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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: February 28, 2020
MEETING DATE: March 5, 2020
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Neil Cronin, Chief Planner for Current Planning
Katie Whewell, Planning Associate
CC: Petitioner

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

PETITION #67-20 **58 Cross St./1089 Washington St.**

Special Permit/Site Plan Approval to allow retail marijuana sales and waivers to the extent necessary for the lighting requirements at 58 Cross St./1089 Washington St.

The Land Use Committee (The "Committee") opened the public hearing on this petition on Tuesday, February 4, 2020, which was held open, for the petitioner to respond to questions and concerns raised in the Planning Department's Memorandum and at the public hearing by the Committee as well as by members of the public. The Committee took public comment and key concerns were expressed. The Petitioner provided correspondence (**Attachment A**) to the Planning Department on February 21st that provides an update and updated site plans in response to issues raised at the hearing. This memo reflects those issues and concerns, as well as revised materials submitted by the petitioner as of February 21, 2020.

Plan Modifications

The Petitioner submitted plans on February 21, 2020 that show increased landscaping at the Cross Street curb cut to the site in the area directly east of the proposed emergency access gate.

At the prior hearing, the Petitioner affirmatively responded to committee requests for additional bicycle parking facilities and covered bike storage. The most recently submitted plans do not reflect this, however, a site plan showing additional bicycle parking and bicycle parking that is covered is required as a condition prior to the issuance of a building permit.

Employees will not be permitted to park within residential streets and employees will be incentivized to find other modes of transportation to the site than driving by car. The draft Council Order also incorporates a condition stating as such and the Retailer will also be required to provide messaging to their employees and customers that they are prohibited from parking on residential streets nearby.

Planning has spoken with the Newton Fire Department and they have stated that they are satisfied with the proposed gate and landscaping at Cross Street. Should this petition be approved, the Fire Department will review the plans again prior to the issuance of a building permit.

Hours of Operation

Members of the Committee expressed an interest in limiting the hours of operation to mitigate rush hour traffic impacts. The petitioner's attorney stated they would like the hours of operation to be consistent with other dispensaries in the City. The two approved recreational marijuana retailers in the City have the following hours of operation as conditioned by their respective special permits.

- Cypress Tree, 24-26 Elliott Street, 9 AM - 9 PM Monday-Saturday; 12 PM - 6 PM Sunday
- Garden Remedies, 697 Washington Street, 10 AM – 8 PM Monday-Thursday; 10 AM – 9 PM Friday and Saturday; and closed Sunday. Following final inspections for the associated parking facility and interior renovations, their hours of operation shall be: 10 AM – 8 PM Monday-Thursday; 10 AM – 9 PM Friday and Saturday; Sunday 12 PM – 6 PM.

The Petitioner has proposed hours of operation 9 AM – 9 PM Monday – Saturday, and 12 PM - 6 PM on Sundays, also reflected in the attached Draft Council Order (**Attachment B**).

ATTACHMENTS:

Attachment A: **Petitioner Correspondence**
Attachment B: **Draft Council Order**



February 21, 2020

SENT VIA EMAIL AND HAND DELIVERY

Katie Whewell
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Planning & Development
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Nadia Khan
Clerk
Newton City Council Land Use Committee
1000 Commonwealth Avenue
Newton MA 02459
nkhan@newtonma.gov

RE: 1089 Washington Street (the "Proposed Project"); Supplemental Information for
March 5, 2020 Land Use Committee

Dear Ms. Whewell and Ms. Khan:

On behalf of Ascend Mass, LLC (the "Applicant"), attached please find information for review by the Planning & Development department and the Land Use Committee. Attached please find:

- A revised plan set as prepared by Fuss & O'Neill to incorporate a planting bed along the Cross Street emergency access gate and reconfiguration of the stormwater plan to allow for reduced runoff onto Cross Street
- A proposed redline of the Council Order

In addition, we were asked for guidance around hours of operation. As referenced in the amended Council Order, we are agreeable with the proposed hours of 9:00AM to 9:00PM, Monday through Saturday, and from 12:00PM to 6:00PM on Sunday. However, we do ask that language is included to allow us to be consistent with other operators. I have included proposed language in the attached document.

Further, as previously mentioned, my client has made the business decision to not include a public bathroom on site as requested by some members of the community. After a review of publically available crime data, our security consultant has found no nexus between the operation of a cannabis entity and reports of public urination. Much like a liquor store or a drug store, public bathrooms are not required, nor commonly found in practice.

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Ms. Whewell and Ms. Khan
February 21, 2020
Page 2

Please let me know if any additional information is needed or required. Thank you.

Very truly yours,

Michael P. Ross

Michael P. Ross

(A127)

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CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow retail marijuana sales and waivers to the extent necessary for lighting requirements as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed Marijuana Retailer due to its location within the Business Use 2 zone. (§7.3.3.1)
2. The proposed Marijuana Retailer as developed and operated will not adversely affect the neighborhood given its proximity to the varied uses along the Washington Street Corridor and the petitioner's proposals to manage traffic and parking. (§7.3.3.2)
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved given the site's proximity to regional roadways such as the Massachusetts Turnpike and Washington Street. (§7.3.3.3)
4. There will be no nuisance or serious hazard to vehicles or pedestrians due to the petitioner's upgrades to the site, including new sidewalks along the site's frontage and in the interior of the site. (§7.3.3.4)
5. Literal compliance with the lighting and parking 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)

With regard to special permits concerning the Marijuana Retailer on site, pursuant to §6.10.3.G:

6. 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.G.1.a)
7. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.G.1.b)

- 8. The Marijuana Retailer is designed to minimize any adverse impacts on abutters with reduced lighting, fencing, landscaping and site design that prohibits access to Cross Street. (§6.10.3.G.1.c)
- 9. The Marijuana Retailer is not located within a 500-foot radius of a public or private K-12 school. (§6.10.3.G.2.a)
- 10. 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 due to the appointment only system set forth in Condition 2. (§6.10.3.G.2.b)
- 11. 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.G.2.c)
- 12. The building and site are accessible to persons with disabilities. (§6.10.3.G.2.d)
- 13. The lot is accessible to regional roadways and public transportation due to its location on Washington Street and proximity to the Massachusetts Turnpike, and MBTA bus routes 553, 554, and 59. (§6.10.3.G.2.e)
- 14. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.G.2.f)
- 15. The Marijuana Retailer's hours of operation will have no significant adverse impact on nearby uses given the mixed-use nature of the Washington Street Corridor and presence of commercial uses nearby that operate during similar hours. (§6.10.3.G.2.g)

PETITION NUMBER: #67-20

PETITIONER: Ascend Mass, LLC.

LOCATION: 58 Cross Street/1089 Washington Street, on land known as SBL 31, 09, 07, containing approximately 25,122 square feet of land

OWNER: 1089 Washington Street Limited Partnership

ADDRESS OF OWNER: 10 Newbury Street
Boston, MA 02116

TO BE USED FOR: Marijuana Retailer

CONSTRUCTION: Concrete

EXPLANATORY NOTES: To allow retail marijuana sales and waivers to the extent necessary for lighting requirements (§7.3.3, §7.4, §6.10.3.D, §4.4.1, §5.1.10, §5.1.13)

ZONING: Business Use 2 District

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan approval shall be located and constructed consistent with:
 - a. Existing Conditions Site Plan signed and stamped by Gerry Holdright, Professional Land Surveyor, dated March 26, 2019.
 - b. Proposed Site Plan, signed and stamped by Daniel F. Delany, Professional Engineer, prepared by Fuss and O'Neill, November 12, 2019, most recently revised February 6, 2020;
 - c. Details, consisting of six sheets, CD-501-CD-506, signed and stamped by Daniel F. Delany, Professional Engineer, prepared by Fuss and O'Neill, November 12, 2019, most recently revised February 6, 2020;
 - d. Site Landscape Plan, LP-101 signed and stamped by Daniel F. Delany, Professional Engineer, dated November 12, 2019, most recently revised February 6, 2020
 - e. Floor Plans and Front Elevations A01 and A02 signed and stamped by Keith Bettencourt, Registered Architect, dated August 2, 2019.
 - f. Proposed Site Lighting - Photometric, SL-101, prepared by Fuss and O'Neill, dated November 12, 2019 most recently revised February 6, 2020.

2. The petitioner shall see all visitors of the Marijuana Retailer on an appointment only basis. Given that the petitioner requires each customer to be served individually by a customer service representative, the "appointment only" requirement is intended to ensure a smooth flow of customers arriving to and leaving from the site, to avoid customer waiting outside the building for a customer service representative to be available, and to allow the petitioner to anticipate customer volume.

The petitioner may use reasonable flexibility to accommodate customers where events such as, but not limited to, traffic delays, public transportation scheduling, or changes in customers' schedules affect the appointment schedule. The petitioner shall also accommodate those customers who need to wait inside the building either before or after their scheduled appointments. This "appointment only" condition will permit "first available" (i.e., no waiting period) appointments only when a customer service representative is immediately available to serve that customer.

Six months after commencement of operations for the Marijuana Retailer authorized by this Order, the petitioner may submit a letter to the Commissioner of Inspectional Services, the Director of Planning and Development and the Clerk of the Council requesting to no longer require that all customers be served by appointments only. Such letter shall only be filed after the petitioner has completed the following:

- Met with the Director of the Transportation Division of Public Works, the Director of Planning and Development, and the Newton Police Department to discuss pedestrian and traffic safety and site security.

- Met with the Director of the Transportation Division of Public Works, and the Director of Planning and Development regarding Transportation Demand Management in accordance with Condition #6 below.
3. The Commissioner of Inspectional Services and the Director of Planning and Development may administratively waive the “appointment only” requirement if they determine that the petitioner is able to maintain an orderly flow of patrons, accommodate all patrons waiting to see a customer service representative inside the building, and accommodate patron parking on site without the “appointment only” requirement. Prior to any decision on the petitioner’s waiver request, the Commissioner of Inspectional Services and the Director of Planning and Development shall consult with the Land Use Committee of the City Council regarding the waiver request in the same manner as the Land Use Committee is consulted when a “consistency” ruling on a special permit is requested from the Commissioner of Inspectional Services.
 4. The Marijuana Retailer may only operate between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday, and from 12:00 p.m. to 6:00 p.m. on Sunday.
 5. If the appointment only condition is removed and at any time the Director of Planning in conjunction with the Commissioner of Inspectional Services, Chief of Police, and Commissioner of Public Works, determines there is a public safety concern due to the lack of appointments, the petitioner shall meet with the Director of Planning to discuss and implement measures to address concerns, including resuming appointments during peak periods.
 6. Should any line form following the possible conclusion of the appointment only condition, lines must form only on the internal sidewalk and must not form on the Washington Street sidewalk for customers waiting.
 7. There shall not be more than fifteen (15) staff members, on site at any one time not including delivery personnel.
 8. Employees of the Marijuana Retailer shall not park on residential streets in the vicinity of the site. The Marijuana Retailer shall provide messaging to customers and employees in that parking on residential streets is prohibited.
 9. The Petitioner shall update the sidewalks along the Washington and Cross Streets frontage, install a crosswalk across Cross Street, and install rain gardens on site to the satisfaction of the City Engineer. Such improvements shall be completed prior to the issuance of a temporary occupancy certificate.
 10. The Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site. The Plan shall include, but not be limited to:
 - a. Displaying all transit schedules in a visible location at the dispensary;
 - b. Provide pre-paid CharlieCard and/or Commuter Rail passes to any employee who can utilize the MBTA system to commute to the retailer;
 - c. Participating in the City of Newton Bikeshare program;
 - d. Providing a secure bicycle storage area on site;
 - e. Incentives for employees to carpool with small bonuses or other programs;
 - f. Establishing an on-site car-pool, rideshare program with guaranteed ride home; and

- g. Reimburse employees who regularly walk to work the cost of a new pair of walking shoes each calendar year.

The Petitioner shall keep records detailing how employees are commuting to and from the site, including the number of employees utilizing transit, parking at satellite lots, and using alternative methods of transportation such as the bikeshare. Two months after the commencement of operations for the Marijuana Retailer, the petitioner shall provide an update to the Director of Planning and Development and the Director of Transportation regarding the results of the petitioner's TDM Plan for employees. Should the TDM plan be deemed insufficient, the petitioner shall be required to revise the TDM plan to the satisfaction of the Director of Planning and Development and the Director of Transportation. The petitioner shall be required to meet again with the officials above at six months and at 12 months after the receipt of a temporary certificate of occupancy.

11. Security lighting shall be in accordance with the standards imposed by the Department of Public Health. Additionally, security lighting shall be directed downward, shall not shed light on abutters' properties, and shall comply with the Lighting Plan identified in Condition 1 above.
12. The petitioner shall locate, secure, and screen the dumpster to minimize its visibility from the public way. The dumpster shall be kept closed and secured and the area surrounding the dumpster shall be kept free of debris.
13. The granting of a special permit to allow a Marijuana Retailer to operate at this site applies only to the petitioner and does not run with the land. When the petitioner has permanently stopped operations at the site, for whatever reason including but not limited to the loss of its registration with the Cannabis Control Commission, the Marijuana Retailer use as well as the additional relief granted by this Order shall expire.
14. Snow shall not be stored on site.
15. Should the petitioner seek to extend the Marijuana Retailer authorized by this Order, including but not limited to, increasing the number of employees, or extending the hours of operation, it shall seek an amendment to this Order.
16. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
17. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
18. The petitioner shall maintain its registration with the Cannabis Control Commission. Within one (1) week from the date of the initial and annual renewal of its registration, the petitioner shall file a copy of the same with the Clerk of the City Council, the Commissioner of Inspectional Services and the Planning Department. The petitioner shall immediately notify the Clerk of the City Council, the Commissioner of Inspectional Services and the Planning Department if its registration is not renewed or is revoked.
19. In order to provide information to the City regarding the operation of the Marijuana Retailer and the effectiveness of the mitigations and conditions imposed through this Council Order, the petitioner shall monitor the Marijuana Retailer's operation in the following areas and at

the following intervals, and shall provide reports summarizing such monitoring to the Commissioner of Inspectional Services and the Director of Planning and Development, and such reports shall also be filed with the Land Use Committee of the City Council:

- a. Within six (6) months and again at twelve (12) months of commencing operations of the Marijuana Retailer, a report on pedestrian and traffic safety concerns, if any, that may have arisen from the operation of the Marijuana Retailer and on the issue of the security of the facility itself, as well as a report on the number of customers coming to the site and the peak times when customers are at the site.

If the Commissioner of Inspectional Services and Director of Planning and Development have concerns and/or find that the reports raise concerns regarding the security of the facility or regarding public safety, including pedestrian or traffic safety, created by the operation of the Marijuana Retailer at this site. If the Commissioner of Inspectional Services and Director of Planning and Development have concerns regarding public safety or the security of the facility, the petitioner shall meet with the Director of Planning to see if further mitigations on the operation of the Marijuana Retailer are warranted to address such public safety or security of the facility concerns.

20. Prior to the issuance of a temporary certificate of occupancy, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
21. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved security plan to the City of Newton Police Department for review and approval.
22. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved emergency response plan to the City of Newton Fire Department for review and approval.
23. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved Operation and Management plan to the Inspectional Services Department and the Department of Planning and Development for review and approval.
24. Prior to the issuance of any occupancy certificate, the petitioner shall conduct a Pre and Post closed-circuit television inspection of the City's drainpipe in concert with the proposed overflow connection and provide an electronic copy of such inspection to the Commissioner of Public Works.
25. Prior to the issuance of any building permit for the Project the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the project.

- b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor or designee.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise and vibration control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. A plan for rodent control prior to demolition, during demolition, and during construction.
 - i. The CMP shall also address the following:
 - safety precautions;
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties.
26. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
- a. Recorded a certified copy of this Council order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Received approval of the final engineering, utility, and drainage plans for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
 - d. Received approval of the Cross Street gate from the Fire Department.
 - e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

- f. Provided updated site and landscape plans that show additional bicycle parking, as well as covered bicycle parking.
27. No Final Inspection and/or Occupancy Permit for the portion of the building covered by this Special Permit/Site Plan approval shall be issued until the petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. Submitted to the Director of Planning and Development, Commissioner of Inspectional Services and City Engineer final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works.
 - d. Provided the City Engineer, Department of Inspectional Services, and the Department of Planning and Development with a recorded copy of the Operation and Maintenance (O & M) plan for Stormwater Management in accordance with Condition #20.
 - e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features, fencing, and parking areas.
 - f. Received approval from the appropriate City Departments in accordance with Conditions #20, #21, #22 above.
28. Notwithstanding the provisions of Condition #27 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of final landscaping provided that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.