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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 9, 2022
MEETING DATE: September 13, 2022
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #254-22

1185 Chestnut Street

Petition #254-22, for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a retail marijuana establishment, to allow parking within the side setback, to waive perimeter screening requirements, to waive lighting requirements, to waive the 500 ft. buffer for an existing kindergarten, 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, 5.1.9.A, 5.1.13, 5.1.10, 6.10.3.F.1, 6.10.3.F.15 of the City of Newton Rev Zoning Ord, 2017.

The Land Use Committee (the "Committee") held a public hearing on May 3, 2022, on this petition. This memo reflects additional information addressed to the Planning Department as of September 8, 2022.

BACKGROUND

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).

The proposed 4,988 square foot building and nine employees would require 14 parking stalls. 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 number of parking stalls by four. The site would also feature 10 bicycle parking spaces.

UPDATE

Adjacent Day Care Operations

Regarding the issue as to whether the proposed project is subject to regulations related to a kindergarten operating within 500 feet of the subject site (*see* NZO Sec. 6.10.3(F)(1)), the petitioner has indicated that it worked with the adjacent childcare center that has ten children enrolled in a kindergarten program. As such, the petitioner has requested additional relief that the City Council allow the proposed facility to operate adjacent to a kindergarten.

The petitioner has indicated that toward that end, it has worked with the abutting childcare facility to identify modifications to the proposed plans to “enhance the existing screening and buffering between the two parcels” and that such “commitments be added as conditions of any land use approval granted.” These modifications include the installation of a six-foot-tall fence along the shared property line to screen the view of proposed facility from the adjacent parking lot and from within the childcare facility. Also, the petitioner would install plantings on the abutting parcel’s side of the fence; use personnel and security cameras to monitor the parking area of the site to “mitigate any illegal parking or on-site consumption,” as well as clean up and maintain some open space at the rear of both parcels, and to enhancing the childcare facility’s existing playground area.

Responses to Previous Comments

The petitioner submitted responses to comments made in the Planning Department’s April 29, 2022, memo and at the May 3, 2022, Land Use Committee public hearing. Those responses, which are contained in a letter dated July 21, 2022, include the following information.

- the petitioner has modified its proposed photometric plan to include security lighting with a minimum intensity of one-foot candle on the parking area’s entire surface per Sec. 5.1.10.A requirements to enhance security. The petitioner has indicated that “(a)ll lighting will be downcast, dark sky compliant lighting as so not to result in light pollution to abutting properties.” As a result, while the previously sought relief from the relevant relief would no longer required, the Planning Department also recommends that the petitioner ensure that any lighting does not impact any neighboring residences.
- the proposed site plan has been updated to include a section of granite posts sand chain being placed between the sidewalk and the stockade fence along the left property line to provide “additional visual separation from the abutting driveway” while maintaining vehicular and pedestrian safety. The site plan has also been modified to show temporary snow storage areas

within the parking area. The petitioner has indicated it would remove all snow within 72 hours of a “major snow event” and requests such requirement be made a condition of a special permit. The petitioner should clarify their snow removal plans and which areas they are referring to. Their snow removal plan would not exempt them from the sidewalks, as the City requires “all property owners or occupants of a building to maintain all paved and concrete sidewalks abutting their property or business in a non-slippery condition free of ice and snow within 24 hours after snow has ceased to fall or ice has formed.”

- the site plan has been updated to reflect that the petitioner intends to improve the area of encroachment into the adjacent MBTA-owner Greenway property with landscaping and to provide a gravel pathway and gate to provide access between the proposed facility’s bicycle parking and the Greenway.
- a turning movement plan has been added to the site plans showing how vehicles would be able to safely enter and exit the site.

Traffic and Transportation

Transportation Peer Review

The Planning Department has engaged an on-call transportation consultant, the BSC Group, to perform a peer review of traffic and transportation-related materials submitted by the petitioner. The peer reviewer recommended in its initial response (**Attachment A**) that additional data be collected related to existing traffic levels and conditions to support the petitioner’s statements that the anticipated increase in traffic “is not anticipated to have an adverse effect on prevailing traffic conditions.” In its response (**Attachment B**), the petitioner has indicated it will commission a complete Traffic Impact Assessment (TIA) with a Level of Service (LOS) analysis but requests the completion of such a study that indicates that the project “not decrease the LOS for this intersection below the lesser of the existing conditions or LOS D,” be a condition of a special permit.

In response to comments from the peer reviewer, the site plans have been updated to include a solid yellow centerline line and stop bar at the site driveway and swept path analysis for the proposed parking lot’s most restricted parking spaces.

In response to the peer reviewer’s request that the petitioner’s Traffic Impact Statement be revised to discuss the parking demand and supply using either typical Institute of Transportation Engineers (ITE) parking generation rates, empirical data or operational criteria. The petitioner responded that it reviewed the ITE Parking Generation Manual to determine the parking demand for the proposed use and stated that the ITE peak parking demand rate for a Retail Marijuana dispensary is 2.2 spaces per 1,000 square feet on weekdays or 11 spaces using the entirety of the floor area of the building (the submitted traffic impact statement projects that 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 proposed facility would have 18 parking stalls (including one accessible parking space).

Also, in its response the peer reviewer recommended that the Traffic Impact Statement also include a discussion of crash data and safety within the study area, an assessment of the Intersection Sight Distance (ISD) (as this could impact Chestnut Street’s traffic flow), and a speed study to confirm the

assumed 85th percentile speed that is utilized to calculate the required ISD and the Stopping Sight Distance (SSD).

Proposed Transportation Demand Management (TDM) Plan

Also, per the Planning Department’s request in its April 29, 2022, public hearing memorandum, the petitioner has submitted a proposed TDM plan. As detailed by the petitioner, the TDM plan would:

- provide MBTA pass subsidies (to the “federal fringe limit”) for full time employees and prorated passes for part time employees; lockers and indoor bicycle storage for employees; an air pump and bicycle repair tools to employees and customers; and annual reimbursements for walking and/or athletic shoes to employees.
- designate a Transportation Coordinator to implement the TDM plan and maintain on-site information on pedestrian and bicycle facilities; MBTA maps and schedules; and car-pooling
- implement a “ride home plan” that will cover the cost of one ride share or taxi ride home per quarter in case of illness or emergency for those employees using alternative transportation.
- Provide bicycle, pedestrian, and transit route information on the marijuana retailer’s website

The petitioner has also indicated it would explore membership in a transportation management association and the Planning Department also notes the petitioner would provide ten on-site bicycle parking stalls.

The City is currently working on implementing standardized TDM measures based on the size of the project and number of parking stalls. At 18 parking stalls, the marijuana retailer is considered a smaller project, thus the Planning Department is supportive of proposed measures. Should the petition be approved, the TDM plan would be incorporated as a condition of the Council Order.

The peer reviewer will be available at the upcoming public hearing to discuss the proposal as it relates to the traffic study and transportation aspects of the petition.

ATTACHMENT(S)

Attachment A

BSC Group Transportation Peer Review, dated May 3, 2022

Attachment B

Petitioner’s response to Transportation Peer Review, dated September 7, 2022

MAY 3, 2022

Michael Gleba
Senior Planner
City of Newton
Planning and Development Department
1000 Commonwealth Avenue
Newton, MA 02459

RE: Transportation Peer Review – 1185 Chestnut Street

Dear Mr. Gleba,

As requested, BSC Group, Inc. (BSC) conducted a peer review of the Traffic Impact Statement prepared by Hayes Engineering, Inc. dated April 21, 2021, revised March 25, 2022 for the proposed 4,988 sf Nuestra, LLC marijuana establishment proposed at 1185 Chestnut Street in Newton, MA.

The purpose of this review is to ensure that the traffic analysis conforms to industry standards, to confirm that the traffic study methods are appropriate for the setting, and to ensure that the recommendations and proposed mitigation adequately address potential project impacts and are consistent with the City of Newton's recommended guidelines for transportation improvements.

The project site is located at 1185 Chestnut Street, with access off the segment of Chestnut Street between Pennsylvania Avenue and Oak Street and backs onto the Upper Falls Greenway. The project will demolish a portion of the existing building, renovate the remainder of the building and expand the parking to the rear of the site. The existing curb cut will be retained with new WCRs provided along the sidewalk on both sides of the driveway.

The key findings of our review of the Traffic Impact Evaluation are presented in the following sections. BSC's comments and recommendations are presented in bold.

Scope of Review

The following topics were reviewed in the Traffic Impact Statement as part of the peer review consistent with the Schedule H, Professional Services Work Authorization Form provided by the City:

- Review of the Traffic Impact Statement for compliance with the following:
 - Institute of Transportation Engineers (ITE) Trip Generation Manual (TGM) 10th Edition
 - MassDOT Transportation Impact Assessment (TIA) Guidelines
 - City of Newton Zoning Bylaw and General Bylaws
 - Specifically parking, ADA requirements, handicap access and emergency access
- Identification of potential new mitigation measures pertaining to traffic and congestion associated with the marijuana establishment
- Review of any Transportation Demand Management measures
- Review of site circulation and driveway locations
- Traffic study methodology

Specifically, the following was reviewed:

- Adequacy of study area
- Data collection and existing traffic counts
- Crash data and safety within the study area
- Sight distance
- Trip generation
- Design year traffic volumes
- Operations analysis at the study area intersections
- Site access and circulation
- Parking supply and configuration

Traffic Study Methodology/Adequacy of Study Area

The Traffic Impact Statement calculates trip generation and applies various reductions to them. The stated purpose of the Traffic Impact Statement is “to evaluate the anticipated Average and Peak Hour trip generation rates and volume for the facility under both prior and proposed uses.” The Traffic Impact Statement calculates the maximum peak hour increase in vehicles is 31 trip ends during the weekday PM peak hour and concludes “This anticipated increase is not anticipated to have an adverse effect on prevailing traffic conditions.” No existing traffic counts, design year traffic volumes or operational analysis of adjacent intersections are provided to justify this conclusion. It is unclear how this conclusion was reached.

1. **BSC recommends the Traffic Impact Statement be revised to include existing traffic counts, design year traffic volumes and operational analyses of adjacent intersections to confirm the conclusion reached.**

Data Collection and Existing Traffic Counts

No existing traffic counts were provided in the Traffic Impact Statement.

2. **BSC recommends the Traffic Impact Statement be revised to include existing traffic counts.**

Crash Data and Safety Within the Study Area

No crash data or safety evaluation was provided in the Traffic Impact Statement.

3. **BSC recommends the Traffic Impact Statement be revised to include a discussion of crash data and safety within the study area.**

Sight Distance

The Applicant provided an evaluation of Stopping Sight Distance (SSD) at the proposed driveway intersection along Chestnut Street. Based on the evaluation, sufficient SSD is provided at the intersection of Chestnut Street to meet the minimum distances per AASHTO as well as the minimum called for in the Newton Zoning Code. The Traffic Impact Statement does not include an assessment of Intersection Sight Distance (ISD) nor a speed study to determine the 85th percentile speed utilized in calculating the required SSD and ISD.

4. **BSC recommends the Traffic Impact Statement be revised to include an assessment of the ISD (as this could impact traffic flow along Chestnut Street) as well as a speed study conducted to confirm the assumed 85th percentile speed utilized for calculating the required SSD and ISD.**

Trip Generation

Existing Condition

The existing trip generation is calculated using Institute of Transportation Engineers (ITE) Land Use Code (LUC) 866, Pet Supply Superstore. The data plots for this LUC show the study sites having total gross floor areas ranging between approximately 18,000 sf and 28,000 sf.

- 5. BSC recommends the applicant discuss if this LUC is appropriate for a pet store with a total gross floor area of 7,880 sf.**

Marijuana Dispensary

The future trip generation for the marijuana dispensary was calculated using LUC 882, Marijuana Dispensary. Based on this LIC and a total gross floor area of 2,586 sf, the projected vehicle trips for weekday daily is 653, for weekday AM peak hour is 54, for weekday PM peak hour is 77, for Saturday daily is 670 and for Saturday peak hour is 94.

The applicant believes the ITE trip generation rates are high based on curiosity and scarcity of the use at the time of the study and compares them to empirical data from a recreational and medical marijuana dispensary located in Lynn, MA during the opening period between October 26 and November 18, 2019. This empirical data is used to project weekday vehicle trips of 373 and Saturday daily vehicle trips of 457.

The applicant references a pass-by trip rate of 49% for a Pharmacy/Drugstore without Drive-Through (ITE). The applicant also states empirical data from an existing dispensary located in Brookline, MA on June 13, 2019 show that 53.7% of patrons consider their stop to be a pass-by or diversion trip. The applicant applies the 49% pass-by trip rate to the LUC 882 trip generation projections to reduce the projected weekday daily trips to 333, weekday AM peak hour trips to 28, weekday PM peak hour to 39, the Saturday daily trips to 342 and the Saturday peak hour trips to 48.

The applicant then added the projected trips from the remainder of the building utilizing LUC 712, Small Office Building (2,402 gross sf) and calculated the total net increase/decrease in trips for weekday daily to be +344, for weekday AM peak hour to be +19, for PM peak hour to be +31, for Saturday daily to be +257 and for Saturday peak hour to be -7.

Th report then concludes "This anticipated increase is not anticipated to have an adverse effect on prevailing traffic conditions."

- 6. The applicant uses two LUCs for the proposed use when calculating the future trip generation. The description of LUC 882 starts by stating "A marijuana dispensary is a stand-alone facility...". This implies all support services are included under this use. The applicant should provide justification for using two LUCs to calculate the future trip generation.**

- 7. BSC recommends the applicant provide additional narrative justifying the pass-by trip calculation. The ITE LUC 880 does not seem relevant to the proposed use. A Pharmacy/Drugstore without Drive-Through is described as "A pharmacy/drugstore is a retail facility that primarily sells prescription and non-prescription drugs. A pharmacy/drugstore also typically sells cosmetics, toiletries, medications, stationary, personal care products, limited food products, and general merchandise.". The size of pharmacy/drugstore used in calculating the pass-by trips varies between 8,600 sf and 13,200 sf and are all located in Florida. Typically, empirical data when used in lieu of ITE rates will come from more than one location being studied on one day. The site in Brookline, MA should be compared to this site in terms of neighborhood context, roadway characteristics, traffic volumes and adjacent land uses. Additional empirical data (dates and/or sites) should be used to justify the pass-by trip calculation, if empirical data is to be utilized.**

8. The Traffic Impact Statement does not provide justification of the statement that “This anticipated increase is not anticipated to have an adverse effect on prevailing traffic conditions.” BSC recommends the Traffic Impact Statement be revised to include existing traffic counts, design year traffic volumes and operational analyses of adjacent intersections to confirm the conclusion reached.

Design Year Traffic Volumes

No design year traffic volumes were provided in the Traffic Impact Statement.

9. BSC recommends the Traffic Impact Statement be revised to include design year traffic volumes.

Operations Analysis at the Study Area Intersections

No operations analysis at the study area intersections was provided in the Traffic Impact Statement.

10. BSC recommends the Traffic Impact Statement be revised to include operations analysis at the study area intersections.

Site Access and Circulation

Site access will remain via the existing curb cut along Chestnut Street. The site driveway allows both entering and exiting vehicles and has no pavement markings. The site driveway will retain the existing curb cut and will improve the existing sidewalks by installing new WCRs on either side of the driveway.

11. BSC recommends the applicant consider installing a solid yellow centerline line and STOP bar at the site driveway.

12. BSC recommends a swept path analysis be conducted to confirm vehicular access to the most restrictive parking spaces in the parking lot.

Parking Supply and Configuration

The Parking Analysis section of the Traffic Impact Statement utilizes a 15-minute customer transaction time with 4 turnovers per hour to calculate the parking area can provide parking for 72 vehicles in the peak hour, which is greater than the Saturday trip generation peak hour rate of 48, concluding adequate parking is provided. The mixing of trip generation rates with parking generation rates is not the typical approach for parking analysis. Typically, parking generation rates, empirical data or operational criteria are used to develop the peak parking demand, which is then compared to the parking supply

13. BSC recommends the Traffic Impact Statement be revised to discuss the parking demand and supply using either typical ITE parking generation rates, empirical data or operational criteria.

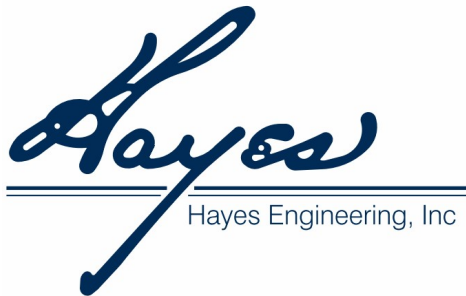
Please do not hesitate to contact our office with any inquiries you may have.

Sincerely,

BSC Group, Inc.



Wayne Keefner, PE, PTOE
Senior Project Engineer



ATTACHMENT B

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Refer to File No. NEW-0044A

September 7, 2022

Mr. Michael Gleba
Senior Planner
City of Newton Planning /& Development Department
1000 Commonwealth Avenue
Newton, MA 02459

RE: Transportation Peer Review
The Boston Garden
1185 Chestnut Street

Dear Mr. Gleba:

Hayes Engineering, Inc. (HEI) is in receipt of the BSC Group peer review dated May 3, 2022, for the above referenced project. It should be noted that the Applicant did not receive a copy of this peer review until September 3, 2022. Please consider the following responses in support of the above referenced Project:

Items 1 through 10, inclusive, involve the collection of data and performance of a Traffic Impact Assessment for the above referenced Project. The Special Permit requirements set forth in §6.10.3 of the City of Newton Zoning Ordinance related to Registered Marijuana Uses, nor do the requirements of §7.3, as it relates to Special Permit Review, require a complete Traffic Impact Assessment (TIA) or Level of Service (LOS) analysis.¹ Additionally, the Massachusetts Department of Transportation (MassDOT) Highway Department in its Traffic Impact Assessment (TIA) Guidelines, Section 3.I.C specifically identifies the following criteria for intersection TIAs:

Intersections (to be assessed by approach) or roadway segments where site-generated trips increase the peak hour traffic volume by a) five (5) percent or more or b) by more than 100 vehicles per hour should be included in the study.

The proposed use, using the full ITE trip generation estimates for the proposed dispensary, does not meet the 100 vehicle per hour threshold in any of the peak hours, without any reduction for pass-by vehicles or alternative modes of transportation. The projected maximum peak hour increase of 31 vehicle trip ends would necessitate a peak hour, bi-directional volumes of less than 620 vehicles in the peak hour at the site to trigger a TIA, including LOS analysis, under the MassDOT TIA guidelines. Spot observations during site visits during the typical AM peak hours were representative of at least this volume for the Chestnut Street and Oak Street intersection. Nevertheless, the Applicant has commissioned a full TIA, with LOS analysis, for this intersection as a result of the peer review. The Applicant respectfully requests that the City grant the Special Permit conditioned upon the Project as proposed not decrease the LOS for this intersection below the lesser of the existing conditions or LOS D.

¹ It should be noted that the City of Newton Zoning Ordinance specifically identifies the performance of a LOS analysis in §4.1.4(J), 7.3.5.A.5.d, and 7.3.5.E. There are no other specific references to a LOS analysis as it may relate to this Project.



Mr. Michael Gleba
Transportation Peer Review
1185 Chestnut Street
Newton, MA
September 7, 2022

The Site Plans for the Project have been updated to address the comments in items 11 and 12 related to the inclusion of a solid yellow centerline line and stop bar at the site driveway and swept path analysis for the most restrictive parking spaces in the proposed parking lot.

The Institute of Transportation Engineers (ITE) Parking Generation Manual was reviewed to determine the parking demand for the proposed recreational marijuana dispensary. The ITE peak parking demand rate for a Retail Marijuana dispensary is 2.2 spaces per 1000 Sq. Ft. on a weekday or 11 spaces using the entirety of the floor area of the dispensary building. This rate is reflective of locations in western states where lines are no longer an issue and people can enter and exit the facilities at a rapid pace. The proposed recreational marijuana facility at 1185 Chestnut Street will include 18 parking spaces which includes one (1) handicapped parking space.

If you have any questions or comments, please do not hesitate to contact me at your convenience. Thank you for your time and attention to this matter.

Regards,

Anthony M. Capachietti, PE
Project Manager