

COMMONWEALTH OF MASSACHUSETTS

BERKSHIRE, SS.

SUPERIOR COURT DEPARTMENT
CASE NO.

CITY OF NORTH ADAMS, by and through
its Mayor,

Plaintiff

v.

NEW ENGLAND ALCHEMY LLC; RUSTIN
KLUGE; and BRIAN MIKSIC, JESSE LEE
EAGAN POIRER, LISA BLACKMER,
LYNETTE RITLAND BOND, ROBERT
BURDICK, KYLE HANLON, KAYLA
HOLLINS, PAUL SENEAL, and RYE
HOWARD, in their official capacities as
members of the CITY OF NORTH ADAMS
PLANNING BOARD

Defendants

COMPLAINT

INTRODUCTION

1. This is an appeal by the City of North Adams, by and through its Mayor (the “City”), pursuant to G.L. c. 40A, §17, from a decision of the City of North Adams Planning Board (the “Planning Board”), that was filed with the North Adams City Clerk on March 15, 2022 (the “Decision”). The Decision granted defendants Rustin Kluge and New England Alchemy LLC (the “Defendants”) a special permit to allow for an adult-use outdoor marijuana cultivation establishment and an adult-use marijuana product manufacturing establishment on approximately 1.204 acres of land on property located at 537 Ashland Street, North Adams, Massachusetts, numbered Lots 245-0-3A, 245-0-4, and 245-0-5 in the Assessor’s database (the “Property”). The City owns numbered Lot 245-0-6 which abuts the Property and contends that

the Decision is arbitrary, capricious, and is based on untenable legal grounds, and exceeds the authority of the Planning Board.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to G.L. c. 40A, §17.

PARTIES

3. Plaintiff City of North Adams, by and through its Mayor, is a duly organized municipality, with a principal place of business at North Adams City Hall, 10 Main Street, North Adams, MA.

4. Defendant New England Alchemy LLC is a Massachusetts limited liability company with a principal office address of 76 Gothic Street, Northampton, MA.

5. Defendant Rustin Kluge is the owner of New England Alchemy LLC with a last known address of 76 Gothic Street, Northampton, MA.

6. Defendant Planning Board is a duly organized municipal board of the City of North Adams.

7. Defendant members of the Planning Board are named only in their official capacities as members of the Planning Board, and as required pursuant to G.L. c. 40A, §17, they are listed below together with their respective addresses:

- (a) Brian Miksic, 123 Church Street, North Adams, MA 01247;
- (b) Jesse Lee Eagan Poirer, 45 Williams Street, North Adams, MA 01247;
- (c) Lisa Blackmer, 74 Cleveland Avenue, North Adams, MA 01247;
- (d) Lynette Ritland Bond, 54 Orchard Hill, North Adams, MA 01247;
- (e) Robert Burdick, 67 Cherry Street, North Adams, MA 01247
- (f) Kyle Hanlon, 264 Beaver Street, North Adams, MA 01247

- (g) Kayla Hollins, 96 Veazie Street, North Adams, MA 01247
- (h) Paul Senecal, 165 East Avenue, North Adams, MA 01247; and
- (i) Rye Howard, 23 Goodrich Street, North Adams, MA 01247.

FACTS

8. The Property is located on approximately 1.204 acres of land, known as 537 Ashland Street, North Adams, Massachusetts and numbered as lots 245-0-3A, 245-0-4, and 245-0-5 in the Assessor's database.

9. The Property is encumbered by a parking lot and two (2) structures used as automotive repair garages.

10. The Property is located in the Industrial-1 Use District, as designated under the City's Zoning Ordinances.

11. The City owns a parcel of land numbered Lot 245-0-6 in the Assessor's database which abuts the Property.

12. The Defendants filed an application for a special permit with the Planning Board on or about February 8, 2022 to allow for an adult-use outdoor marijuana cultivation establishment and an adult-use marijuana product manufacturing establishment at the Property (the "Application"). A true and accurate copy of the Application is attached hereto as Exhibit A.

13. Pursuant to the Application, the Defendants seek to convert the existing parking lot on the Property into an outdoor marijuana cultivation establishment and to modify the existing structures for "cannabis cultivation facility support buildings" and for an extraction booth.

14. The Application provided that the Defendants intend to mitigate odor from the outdoor marijuana cultivation establishment only by planting marigold and lavender plants. No

other measures are proposed to mitigate the odors which will emanate from the area where the cannabis plants will be grown outdoors.

15. On March 14, 2022, the Planning Board conducted a remote public hearing on the special permit application.

16. Upon information and belief, on March 14, 2022, the Planning Board voted 8-1, without a roll call vote, as is required for remote hearings, to grant a special permit to allow an adult-use outdoor marijuana cultivation establishment and an adult-use marijuana product manufacturing establishment at the Property.

17. The Planning Board's Decision was filed with the City Clerk on March 15, 2022. A true and accurate copy of the Decision is attached hereto as Exhibit B.

18. Pursuant to Section 10.12.5 of the City's Zoning Ordinance, a special permit is required for the operation of any marijuana establishment in accordance with Sections 10.12 and 12.3 of the Zoning Ordinance.

19. Pursuant to Section 12.3.4 of the City's Zoning Ordinance, the Planning Board has the limited authority to grant special permits as follows:

Before granting a special permit for any use requiring such permit under the provisions of this ordinance, the special permit granting authority shall find that the proposed use:

- (1) Will be in harmony with the general intent and purpose of this ordinance; and
- (2) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood;
- (3) Will not have vehicular and pedestrian traffic of a type and quantity so as to cause significant adverse effect to the neighborhood;
- (4) Will not have a number of residents, employees, customers or visitors so as to cause significant adverse effect to the neighborhood;
- (5) Will not be dangerous to the immediate neighborhood or the premises through fire, explosion, emission of wastes or other causes;
- (6) Will not create such noise, vibration, dust, heat, smoke, fumes, odor, glare, adverse visual effects or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;

- (7) Will not cause degradation of the environment;
- (8) Will not impose an excessive financial burden to the City.

20. The Decision does not contain the findings required for a special permit under Section 12.3.4 of the Zoning Bylaw.

21. The Decision did not make any specific, factual findings regarding odor mitigation required for the issuance of a special permit.

22. The Planning Board's finding that the proposed use "will protect adjoining premises and the general neighborhood from any detrimental impact resulting from the use of the subject property including, but not limited to, creation of a nuisance by virtue of noise, odor, unsightliness, signs or vibration" is vague, arbitrary and capricious. This is a mere recitation of required findings and does not include any specific, factual findings.

23. In granting a special permit for an outdoor marijuana cultivation establishment with limited odor mitigation through only the minimal use of seasonal vegetation, the Planning Board did not consider or address the Special Permit review criteria of Section 12.3.4 applicable to marijuana establishments.

24. The Planning Board did not consider or impose any landscaping or vegetated buffer requirement from the abutting properties as required by Section 12.3.8(d) of the Ordinance.

25. The Planning Board's improper grant of a special permit undermines the intent of the Ordinance and unlawfully deprives the Planning Board of its ability to impose the specific requirements of the Ordinance for marijuana establishments.

26. The Decision is arbitrary, capricious, based on untenable legal grounds and exceeds the authority of the Planning Board.

COUNT I
(Appeal Pursuant to G.L. c. 40A, §17)

27. Paragraphs 1 through 26 are hereby repeated and incorporated by reference as if fully set forth herein.

28. Pursuant to G.L. c. 40A, §17 and the Zoning Ordinance, Section 12.3.4, the Planning Board's Decision granting the Defendants' Application for a special permit is arbitrary, capricious, based on untenable legal grounds and exceeds the authority of the Planning Board.

29. The Defendants made no showing, and the Planning Board did not find that the outdoor marijuana cultivation establishment would not result in substantial odors that could be mitigated year-round.

30. The Defendants made no showing, and the Planning Board did not find that the outdoor marijuana cultivation establishment would not result in substantial odors that would be detrimental to and have a significant adverse effect on the neighborhood.

31. The Planning Board's granting of a special permit without the required findings unlawfully circumvented the Special Permit requirements for marijuana establishments under the City's Zoning Ordinances.

32. The Planning Board's grant of a special permit undermines the clear intent of the Ordinances, which is for the Planning Board to apply a Special Permit review process to the uses proposed under Section 10.12 of the Ordinances.

33. The Decision is arbitrary, capricious, based on untenable legal grounds, and must be annulled pursuant to G.L. c. 40A, §17.

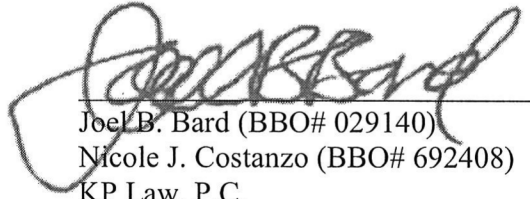
RELIEF

WHEREFORE, the Planning Board requests this Honorable Court:

- (1) Annul the Planning Board's Decision to grant the Defendants' Application for a special permit; and
- (2) Grant such other relief as this Court deems equitable and proper.

CITY OF NORTH ADAMS, by and through
its Mayor,

By its attorneys,


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Date: April 1, 2022

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