabis Establishments as defined by CGS...limited to Cannabis retailer, hybrid retailer, dispensary facility <ul style="list-style-type: none"> • A maximum of one (1) establishments are permitted within the town of Simsbury at any time. • The establishment must be within 1,500 feet of the intersection of Route 167 (Bushy Hill Rd.) and Route 202/44 (Albany Tpke.) 	NO	NO	NO	NO

COMMENT: Pursuant to Board of Selectmen Action, retail cannabis operations are prohibited town wide.

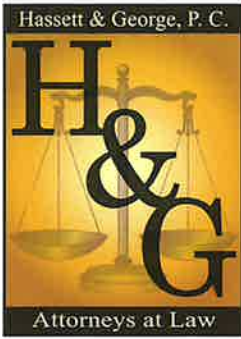
- F. Section 5.5. Amend Section 5.5 Permitted and Special Permit Uses (use matrix pg. 31-32).
 - 3. Delete “Medical Marijuana production facilities” entry (pg. 32).
 - 4. Replace with:

Industrial Permitted Uses	I-1	I-2
Cannabis Establishments as defined by CGS... limited to Cultivator, Micro-Cultivator, Food & Beverage Manufacturer, Product Manufacturer, Product Packager, Producer, Transporter. Note: Medical only production facilities shall secure a new special exception approval for entrance into retail markets.	SE	SE

COMMENT: These changes would allow Cannabis production facilities, with distribution intended to both medical and retail markets, by Special Exception, in the I-1 and I-2 Zoning Districts. Existing cultivators, manufacturers, producers, etc...with only an approved special exception for medical could continue to manufacture medical cannabis products as a legal non-conforming use; they would be required to secure a new special exception for a cannabis establishment under the new title if they desired to enter the retail marketplace.

G. Section 17.4. Amend Section 17.4 Definitions. Move Section 2.6B in its entirety to Section 17.4.

COMMENT: This action moves the adopted Cannabis definitions from the Moratorium Section 2.6 to the Definition Section 17.4. The definition of “producer was inadvertently left out of previous versions.



Hassett & George, P.C.
Attorneys at Law

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AND USPS FIRST CLASS MAIL

Louis N. George
lgeorge@hgesq.com
(860) 651-1333, ext. 121

Please reply to Simsbury

October 12, 2022

David Ryan
Chairman of the Zoning Commission
c/o Joseph Hollis, Land Use Specialist
933 Hopmeadow Street
Simsbury, CT 06070

RE: Curaleaf

Dear Mr. Ryan,

This office represents the interest of Curaleaf LLC located at 34 Hopmeadow Street Simsbury, Connecticut. As you know, Curaleaf is a Cannabis Establishment growing, cultivating and producing cannabis products in the aforementioned location.

We have reviewed the proposed Simsbury zoning regulation amendments regarding the cannabis industry and have some minor concerns we believe can be clarified with minor revisions to the proposed language. The overall concern is that Curaleaf does not want to be affected in any negative way from its present operations. We do not want any unintended consequences to affect Curaleaf's operation presently or in the future. That being said, we are suggest the following revisions:

1) Curaleaf is a "Cannabis Establishment" and its operations are covered in the proposed definition revisions, however, in Section 5.5 and on page 32 of the Permitted Use Chart for I-1 zone, the language limits those uses. One part of the definition that was excluded was "Producer". We believe that permitted use should include "Producer".

2) We would like the following language to be added to the regulation on page 32, or where the Commission sees fit to add it, so Curaleaf, which is already in existence, does not have to go through any special exception process for medical or adult retail use production. With this language nothing will change in their operation but would allow them to continue to operate in this location without hinderance.

"Cannabis Establishments, as defined, that are in existence at the time of the adoption of the amended cannabis regulations shall be considered an as of right use for this particular location and shall not be considered a non-conforming use."

Hassett & George, P.C.

October 12, 2022

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They presently employ approximately 65 employees in this location. They pay approximately Three Hundred Thirteen Thousand (\$313,000) Dollars in personal property tax and they have been a good corporate citizen for years.

With these revisions Curaleaf can maintain their medical and adult use operations without the necessity of any further additional approvals which could affect or delay its operations. Please do not hesitate to contact me with any questions.

Very truly yours,



Louis N. George

cc: Attorney Robert Decrescenzo
LNG

From: [Robin Pearson](#)
To: [McGregor George](#); [Hollis Joseph](#)
Cc: [Mackstutis Wendy](#); [Capriola Maria E.](#); [Eli Pechthold](#)
Subject: Application 22-32 of the Simsbury Zoning Commission Text Amendment - Cannabis Establishment Regulation
Date: Wednesday, January 4, 2023 11:18:33 AM

Hello George:

As you aware, my office represents Simsbury Developers LLC, owner of the Aspen Green apartment and town home development at 20 Hopmeadow Street in Simsbury. The Aspen Green community is located on property adjacent to the Curaleaf production facility at 34 Hopmeadow Street. I am out of the office until January 23d and unable to attend the January 4 meeting of the Zoning Commission. **Therefore, please provide the Commission with a copy of this email for inclusion in the public record on this application, the public hearing on which is currently continued to the January 4 meeting.**

I have also copied the Town Manager and First Selectman as the issues discussed below have policy implications for the owner of the Aspen Green development on Hopmeadow Road and the 180 families who reside there that go beyond the proposed text amendment, the initial purpose of which was to regulate the retail sale of recreational cannabis retail sales in Simsbury.

Points for Consideration by the Commission:

1. **The record of comments by the public in Commission minutes is not complete.** I appeared on behalf of the owner of Aspen Green at the November 21 public hearing. I provided testimony as to the negative impacts on the Aspen Green community of the request by Curaleaf to revise the proposed cannabis text amendments as outlined in its October 12, 2022 letter to the Commission. I testified that such changes would deprive Aspen Green residents and owner of the opportunity to participate in a public hearing process on any changes in use or expansion of operations at Curaleaf resulting from additional production to serve the huge new recreational market. Production changes could have the potential to further impact the residents next door, particularly with regard to odors. Its operations were initially subject to special exception analysis and future changes to the scope of its business operations should also be subject to special exception review. There is no record in the minutes that we appeared and testified, nor of the concerns that we raised. The resultant minutes are therefore not an accurate description of the public proceedings.

The text amendment hearing process has been appropriately extended to include input from all interested parties as well as ongoing staff research, all to enable the Commission to ultimately make a well-considered decision. The Commission is to be

commended for doing so. However, not having complete minutes deprives you of the record you should have available for reference when your deliberations do begin. The November 21, 2022 Staff Report to the Commission states on page 4 that “Public comments received in writing or in person at the hearings are a part of the public record and may be used to revise, extend, or amend the publicized draft text amendment.” How will the Commission do so without a written record of some sufficiency as to those comments? As it stands now, the legislative record does not reflect that we provided any testimony. That there be a record of our concerns and others in the legislative history should be important to the Commission. We request that the minutes of that meeting be updated.

2. **Curaleaf’s request that it not be required to go through any special exception process for expanding into “adult retail use production” has the potential to interfere with the peaceful enjoyment by Aspen Green families of their homes next door.**

Curaleaf has requested that language be added to the proposed text that would convert any “Cannabis Establishment” in existence at the time of adoption of the new regulation (of which there is only the Curaleaf production facility) to an “as of right” production use at the existing location. That would mean no public review of operational changes inherent in the expansion into retail marijuana production. Without the opportunity to be informed of the scope of such changes through the public hearing process, particularly the implications for the 180 families residing at Aspen Green and any safeguards proposed to protect residents from negative impacts such as odors, the owner and residents cannot be confident that Simsbury has protected their homes and Simsbury Developers LLC’s significant investment in the Town. Curaleaf states that abolishing the public hearing process protections is necessary to avoid additional approvals which could affect or delay its operations. This position may make an expansion process easier for Curaleaf but it would be to the distinct detriment to the residential community that was there before Curaleaf moved next door. Just as any proposed retailer will need to undergo the special exception process once the regulation is adopted to enter the recreational marijuana market in Simsbury, so too should the production facility if it is expanding its operations to enter into that new market.

3. **Curaleaf’s request to amend the language of the proposed text is too significant a change to be undertaken as part of this amendment process.** As previously discussed, the changes Curaleaf proposes to the text as part of this amendment process will deprive Aspen Green residents and its owner, or any other members of the public, of the opportunity to participate in a public hearing on the impacts expanding its operations into the recreational market might have on the community. As the initial special exception granted Curaleaf was limited to medical marijuana production, expanding its operational scope would appropriately require amending the special

exception to address expansion implications. Eliminating the public hearing rights of those potentially impacted is not, as Curaleaf argues, a minor change. Depriving the public of rights it would otherwise have, cannot legally be accomplished without the public having due legal notice of the language to do just that along with the opportunity to participate in the review of that text change through a public hearing process. Case law generally allows the Commission to only make minor changes to the text once it has been publicly noticed. A minor change is one that makes the proposed text amendment less impactful than the language of the amendment as noticed prior to the hearing. A good test of whether a proposed change is minor is to ask whether any member of the public might have had objections if they knew the “minor change” was part of the text amendment proposal. If the requested change is made, the public and Aspen Green residents in particular, would not have had legal notice that the Commission was proposing to eliminate public hearing rights that would otherwise have been available under the special exception process governing Curaleaf’s operations. Cutting their public hearing rights out from underneath them in this way would be both infuriating for them and a denial of due process.

4. **Curaleaf’s stated concern that it will be considered a legal nonconforming use if the Commission does not adopt the “minor change” it suggests, is not a meaningful concern.** The text amendment proposed by the Town will not make its current medical marijuana production operations nonconforming. They will remain authorized by their existing permit. If it chooses to expand existing production operations to address new opportunities, it will simply mean Curaleaf must apply to amend its special exception permit. If the operations meet the requirements of zoning and will not detrimentally impact the surrounding community, the expansion should be approved.

5. **Special exception uses require a public hearing for the reason that the use is of such a nature that adjacent residents and owners, and the public at large, should have the opportunity to be informed of proposed changes and participate in the process.** When Curaleaf moved into the vacated Eversource facility next door to Aspen Green, there was no concern regarding the potential impact of odors on surrounding properties because the Town reported there were no reports of odor issues at Curaleaf’s prior Powder Forest location. This was most likely due to the differences in the characteristics of the location. Aspen Green however is close by, indeed not much more than a driveway separating the two. Aspen Green residents experience periodic odor releases while walking outside with their dogs, sitting by the pool, or otherwise enjoying their homes.

That odors from cannabis production facilities can be an issue is incontrovertible. In the January 4 memo from the Town Planner to the Commission reporting on information gleaned from the experience of other states with cannabis regulation, he

notes the Uxbridge police are currently dealing with an issue of grower odor which they are trying to resolve. Recently I read a communication between the Southbury Connecticut Land Use Enforcement Officer in response to another planner's observation that he experienced no odors outside a production plant at the time he visited. The Southbury professional recounted his experience with odors emanating from the same Connecticut production facility. He permitted me to reproduce his observations for the Commission, as follows:

From: Jordan Marcinko <JMarcinko@southbury-ct.gov>
Sent: Wednesday, December 7, 2022 2:08 PM
Subject: RE: Cannabis lessons learned

Hi,
Just to hopefully provide some anecdotal information. I actually worked in a building near the cultivation site in Rocky Hill, CT. Aesthetically the operation is not intrusive to the neighborhood and driving by you wouldn't know it's a marijuana cultivation facility. There were however, a number of days when I would walk outside or drive by in my car and get hit with the odor from the facility. This is something that should probably be considered when proposing these operations in an area close to residential or in a basin where the odor might stagnate.

Jordan Marcinko
Land Use Enforcement Officer
Town of Southbury

Because of the potential impact to neighbors, any changes to the Curaleaf facility operations of significance should remain subject to special exception review. In its letter, Curaleaf advised the Commission that it employs approximately 65 employees and pays approximately \$313,000 in personal property tax. We remind the Commission that we reported to it at the November 21st hearing that Aspen Green paid the Town of Simsbury \$822,084 in 2021 property taxes and had already paid \$813,434 at that point in November 2022. It remains one of the top 20 taxpayers in Simsbury, without consideration of the additional personal property taxes paid to the Town for such things as automobile taxes attributed to the occupants of the 180 units. Both Aspen Green and Curaleaf provide major revenue and other benefits to the Town by virtue of their significant investment in Simsbury. The special permit process should remain available as a vehicle to address any valid concerns arising from their operations as close neighbors to each other and to protect the continued viability of those investments.

- 6. Simsbury Developers LLC has no objection to the amendments directed to the regulation of cannabis retail establishments as prepared by the Town.** We concur that limiting the location for retail uses to the areas zoned B-3 within 1500 feet of the

intersection of Routes 167 and 44 as illustrated in the November 21 Staff Report to the Commission and subject to special exception permitting review, is appropriate. The Report makes clear that as a special exception use, there will be public notice and a public hearing on each request. Surely changes in use or the expansion of operations at Curaleaf into the recreational market are deserving of the same special exception procedural protections now being proposed as necessary to adequately regulate retail sale use. The potential for negative impacts, in particular odor emissions, is significantly greater with the cultivating process than it is with retail sales. It would be unreasonable to remove the public notice protections currently in place for the residential neighbors adjacent to Curaleaf while enacting public hearing protections for retail cannabis activity limited, by comparison, to an area the Report characterizes as "...a concentration of retail and other commercial uses and is located on one of the region's primary commercial corridors." Residential property owners and the residents of those communities must continue to have the benefit of the special exception protections.

On behalf of Simsbury Developers, LLC and its residents, we express appreciation of the time you have invested in this text review process. Please forward any questions you may have, though we will review the continued hearing proceedings virtually. Thank you for consideration of our concerns.

**Regards,
Robin**



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