

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, OCTOBER 7, 2014

Present: Ald. Laredo (Chairman), Ald. Crossley, Cote, Schwartz, Lennon, Lipof, and Harney;
absent: Ald. Albright; also present: Ald. Norton

Staff: Stephen Pantalone (Chief Planner), Robert Waddick (Assistant City Solicitor), Ouida Young (Associate City Solicitor), Linda Finucane (Assistant Clerk of the Board)

Public Hearing opened on June 17, 2014:

#167-14 GARDEN REMEDIES/697 WASHINGTON STREET TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to operate a Registered Marijuana Dispensary and to waive two parking stalls; to allow parking in the front setback; and to exceed the allowable horizontal projection of a secondary sign at 697 WASHINGTON STREET, Ward 2, NEWTONVILLE, on land known as SBL 23, 19, 1B, containing approximately 16,669 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-36, 30-19(d)(10), 30-19(h)(1), 30-19(m), and 30-20(j)(2) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The public hearing was opened on June 17 (this report and all other documents referred to are available online at www.ci.newton.ma.gov under Board Committees/Land Use/2014/06-17-14) and continued to this evening to allow the petitioner time to respond to questions raised by the committee and the public. These questions were addressed in letters from the petitioner dated August 6 and September 30, 2014 and in a revised site plan dated July 24, 2014. In its August 6 letter the petitioner provided links to two studies that analyzed the relationship between medical marijuana legislation/dispensaries and crime. These studies found no correlation with the passing of medical marijuana legislation and medical marijuana facilities and an increase in violent or property crimes.

The chairman reminded everyone that this petition is not for the use, which was approved by voters in 2012, but for a special permit to locate such use at this site. Mr. Pantalone reviewed the proposed project in the attached PowerPoint.

The petitioner has agreed to the following:

- The facility will not be open on Sunday
- A police detail will be hired during operating hours for the first week after opening
- Walk-in appointments will not be allowed
- No more than six staff will be on-site at one time
- On-site transactions will be limited to one ounce per customer per visit, with the balance of the order delivered to the customer

Although the petitioner has established a relationship with a local bank, the Massachusetts Department of Public Health (DPH) will not allow the petitioner to install an ATM machine on the site. The committee and the petitioner were disappointed as an ATM would obviate the need for clients to carry large amounts of cash. However, the petitioner is willing to renew its request to the DPH periodically. Several members suggested drafting a letter to the state representatives to ask for their help.

The July 24 revised site plan shows paving and striping of the parking lot with an additional parking stall. The plan also shows the dumpster area and a six-foot composite fence, which will replace an existing chain link fence, at the rear of the site. Additional landscaping will be installed adjacent to parking stall #5. Perimeter lighting, which is required by the DPH, will be on a timer and comply with the city's light ordinance.

The petitioner has offered to contribute up to \$15,000 to improving the intersection of Harvard and Washington Streets. In response to concerns raised by the city's Engineering Division, the petitioner is willing relocate the curb cut for the existing driveway to align with the parking area so that vehicles entering and exiting the parking lot will not have to cross the HP parking stall. This will involve shifting one or two on-street parking spaces, but will result in no loss of spaces. The cost will be approximately \$6,000-\$7,000, which the petitioner will pay. The petitioner will provide a revised site plan showing the relocated drive/curb.

Public comment:

Dorotea Marini Lessard, Chapel Street, spoke in June as a cancer survivor and tonight spoke as a cancer patient with stage IV cancer, who supports the facility at this location. It is a near public transportation and will be a resource for people who are suffering from the severe nausea, loss of appetite and fatigue that result from chemotherapy. Having lived in Newton since coming from Italy as a child in the 1970s, she is very familiar with this area and has never had an issue crossing Washington Street at this location.

Victoria Bergman, Harvard Circle, said the location is a problem because of the traffic issue. The area has the highest concentration of schools in the city. Kids will buy and sell marijuana. It belongs in an industrial park. Why not Waban or Chestnut Hill, why is it proposed in a blue-collar neighborhood?

Peter Hayashi, Mt. Ida Terrace, suffers severe pain from an accident 13 years ago. Main stream medicine has been no help. Most people who have prescriptions for medical marijuana have mobility issues and after the required initial visit will choose home delivery.

Barbara Fabricant, Washington Park, is not opposed to the use, but it is not the right location. It is too close to Newton North High School, CATS Academy, the Jackson School, and other elementary schools. The RMD will bring many people to the site because it will serve many cities.

Anthony Pellegrini, Clinton Street, is not against the use, but the location. There is too much traffic and too many children. The intersection should have a light.

Paul Zarchan, Frederick Street, is not opposed, but suggested that if the proposed operation is as humanitarian as portrayed, then scholarships should be given to people who can't afford the price.

Terry Sauro, Cook Street, is concerned about safety for pedestrians crossing Washington Street and security for clients and employees. It is a cash business.

Susan Migliaccio, Hawthorn Street, supports the use, but believes Washington Street is dangerous. A location like the Atrium Mall would be better.

John Madfis, Central Street, Auburndale, noted it is a medical facility and it is a good location. Research shows there are healing properties of cannabis. We don't question the location of a CVS. High School kids are not going to go here.

Anne Cedrone, Walker Street, said the ordinance prohibits a dispensary being located within 500 feet of where children congregate. Cabots Ice Cream is 450 feet from the proposed location.

Sarah Quigley, also noted the proximity to CATS Academy and Newton North High School. She believes there are discrepancies in special permit submittal and the submittal to the state.

A gentleman from Ferncroft Road said he voted to allow medical marijuana as the first step in a rational drug policy. If the location is deemed not suitable, he would be happy to have it in Waban. This will provide access to a safe, reliable, consistent supply for patients.

Robert Gerst, Claremont Street, said this is unsupportable. He reiterated that he believes the application is not in compliance with the state requirements. There is a conflict with the certification of registration and the provisional certificate. Where is the second facility?

Tom Kraus, Walnut Street, said the location near a commercial center is an advantage. There is no judgment of people who pick up medications from CVS. There seems to be a presumption that people who have prescriptions from medical marijuana will game the system. The existing traffic situation is beyond the proposed use, which will contribute very little in the way of additional traffic.

Chris Lessard, Chapel Street, husband of the first speaker and a Newton firefighter, said he understands some of the concerns, but the intersection of Harvard and Washington Streets is not the hot spot that has been portrayed. There are few accidents at that intersection.

Merry Gerard, Newtonville Avenue, said her business Center for Balance has been at 697 Washington Street for 12 years. She and her clients never have a problem parking. The lot actually holds eight cars. The petitioner should not be responsible for funding a signal at the intersection.

A woman from Newtonville said that the proposed facility will not bring crime. It's a medical building. There is more than ample on-street parking. Unfortunately, Newton North High School has problems with heavier drugs.

Scott Murphy, Central Street, supports the location. It would not be safe if located in a far-off location.

Another Newtonville resident related a conversation her son had with a friend about Newton North High School students buying marijuana from patients and re-selling it at school.

Bob Kavanaugh, Court Street, is concerned about safety. The addition of the 36 housing units approved by the Zoning Board of Appeals on Court Street and this use will exacerbate an already bad traffic situation.

A gentleman from Locke Road in Waban supports the location. It is by appointment - unlike Marty's or Whole Foods,. It should have no impact on traffic. He pointed out that Cabots is also a cash only business.

Marie Callahan, Lowell Avenue, is appalled at the location, the cash only aspect, and security.

An email was received from Kathleen Kouril Grieser, who opposes the petition.

The committee asked Ms. Young to respond to former Alderman Gerst's comments about the discrepancy in the applications. Ms. Young explained that she is not in agreement with Mr. Gerst's interpretation. It is similar to the chicken and egg, but a facility cannot get a final certificate until the facility is up and running. The ordinance states that "No building permit or certificate of occupancy shall be issued for an RMD that is not properly registered with the Massachusetts Department of Public Health." Obviously, a cultivation site is necessary for the business to operate. The petition is legitimately before the Board.

The committee also asked Ms. Young to clarify whether the ordinance prohibits locating a dispensary 450 feet from Cabots Ice Cream. A DPH FAQ document which offers guidance to municipalities makes specific reference as to whether an ice cream parlor would be considered a "facility where children commonly congregate." The DPH document explains that such facilities include dance schools, gymnastic schools, etc. if children commonly congregate there in a structured, scheduled manner. It does *not* include other facilities such as ice cream shops, where children *may happen* to congregate, *but not in a structured scheduled matter* [emphasis added].

Alderman Lennon and several speakers noted that the rise in topography going west on Washington Street coupled with sun glare in the afternoon can impair drivers' visibility, creating a danger to pedestrians in the crosswalk at the intersection of Harvard and Washington Streets. Several members pointed out that the proposed facility is not a high traffic volume business like some others that could lease the space. Alderman Crossley said this petitioner cannot be held accountable for existing conditions. It is the width of Washington Street that encourages speed, not an individual petition. Randy Hart of VHB, the petitioner's traffic consultant, said that VHB had looked at the intersection and concluded that although a signal is not an absolute necessity, it is a good idea; however, there is a significant cost involved. Alderman Lennon realizes that the onus is on the city, but other businesses have as part of their special permits contributed to traffic/pedestrian safety measures. He hopes that even though the petitioner is paying the cost of realigning the curb cut and driveway and has offered \$15,000 towards intersection improvements, the petitioner will remain flexible about an additional contribution.

The committee decided after some discussion that perhaps if approved the special permit could include look-back provisions to evaluate how the site is working. Alderman Lipof said a baseline exists for traffic and parking exists, what is the tipping point? With an office on Crafts Street, he is aware that Marty's and Whole Foods generate the most traffic to the area. However, he observed that there is always parking available along that stretch of Washington Street on the opposite side.

Alderman Harney asked how many clients there would be in a day. The petitioner said approximately 30 in the period from 10:00 a.m. to 8:00 p.m. There will be no more than three to five people at a time. The initial consultation will be approximately ½ hour or so, after which a client is eligible for home delivery. The DPH requires that the product be delivered to the dispensary, logged in, and returned to the truck for delivery to clients' homes.

Alderman Norton lives within 1000 feet of the site. Initially, although supportive of the use, she was concerned about the cash and security, but those concerns have been largely addressed by the banking relationship and the small amount for purchase. She is sorry the state will not allow the ATM. Whether or not this is approved, some business will go into the space. She is more concerned about the 40B project the Zoning Board of Appeals just approved for 36 units of housing on Court Street. Medical marijuana should be made accessible as soon as possible. She supports a look-back period to see how well the site is functioning.

Alderman Schwartz reiterated that this petition is to locate a medical facility on a specific site. He recounted a teaching video he had watched this morning at a Massachusetts Medical Society meeting. Shot in a hospital, the film with its theme of empathy was very a powerful reminder that since none of us knows what is ahead, it is not about "those people."

The committee asked the Law Department to craft draft look-back provisions which will address:

- Impact on traffic/pedestrians — consult with Transportation Division - How long?
- Police detail –assessment. Is detail for traffic and/or security? How long should it be?

- Number of clients per day
- ATM on-site

The committee, reluctant to burden the petitioner 10-15 years out, agreed if there is no reason to continue certain provisions they should cease. Alderman Lennon suggested that if the petitioner was amenable, perhaps they should be up to two years, then no more. The committee also agreed the look-back should be triggered from the final certificate of occupancy. On top of the \$6,000 to \$7,000 to relocate the curb cut and driveway, the petitioner this evening offered an additional \$5,000 in addition to the agreed-upon \$15,000 for traffic improvements at the intersection of Harvard and Washington Streets.

Alderman Lipof moved approval with the following findings and the conditions contained in draft special permit #167-14: the site is an appropriate location and meets the requirements for the RMD use; the use including the hours of operation will not adversely affect the neighborhood as its intensity will not be substantially greater than the previous use or other uses allowed by right on the site; there will be no nuisance or serious hazard to vehicles or pedestrians and the petitioner is offering to make a voluntary contribution for improvements to the pedestrian crossing at the intersection of Harvard and Washington Streets; access to the site over streets is appropriate for the types and numbers of vehicles involved; the site is also accessible to highway and public transportation and the site/building are accessible to persons with disabilities; literal compliance with the parking requirements is impractical due to the size and slope of the lot and the waiver of one parking stall is in the public interest; the projecting wall sign will provide way finding for clients; the RMD is located in an area that currently does not have reasonable access to medical marijuana; the site is at least 500 feet from a school, daycare center, preschool, or afterschool facility or any facility in which minors commonly congregate in a structured way, as interpreted by the DPH, or from a house of worship or religious use; the site as designed provides convenient, safe, and secure access and egress for clients and employees; traffic generated by client trips, employee trips, and deliveries will not create significant adverse impact of nearby uses; loading, refuse, and services areas are designed to be secure and shielded from abutting uses; the building and site are 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; the site is located where it may be readily monitored by law enforcement and other code enforcement personnel. The motion to approve carried unanimously.

The meeting was adjourned at approximately 9:45 PM.

Respectfully submitted,

Marc C. Laredo, Chairman

Department of Planning and Development



PETITION #167-14
697 WASHINGTON STREET

SPECIAL PERMIT TO ALLOW A REGISTERED MEDICAL MARIJUANA DISPENSARY, A WAIVER OF ONE PARKING STALL, ALLOW PARKING IN THE FRONT SETBACK, AND TO ALLOW A PROJECTING WALL SIGN

OCTOBER 7, 2014



Requested Relief



- §30-36, to allow a registered medical marijuana dispensary
- §30-19(d)(10) and (m), to waive one parking stall
- §30-19(h)(1) and (m), to allow parking in the front setback
- §30-20(j)(2), to exceed the allowable horizontal projection for a sign
- §30-23(c)(2) criteria for site plan approval
- §30-24(d) criteria for a special permit

Criteria to Consider



Per the requested relief, the LUC should consider the following project specific criteria:

- The site is an appropriate location for the proposed use. (30-24(d)(1))
- The proposed use as developed and operated will not adversely affect the neighborhood. The RMD's hours of operation will have no significant adverse impact on nearby uses (30-24(d)(2)), (30-36(f)(10))
- There will be no nuisance or serious hazard to vehicles or pedestrians. (30-24(d)(3))
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. The site is accessible to regional roadways and public transportation. The building and site are accessible to persons with disabilities (30-24(d)(4)), (30-36(f)(8)), (30-36(f)(7))
- Literal compliance with parking requirements is impracticable due to the size and slope of the lot. (30-19(m)(2))
- The projecting wall sign is in the public interest. (30-20(l))

Criteria to Consider Continued



- The RMD is located to serve an area that currently does not have reasonable access to medical marijuana. (30-36(f)(1))
- The site is at least five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, or the site is located at a lesser distance, if the board of alderman finds that the site is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation. (30-36(f)(2))
- The site 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. (30-36(f)(3))
- Traffic generated by client trips, employee trips, and deliveries to and from the RMD do not create a significant adverse impact on nearby uses. (30-36(f)(4))
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (30-36(f)(5))

Criteria to Consider Continued



- 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 buildings interior. (30-36(f)(6))
- The site is located where it may be readily monitored by law enforcement and other code enforcement personnel. (30-36(f)(9))



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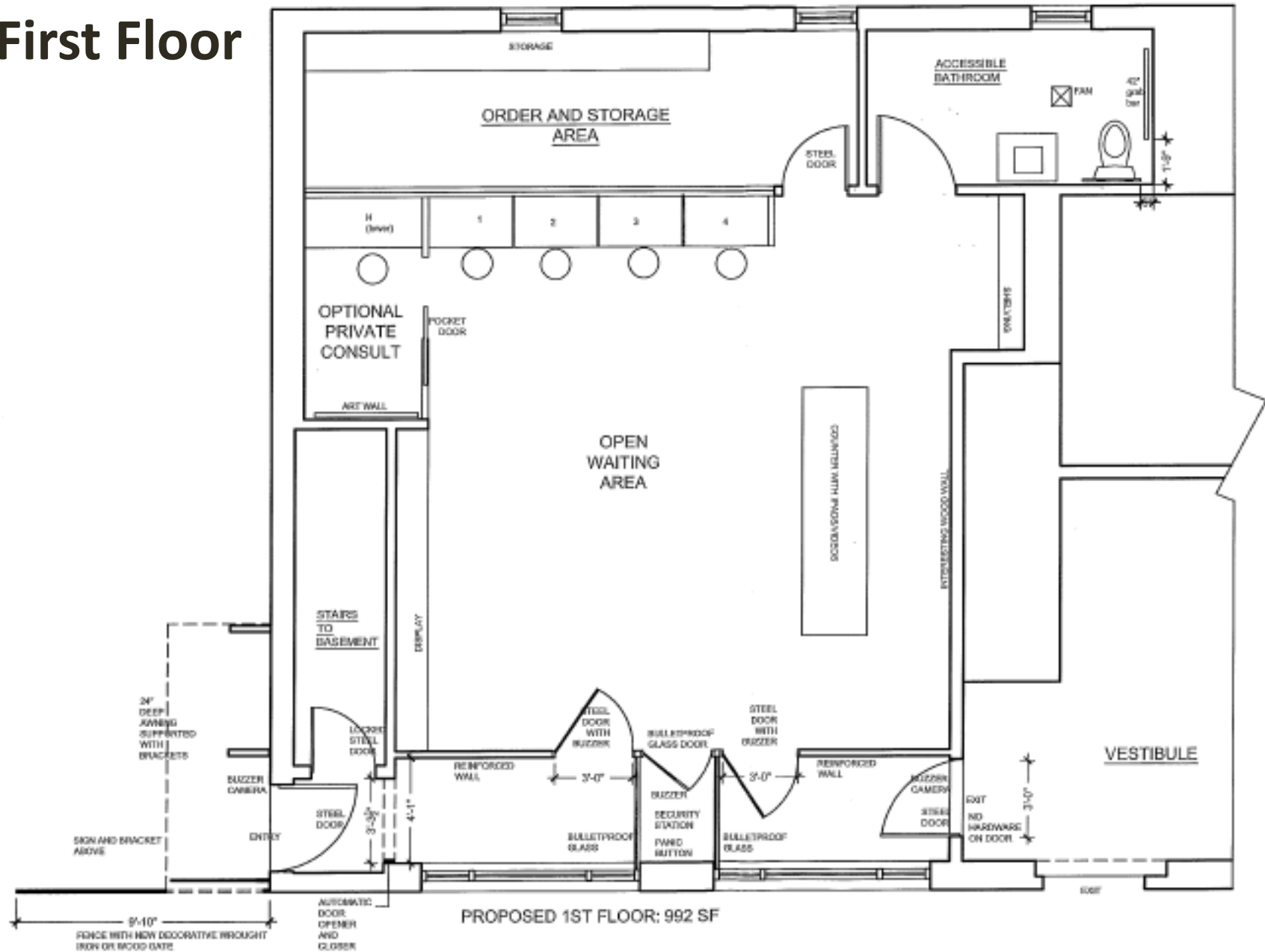
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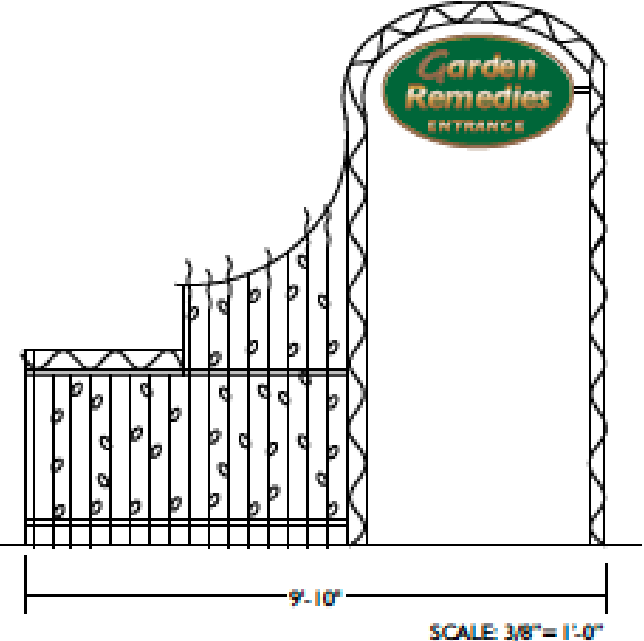
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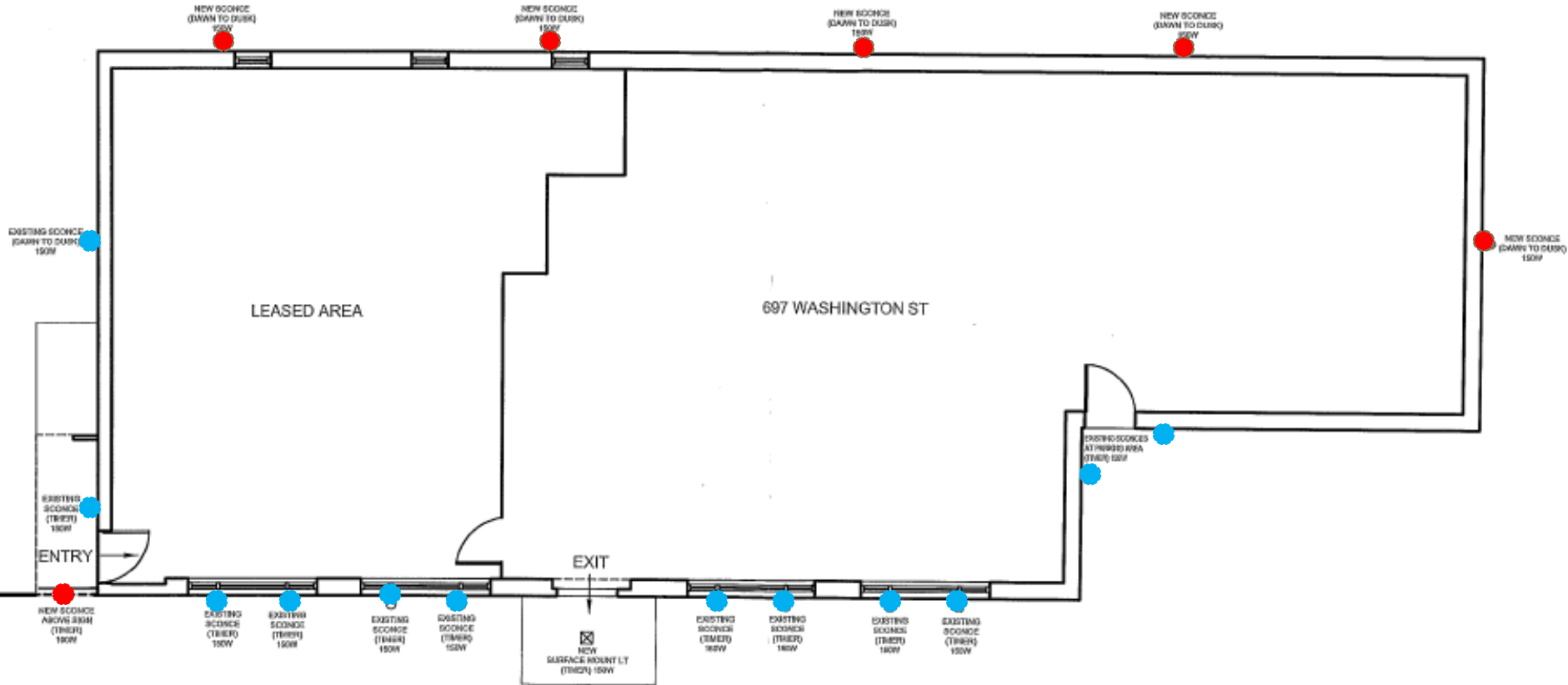
Floor Plan - First Floor



Proposed Signage



Lighting Plan



● New sconces

● Existing sconces



Optometrists



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Dr. Susan J. Sankoff
Dr. David M. Sankoff
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Proposed Findings



1. The site is an appropriate location for the RMD use, as it meets the requirements established in the Newton Zoning Ordinance. (30-24(d)(1))
2. The proposed use as developed and operated, including the hours of operation, will not adversely affect the neighborhood, as the intensity of the use will not be substantially greater than the previous use, or than other uses allowed by right on the site. (30-24(d)(2)), (30-36(f)(10))
3. There will be no nuisance or serious hazard to vehicles or pedestrians, and the petitioner is offering to make a voluntary contribution for improvements to the pedestrian crossing at the intersection of Washington Street and Harvard Street. (30-24(d)(3))
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. The site is accessible to regional roadways and public transportation, and the building and site are accessible to persons with disabilities. (30-24(d)(4)), (30-36(f)(7)), (30-36(f)(8))

Proposed Findings Continued



5. Literal compliance with the parking requirements is impractical due to the size and slope of the lot, and that granting a parking waiver of one stall would be in the public interest. (30-19(m))
6. The projecting wall sign is in the public interest, as it will improve way-finding for customers of the proposed use. (30-20(l))
7. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana. (30-36(f)(1))
8. The site is at least five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use. (30-36(f)(2))
9. The site 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. (30-36(f)(3))

Proposed Findings Continued



10. Traffic generated by client trips, employee trips and deliveries to and from the RMD do not create significant adverse impact on nearby uses. (30-36(f)(4))
11. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (30-36(f)(5))
12. The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impact that might result from the required security measures and restrictions on visibility into the building's interior. (30-36(f)(6))
13. The site is located where it may be readily monitored by law enforcement and other code enforcement personnel. (30-36(f)(9))

Proposed Conditions



1. Plan Referencing Condition
2. The petitioner shall employ a police detail or private detail on the site during all operating hours for the first week that it is open to customers, and subsequently on an interim basis for 90 days from 4:00 p.m. to 8:00 p.m., Monday through Saturday.
3. The petitioner shall operate by appointment only.
4. The petitioner shall not have more than six employees on the site at any one time.
5. The petitioner may only operate between the hours of 10:00 a.m. and 8:00 p.m., Monday through Friday, and between 10:00 a.m. and 8:00 p.m. on Saturday. The petitioner shall not operate on Sundays.
6. The petitioner shall limit on-site transactions to one ounce per customer per site visit, with the balance of the order delivered to customers' homes.

Proposed Conditions Continued



7. Perimeter lighting shall be directed downward and will utilize not more than 150 watt bulbs, and shall not shed light on abutters' properties.
8. The petitioner shall remove any trash in the unimproved portion of the property on a monthly basis.
9. The petitioner shall locate and screen the dumpster to minimize its visibility from the public way. The dumpster(s) shall be kept closed and the area surrounding the dumpster shall be kept free of debris.
10. The granting of the special permit to allow an RMD to operate at this site applies only to the petitioner and does not run with the land. At such time when the petitioner has permanently ceased operations at the site, the allowances granted by this special permit shall terminate.

Proposed Conditions Continued



11. The petitioner shall maintain its registration with the Massachusetts Department of Public Health. The petitioner shall submit evidence that it is registered and in good standing with the Massachusetts Department of Public Health on an annual basis.
12. Standard Building Permit Condition
13. Standard Final Inspection/Certificate of Occupancy Condition, including
 - a. Made a voluntary contribution in the amount not to exceed \$15,000 to the City of Newton for pedestrian improvements at the intersection of Harvard Street and Washington Street in Newtonville.