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**#254-22**

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Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	May 3, 2022
Land Use Action Date:	July 23, 2022
City Council Action Date:	August 1, 2022
90-Day Expiration Date:	August 1, 2022

DATE: April 29, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Michael Gleba, Senior Planner

SUBJECT: **Petition #254-22**, SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retail marijuana establishment, to allow parking within the side setback, to allow parking stalls with reduced length, to alter and extend the nonconforming driveway width, to waive perimeter screening requirements, to waive lighting requirements and to waive the 25% façade transparency requirement at **1185 Chestnut Street**, Ward 5, Newton, on land known as Section 51 Block 45 Lot 09, containing approximately 17,091 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 6.10.3.D, 4.4.1, 5.1.8.A.1, 5.1.13, A, 5.1.10, 6.10.3.E.15 of the City of Newton Rev Zoning Ord, 2017.

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The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



**1185 Chestnut Street**

## **EXECUTIVE SUMMARY**

The subject property at 1185 Chestnut Street consists of a 17,091 square foot lot in a Business Use 2 (BU2) district improved with a 7,880 square foot single-story office building constructed in 1960 and associated surface parking abutting the Upper Falls Greenway.

The petitioner is proposing to reduce the building size to 4,988 square feet and operate a marijuana retail establishment. Defined as an entity that can sell recreational or adult use marijuana, this proposed use requires a special permit from the City Council per Section 6.10.3.D of the Newton Zoning Ordinance (NZO).

As designed the proposed marijuana retailer would also require other zoning relief.

Per Sec. 5.1.8.A.1 no parking may be located within a required side setback. As all the proposed parking stalls are located within either the eastern or western side setbacks, a special permit per Sec. 5.1.13 is required.

Parallel parking stalls must be a minimum of 9 feet wide and 21 feet in length per Sec. 5.1.8.B.2. Three parallel parking stalls proposed along the eastern wall of the building are 20 feet in length, requiring a special permit per Sec. 5.1.13.

Sec. 5.1.8.D.1 requires two-way entrance and exit drives to have a minimum width of 20 feet. The existing driveway has a nonconforming width of 19 feet. As the petitioners propose to modify the use and structure, a special permit per sections 5.1.8.D.1 and 7.8.2.C.2 to maintain their existing width.

Sec. 5.1.9.A requires outdoor parking facilities with more than five stalls to have perimeter screening from abutting streets and parcels. The petitioner is providing a six-foot stockade fence along the eastern and western lot lines of the parcel, as well as screening on the western and rear lot lines outside of the fence, as required. A special permit is requested per Sec. 5.1.13 to waive the perimeter screening requirements for those portions of the parcel that do not meet the requirements of that section.

The petitioner is also seeking a Sec. 5.1.13 exception to Sec. 5.1.10.A's requirement that a parking facility used at night to have security lighting with a minimum intensity of one-foot candle on its entire surface.

Lastly, Sec. 6.10.3.E.15 requires that a marijuana retailer located on the ground level provide at least 25 percent transparency along the building's front façade at ground level, and that existing buildings shall not be modified to reduce the ground level transparency to less than 25 percent, unless the City Council finds it appropriate. As designed, the proposed structure would have 16.4% transparency at the front façade, necessitating a waiver of the transparency requirement of Sse.6.10.3.E.15.

The Planning Department has engaged a consultant to perform a traffic and transportation peer review of aspects of the project and anticipates receiving its comments in advance of a future public meeting on this petition.

## I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the City Council should consider whether:

- The specific site is an appropriate location for the proposed marijuana retailer as designed (§7.3.3.1)
- The proposed marijuana retailer as developed and operated will adversely affect the neighborhood (§7.3.3.2)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.3)
- There will be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.4)
- Literal compliance with the requirement that no parking may be located within a required side setback is impracticable due to the nature of the use, size, width, depth, shape, or grade of the lot or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.3.E; §5.1.13)
- Literal compliance with the requirement that parallel parking stalls must be a minimum of 21 feet in length is impracticable due to the nature of the use, size, width, depth, shape, or grade of the lot or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.8.B.2; §5.1.13)
- The proposed alteration and extension of the existing nonconforming two-way driveway's width of 19 feet where 20 feet is required is substantially more detrimental than the existing nonconforming use to the neighborhood (§5.1.8.D.1 and §7.8.2.C.2).
- Literal compliance with the requirement that parking facilities with more than five stalls provide perimeter screening from abutting streets and parcels is impracticable due to the nature of the use, size, width, depth, shape, or grade of the lot or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.9.A; §5.1.13)
- Literal compliance with applicable parking facility lighting requirements is impracticable due to the nature of the use, size, width, depth, shape, or grade of the lot or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.10; §5.1.13)
- Whether any impacts to security and aesthetics resulting from the petitioner's proposed front façade's ground level transparency of 16.4% (the existing condition) where 25% is required have been appropriately mitigated (§6.10.3.F.15)

With regard to the special permit required to allow the proposed Marijuana Retailer, the City Council should also consider whether:

- The lot is designed such that it provides convenient, safe and secure access and egress

for clients and employees arriving to and leaving from the site, whether driving, bicycling, walking or using public transportation. (§6.10.3.H.1.a)

- Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.H.1.b)
- The Marijuana Retailer is designed to minimize any adverse impacts on abutters. (§6.10.3.H.1.c)
- The Marijuana Retailer is not located within a 500-foot radius of a public or private K-12 school. (§6.10.3.H.2.a)
- Traffic generated by client trips, employee trips, and deliveries to and from the marijuana retailer will not create a significant adverse impact on nearby uses. (§6.10.3.H.2.b)
- 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. (§6.10.3.H.2.c)
- The building and site are accessible to persons with disabilities. (§6.10.3.H.2.d)
- The lot is accessible to regional roadways and public transportation. (§6.10.3.H.2.e)
- The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.H.2.f)
- The marijuana retailer's hours of operation will have no significant adverse impact on nearby uses. (§6.10.3.H.2.g)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on south side of Chestnut Street west of its intersection with Oak Street. The neighborhood features a mix of uses, with the area to the east including industrial and commercial uses while in other directions residential uses, including single-, two- and multiple- family uses predominate (**Attachment A**). The site and the abutting property to the east are zoned Business 2 (BU2). Several parcels to the east are zoned Business 1 (BU1), with the remainder of the neighborhood to the north, west and south are zoned Multi Residence 1 (MR1) (**Attachment B**).

### B. Site

The subject property is a largely level 17,091 square foot lot improved with a 7,880

square foot single-story office building and associated surface parking. The front portion of the site features some lawn area and mature trees and shrubbery. Vehicular access is provided by a curb cut on the property's left (east) that serves the parking area.

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The petitioner is proposing to reduce the size of an existing 7,880 square foot single-story office building to 4,988 square feet and operate a marijuana retail establishment.

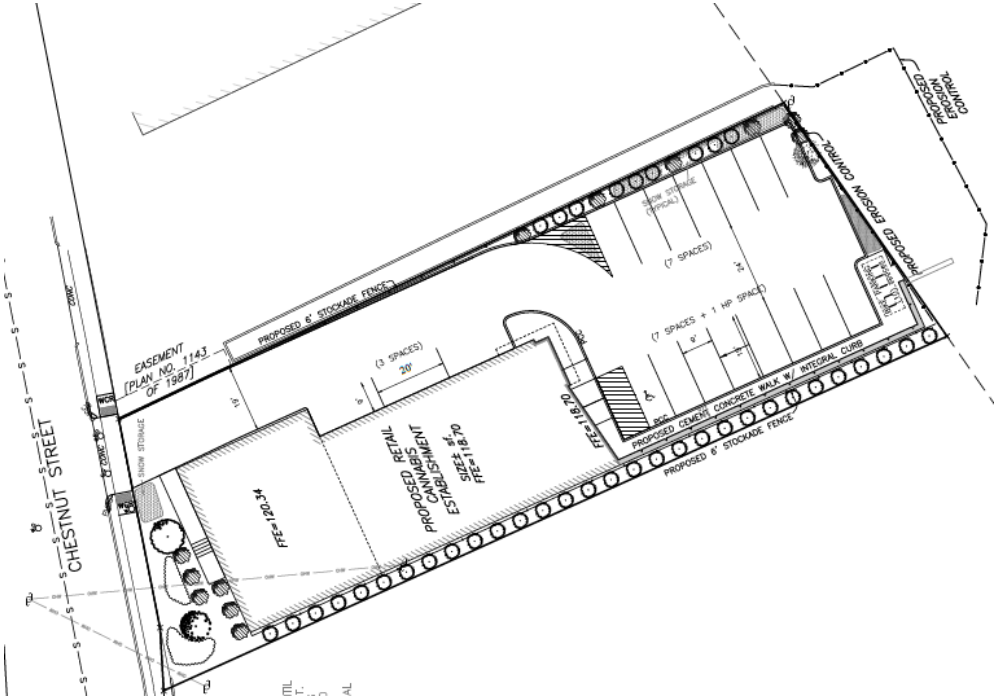
The mayor has signed a provisional Host Community Agreement (HCA) (as required prior to applying for a Special Permit and/or a license from the state Cannabis Control Commission) with Nuestra, LLC, the proposed marijuana retailer (d/b/a "Boston Garden").

#### B. Operations

The petitioner will offer only recreational marijuana on site. All marijuana will be delivered to the site, and the petitioner is proposing to employ nine (9) staff members during the largest shift. While the City Council shall set the proposed marijuana retailer's hours of operation via a special permit condition, the petitioner has indicated that it intends to be open 9:00 a.m.-9:00 p.m daily

#### C. Site and Building Design

The petitioner is proposing to reduce the size of the existing 7,880 square foot single-story office building to 4,988 square feet. As designed, the rear portion of the building would be removed, to be preplaced by parking and circulation area. The front portion of the structure would be retained, and the parcel would remain generally level.



**Site plan (with proposed landscaping)**

While there is an existing doorway on the front façade of the building that would remain, the petitioner has indicated that the main customer entry would be located at the rear of the building, nearer to the parking area.



**Front & left side elevations**

The City's Registered Marijuana Use ordinance requires that Marijuana Retailers

“located on the ground level shall provide at least 25 percent transparency along the building’s front façade at ground level, unless waived by the City Council.” The intent of this requirement is to ensure the security requirements found in the State Law do not overburden the aesthetics of the structure in relationship to the adjacent structures. The petitioner is proposing to maintain the existing structure’s 16.4% transparency along the Chestnut Street frontage.

D. Parking and Circulation

As detailed in the attached zoning review memorandum (**Attachment C**), a marijuana retailer is subject to the parking requirements of Sec. 5.1.4. The Commissioner of Inspectional Services has determined that given the specific nature of the proposed retail use (i.e., customers would not be able to shop for products without employee assistance), the parking requirement is determined by aggregating that for each of several sub-uses, namely retail, office, and storage. The proposed 4,988 square foot building and nine employee staff would require 14 stalls (this calculation is premised upon nine employees on site- the petitioner should confirm this is accurate). The petitioner intends to reconfigure the existing parking lot to provide 18 parking stalls (with one of those stalls designed as accessible), exceeding the required minimum by four. It would also feature 10 bicycle parking spaces.

As referenced above, vehicular access to the lot would continue to be provided by a nonconforming 19-foot-wide, two-way curb cut and driveway located along the left (east) side of the property.

The Planning Department recommends that the petitioner provide information regarding how deliveries to the site would be handled, e.g., what time of day, what kinds of trucks, etc. and, if necessary, turning template for any such vehicles.

The Planning Department expects to receive comments on the proposed parking facility from the transportation peer reviewer that has been engaged to review this petition (see below).

E. Landscaping and Lighting

Per the NZO, outdoor parking facilities with more than five stalls must be screened from abutting streets and properties with at least five feet in width of dense shrubs and trees and/or a wall, fence etc. of at least six feet in height. Based upon submitted plans, the petitioners propose to install a mixture of evergreen and deciduous trees and shrubs along the right, left, and rear property lines. A six-foot high stockade fence is also proposed for those areas as well.

Parking facilities which are used at night are required to have security lighting with a minimum intensity of one-foot candle on their entire surfaces per Sec. 5.1.10.A.

While the Planning Department is sensitive to issues related to “over-lighting,” light overspill and light pollution, it recognizes that the relevant NZO requirements are related to security concerns. Given the documentation on security provided by the applicant, and that NZO’s Marijuana Establishment-specific special permit criteria specifically requires that the lot be “designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site, whether driving, bicycling, walking or using public transportation” (§6.10.3.G.1.a), the Planning Department recommends that the petitioner provide information as to why granting its requested exception to applicable lighting requirements would be appropriate.

F. Traffic and Transportation

The petitioner submitted a traffic impact statement dated April 21, 2021, as revised March 25, 2022.

This analysis indicates the proposed use, based upon data from the Institute of Transportation Engineers (ITE)’s Trip Generation, 10th edition, the proposed use would be expected to generate approximately 48 “vehicle trips ends” during the weekday afternoon peak hour and approximately 49 “vehicle trips ends” during Saturday midday peak hour.

The petitioner’s submitted materials include an “opening day plan” outlining its intentions regarding traffic and parking management during the opening phase, including having a parking lot attendant on-site for at least the first six months of operation. The Planning Department recommends that the petitioner submit a comprehensive transportation demand management (TDM) plan identifying its proposed approach

The Planning Department has engaged an on-call transportation consultant to conduct a peer-review of the petitioner’s materials on transportation/traffic issues. The Planning Department anticipates receiving a Peer Review Memorandum from its consultant in advance of a future public meeting.

IV. MINIMUM CRITERIA AND LIMITATIONS ON APPROVAL

Sec. 6.10.3.E of the NZO establishes certain “Minimum criteria and limitations on approval” for marijuana retailers. Those relevant to the present petition include the following:

A. Location

The Marijuana Use Ordinance requires that a marijuana retailer may not be located within a 500-foot radius of an existing private or public K-12 school. The proposed Marijuana Retailer satisfies this criterion.



B. Registration

All Marijuana Retailers must be properly registered with the Department of Public Health or the CCC. The petitioner is in the process of seeking licensure from the CCC for the retail sale of recreational marijuana. The petitioner would be required to obtain licensure from the CCC before obtaining a certificate of occupancy.

C. Signage

State Law and the Registered Marijuana Use Ordinance prohibit graphics, symbols, or images of marijuana or related paraphernalia from being displayed or clearly visible from the exterior of a Marijuana Retailer. As such, all signage will be submitted to the Urban Design Commission for review and approval. All signage must also meet the state requirements and be reviewed by the CCC.

D. Hours of Operation

The petitioner has proposed to have hours of operation of 9:00 a.m. to 9:00 p.m. daily, Monday through Sunday.

E. Number

The number of Marijuana Retailers shall not exceed 20% of the number of liquor licenses issued in the City pursuant to G.L.c 138 § 15 (commonly known as “package stores”). The number of Marijuana Retailers in the City is less than 20% of the number of package stores currently.

F. Distance from Other Marijuana Retailers

The Registered Marijuana Use Ordinance prohibits Marijuana Treatment Centers (MTCs) and marijuana retailers from locating within a one-half mile radius of an existing MTC or marijuana retailer.

G. Size

The Registered Marijuana Use Ordinance prohibits MTCs or marijuana retailers from occupying more than 5,000 square feet. The proposed marijuana retailer will occupy approximately 4,988 square feet.

H. Transparency

The Petitioner intends to not modify the existing building’s 16% transparency along its Chestnut Street frontage, requiring a waiver from the 25% minimum required under the NZO.

There are several additional minimum criteria and limitations on approval for Marijuana Retailers the petitioner would be subject to and would be required to fulfill prior to the issuance of a any certificate of occupancy should this petition be approved. For a complete list of all criteria please see NZO §6.10.3.

## V. TECHNICAL REVIEW

### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**Attachment C**) provides an analysis of the proposal regarding zoning. Based on the Memorandum, the petitioner is seeking the following relief:

- Special Permit per §7.3.3 to:
  - allow a marijuana retailer (§6.10.3.D, §4.4.1)
  - allow parking within the required side setback (§5.1.8.A.1, §5.1.13)
  - allow parking stalls with reduced length (§5.1.8.B.2, §5.1.13)
  - alter and extend the nonconforming driveway width (5.1.8.D.1; §7.8.2.C.2)
  - waive perimeter screening requirements (§5.1.9.A, §5.1.13)
  - waive the lighting requirements (§5.1.10, §5.1.13)
  - waive the 25% façade transparency requirement (§6.10.3.E.15)

### B. Engineering Review

Review of the project by the Engineering Division is not required at this time.

### C. Historical Review

The petitioner should coordinate with Historical Commission staff as to the appropriate review of the proposed modifications to the existing structure.

## VI. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memorandum prior to any future public hearing.

### ATTACHMENTS:

- Attachment A:** Zoning Map  
**Attachment B:** Land Use Map  
**Attachment C:** Zoning Review Memorandum

# ATTACHMENT A








## Land Use

1185 Chestnut St.

*City of Newton,  
Massachusetts*

## Land Use

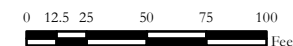
### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Mixed Use
-  Nonprofit Organizations
-  Vacant Land

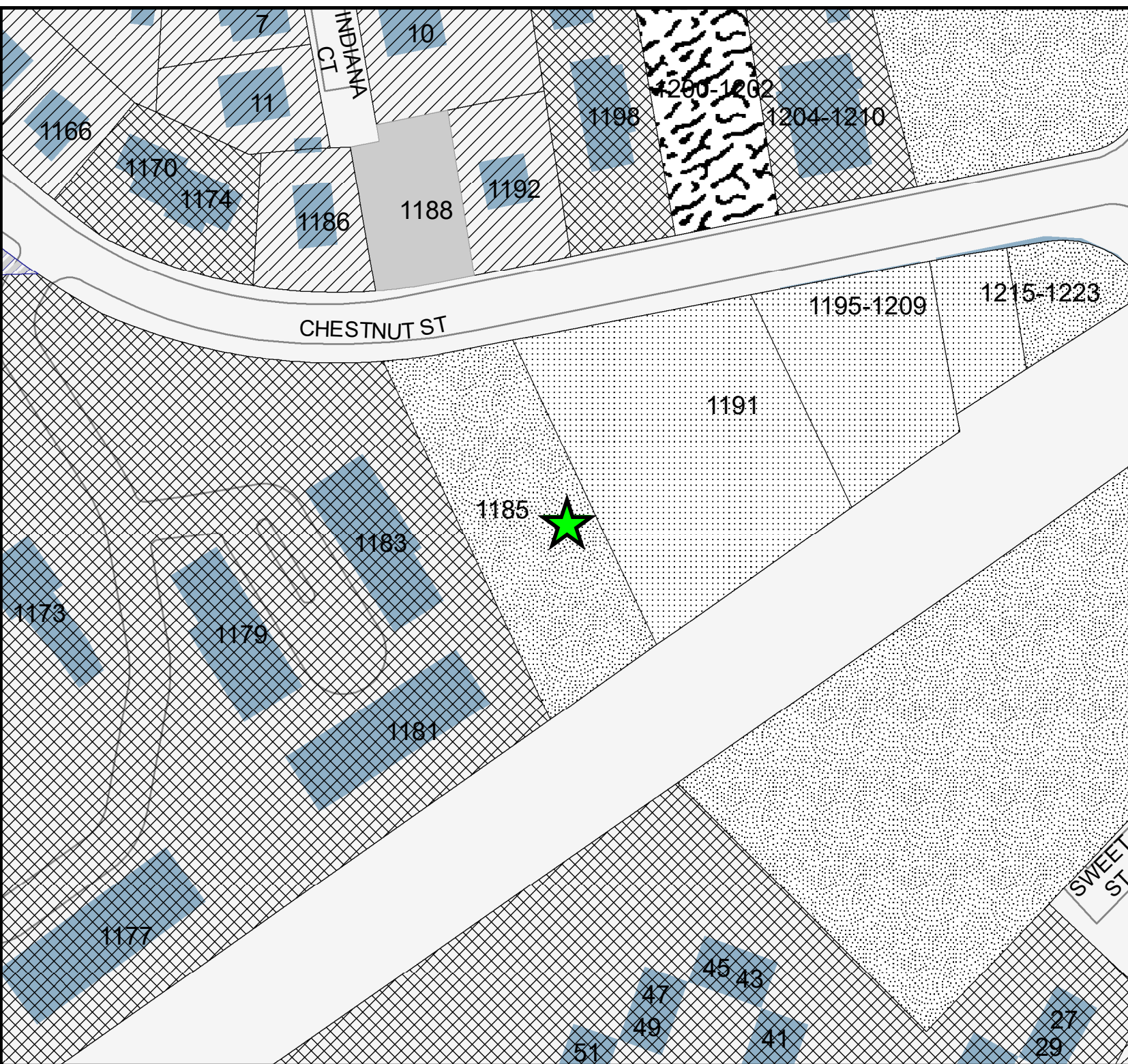


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: April 25, 2022






# ATTACHMENT B

## Zoning

1185 Chestnut St.

*City of Newton,  
Massachusetts*

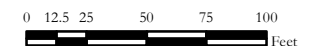
### Legend

-  Multi-Residence 1
-  Business 1
-  Business 2

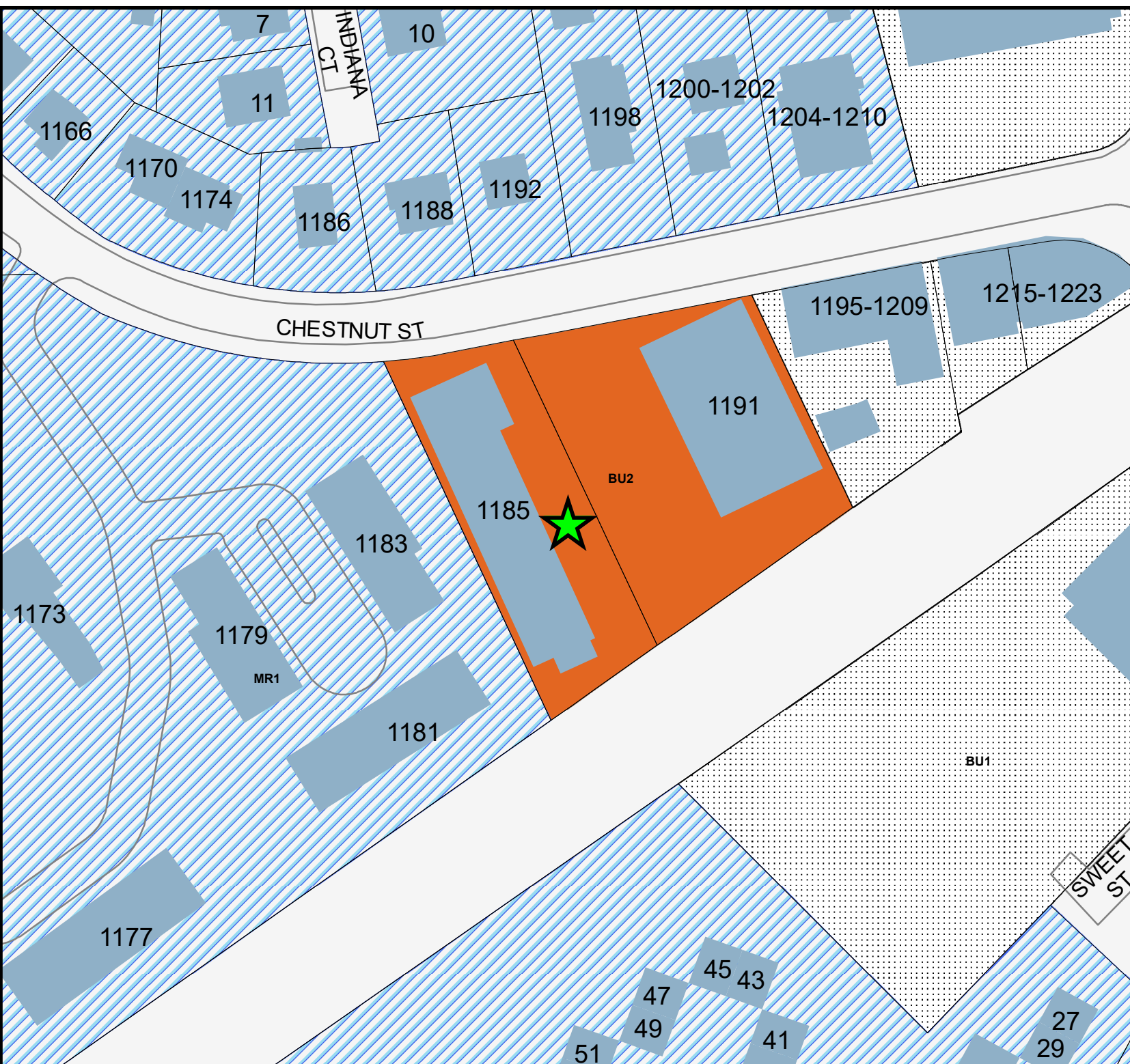


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CITY OF NEWTON, MASSACHUSETTS  
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Map Date: April 25, 2022





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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: March 7, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin Chief Planner for Current Planning

Cc: Nuestra LLC, applicant  
Phil C. Silverman, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

**RE: Request to allow a marijuana retail establishment**

Petitioner: Nuestra LLC	
Site: 1185 Chestnut Street	SBL: 51045 0009
Zoning: BU2	Lot Area: 17,091 square feet
Current use: Vacant	Proposed use: Marijuana retail establishment

### **BACKGROUND:**

The property at 1185 Chestnut Street consists of a 17,091 square foot lot improved with a 7,880 square foot single-story office building constructed in 1960 and associated surface parking abutting the Upper Falls Greenway. The petitioner seeks reduce the building size to 4,988 square feet to operate a marijuana retail establishment pursuant to section 6.10.3.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Phil C. Silverman, attorney, dated 8/27/2021
- Existing Conditions Plan, prepared by Hayes Engineering, Inc, dated 12/23/2021
- Site Preparation, prepared by Hayes Engineering, Inc, dated 12/23/2021
- Proposed Site Plan, prepared by Hayes Engineering, Inc, dated 12/23/2021
- Landscape Plan, prepared by Hayes Engineering, Inc, dated 12/23/2021
- Light Plan, prepared by Hayes Engineering, Inc, dated 12/23/2021
- Floor Plan, prepared by BKA Architects, dated 11/9/2021
- FAR worksheet, submitted 1/6/2022
- Interior square footage, submitted 2/28/2022

**ADMINISTRATIVE DETERMINATIONS:**

1. The petitioner is proposing to operate a marijuana retail establishment. This use requires a special permit from the City Council per Section 6.10.3.D of the Newton Zoning Ordinance.
2. Section 6.10.3.E.5 states that a marijuana retailer is subject to the parking requirements of section 5.1.4. The Commissioner of Inspectional Services has determined that because of the specific nature of the proposed retail use, the space may be broken down into sub-uses to determine the parking requirement. The petitioners are proposing to reduce the building to 4,620 square feet with the following breakdown:

Use	Requirement per §5.1.4	Total Required
Retail 3,022 square feet/ 9 employees	1 stall/ 300 sf + 1 stall/ 3 employees	11
Office 478 square feet	1 stall/ 250 sf	2
Storage 1,488 square feet	1 stall/2,500 sf	1
<b>TOTAL</b>		<b>14</b>

The proposed establishment requires 14 parking stalls. The petitioner proposes to construct 17 parking stalls, requiring no waivers.

3. Per section 5.1.8.A.1 no parking may be located within a required side setback. Fourteen of the proposed parking stalls are located within the eastern and western side setbacks, requiring a special permit per section 5.1.13.
4. There are three parallel parking stalls located along the eastern wall of the building. Per section 5.1.8.B.2 parallel parking stalls must be a minimum of 9 feet wide and 21 feet in length. The proposed stalls are 20 feet in length, requiring a special permit per section 5.1.13.
5. Section 5.1.8.D.1 requires entrance and exit drives to have a minimum width of 20 feet for two-way use. The existing driveway has a nonconforming width of 19 feet. The petitioners propose to remove portions of the building, altering and extending the nonconforming driveway width, requiring a special permit per sections 5.1.8.D.1 and 7.8.2.C.2.
6. Section 5.1.9.A requires outdoor parking facilities with more than five stalls to provide perimeter screening from abutting streets and parcels. The petitioner is providing a six-foot stockade fence along the eastern and western lot lines of the parcel, as well as screening on the western and rear lot lines outside of the fence, as required. A special permit is requested for the eastern lot line which does not provide the landscaping on the outside of the fence per section 5.1.13 to waive the perimeter screening requirements.

7. Section 5.1.10.A requires that parking facilities which are used at night have security lighting with a minimum intensity of one-foot candle on the entire surface of the parking facility. The proposed lighting in the parking facility does not meet the requirements of section 5.1.10.A, requiring a special permit per section 5.1.13.
8. Section 6.10.3.E.15 requires that a marijuana retailer located on the ground level provide at least 25 percent transparency along the building’s front façade at ground level, and that existing buildings shall not be modified to reduce the ground level transparency to less than 25 percent, unless the City Council finds it appropriate. The petitioner intends to provide 16.4% transparency at the front façade, necessitating a waiver of the transparency requirement of section 6.10.3.E.15.
9. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§6.10.3.D §4.4.1	To allow a marijuana retailer	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13	To allow parking within the side setback	S.P. per §7.3.3
§5.1.8.B.2 §5.1.13	To allow parking stalls with reduced length	S.P. per §7.3.3
§5.1.8.D.1 §7.8.2.C.2	To alter and extend the nonconforming driveway width	S.P. per §7.3.3
§5.1.9.A §5.1.13	To waive perimeter screening requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive the lighting requirements	S.P. per §7.3.3
§6.10.3.E.15	To waive the 25% façade transparency requirement	S.P. per §7.3.3