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James Freas  
Acting Director

**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** October 7, 2014  
**TO:** Land Use Committee of the Board of Aldermen  
**FROM:** James Freas, Acting Director of Planning and Development  
Alexandra Ananth, Chief Planner for Current Planning  
Stephen Pantalone, Senior Planner  
**CC:** Petitioner

In response to questions raised at the Land Use Committee public hearings, and/or staff technical reviews, 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 public hearing.

**PETITION #167-14**

**697 Washington Street**

Request for Special Permit/Site Plan Approval to allow a registered marijuana dispensary, a waiver of one parking stall, parking in the front setback, and a projecting wall sign, at 697 Washington Street.

The Land Use Committee (Committee) held a public hearing on June 17, 2014, which was held open so that the petitioner could respond to questions/concerns that were raised by the Committee. The petitioner addressed those concerns in a letter submitted to the Committee/Planning Department on August 6, 2014 (**ATTACHMENT A**), September 30, 2014 (**ATTACHMENT B**), and in a revised site plan dated July 24, 2014, as summarized below.



**Changes to the Proposed Site Plan**

- The paving and striping of the parking area
- The addition of one parking stall
- The construction of a six foot composite fence in the rear of the property
- The striping of the dumpster area
- Additional landscaping abutting parking stall #5
- Confirmation that the perimeter lighting will be kept to a minimum and directed downward, and will be on a timer

### **Responses to other comments and concerns from the public hearing**

- The petitioner will not operate on Sunday
- The petitioner will hire a police detail during all operating hours for the first week after opening, and then on an interim basis for 90 days, most likely during the evening operating hours.
- The petitioner will not allow for walk-in appointments
- The petitioner will have no more than six staff on site at any time
- The petitioner will pay an amount not to exceed \$15,000 towards the construction of a curb extension at the intersection of Washington Street and Harvard Street.
- The petitioner is proposing to limit on-site transactions to one ounce per customer per visit, with the balance of the order delivered to customer's homes
- Massachusetts Department of Public Health will not allow the petitioner to install an ATM machine on site

In its August 6<sup>th</sup> letter to the Committee the petitioner provided links to two studies that analyzed the relationship between medical marijuana legislation/dispensaries and crime, which was a concern raised at the public hearing. The first study analyzed the association between state medical marijuana legislation and state crime rates for Part I (violent and property) crimes collected by the FBI. The second study analyzed the spatial relationship between density of medical marijuana dispensaries and Part I crimes in 95 census tracts in Sacramento, CA. The studies found that the passing of medical marijuana legislation and the siting of medical marijuana dispensaries did not correlate with an increase in violent or property crimes. Considering these studies and the security measures proposed by the petitioner, the Planning Department does not believe that the proposed use will have an adverse impact on crime in the surrounding neighborhood.

### **Engineering Division Memorandum**

The Engineering Memorandum (**ATTACHMENT C**) raised a concern regarding the impact of the proposed handicap stall on access over the existing driveway. To address the issue the Associate City Engineer suggested relocating the existing driveway to better align with the parking area, which will require shifting one or two on-street parking stalls to where the driveway currently exists. The Planning Department confirmed with the City's Transportation Division that the shifting of these on-street parking stalls would not require approval from Traffic Council, as the number of on-street parking stalls (and meters) would not be reduced. The petitioner has indicated that they are willing to relocate the driveway and will provide a revised site plan at the scheduled working session.

### **Recommendation**

The petitioner has responded to each of the questions raised at the public hearing, and to the major concern raised in the Engineering Memorandum. If the petitioner submits a revised site plan showing the relocation of the driveway, and for the reasons stated above, the Planning Department recommends **approval with conditions**.

**Attachment A** – Petitioner letter dated August 6, 2014

**Attachment B** – Petitioner letter dated September 30, 2014

**Attachment C** – Engineering Memorandum

STEPHEN J. BUCHBINDER  
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ROBIN GORENBERG

August 6, 2014

**BY HAND**

Ms. Alexandra Ananth  
Department of Planning and Development  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459-1449

Re: Garden Remedies, Inc./697 Washington Street/Petition #167-14

Dear Alexandra,

Garden Remedies, Inc. responds to the questions posed in your memorandum dated June 25, 2014 as follows:

Question: Exactly what mitigation is the petitioner proposing?

Answer: The petitioner is willing to contribute to the construction of a curb extension at the intersection of Washington and Harvard Streets in an amount not to exceed \$15,000. The petitioners are also willing to pave and stripe the parking area at the site. Finally, the petitioners propose to construct fencing along a portion of the rear property line, as shown on a plan prepared by VTP Associates, Inc. dated July 24, 2014, a copy of which is enclosed herewith. The petitioners are not willing to contribute to the construction of a Hawk Signal on Washington Street.

Q) Would the petitioner be willing to not operate on Sundays?

A) The petitioner is willing not to operate on Sundays.

Q) Please describe the commitment to police detail around the opening of the dispensary.

A) The petitioner is willing to commit to a full police detail during all operating hours for the first week that it is open. Thereafter, the petitioner is willing to hire a police detail on an interim basis, and suggests a period of 90 days, to be reviewed at that time by the Newton Police Department. The petitioner proposes that the detail would be in place from 4:00 p.m. until 8:00 p.m. from Monday through Saturday.

Ms. Alexandra Ananth  
August 6, 2014

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Q) Can the petitioner provide security and crime statistics from other states?

A) Please see the following articles:

- 1) *The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006*  
<http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0092816>
- 2) *Exploring the Ecological Association Between Crime and Medical Marijuana Dispensaries*  
<http://www.ncbi.nlm.nih.gov/pubmed/22630790>

Q) Please address the issue of the dispensary's location close to Cabot's.

A) The Department of Public Health has promulgated a document offering guidance to municipalities as they interpret and integrate 105 CMR 725.00 into their own zoning by-laws and ordinances. This document can be found at the following address:

<http://www.mass.gov/eohhs/docs/dph/quality/drugcontrol/medical-marijuana/municipal-guidance.pdf>

The document makes specific reference as to whether an ice cream parlor would be considered a "facility where children commonly congregate." The 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 manner" (emphasis supplied).

Q) Petitioner's Response to Potential Conditions:

Potential Condition: Hours of Operation – Monday through Saturday, 10:00 a.m. until 8:00 p.m.  
Response: Petitioner is amenable to same.

Potential Condition: No walk in appointments.  
Response: Petitioner is amenable to same.

Potential Condition: Planning Department to review parking lot layout prior to building permit (paving and striping).  
Response: Petitioner is amenable to same.

Potential Condition: Perimeter lighting to be installed with baffles and motion sensor (not on all night).

Response: 105 CMR 725.110(A)(10) requires dispensaries to "[e]nsure that the outside perimeter of the RMD is sufficiently lit to facilitate surveillance." Our security consultants will be installing infrared cameras which do not require supplementary lighting to record video. Therefore the petitioner proposes to install the absolute minimum as far as perimeter lighting. The proposed perimeter lighting will need to be "on" from dusk until dawn, and will not be on a

**SCHLESINGER AND BUCHBINDER, LLP**

Ms. Alexandra Ananth  
August 6, 2014

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motion sensor but a timer. The proposed fixtures will be directed downward and will utilize 150 watt bulbs, so they will not shed light on abutters' properties.

Potential Condition: There will be an ATM on the premises.

Response: Garden Remedies is endeavoring to arrange for an ATM installed on the premises. However, the petitioner is unable to commit to this condition at this time.

Potential Condition: No more than six staff on site at any one time.

Response: Petitioner is amenable to same.

Potential Condition: Planning Department to review proposed relocation and screening of dumpster prior to building permit.

Response: Petitioner is amendable to same.

Potential Condition: Police/Security details around opening.

Response: Petitioner is amenable to same (see answer above).

Very truly yours,



Stephen J. Buchbinder

SJB/mer  
enclosure

cc: (By Hand, w/enclosure)

Linda Finucane, Chief Committee Clerk  
Ouida C. M. Young, Associate City Solicitor  
Mr. Stephen Pantalone, Senior Planner  
(By First Class Mail, w/enclosure)  
Dr. Karen Munkacy



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ROBIN GORENBERG

September 30, 2014

**BY EMAIL**

Ms. Alexandra Ananth  
Department of Planning and Development  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459-1449

Re: Garden Remedies, Inc./697 Washington Street/Petition #167-14

Dear Alexandra,

I want to advise you of two updates respecting the above petition. Dr. Munkacy and her team recently met with representatives from the Department of Public Health (the "DPH"). As you know, under DPH's regulations, patients may purchase up to ten ounces of marijuana at a time from a dispensary, provided that said quantity constitutes a sixty-day supply for the patient. Several Newton residents expressed concerns related to patients carrying large amounts of cash into the dispensary and large quantities of product out of the dispensary.

In response to these concerns, Dr. Munkacy asked DPH whether Garden Remedies would be permitted to limit the amount of marijuana that could be sold to a patient in a given transaction. The DPH responded that such a limit would be permissible, so long as the limitations are part of a clearly stated policy and published in literature and on the company's website.<sup>1</sup> Accordingly, Garden Remedies intends to limit its onsite transactions to one ounce per customer per visit, with the balance of the order delivered to the patient's home. Payment for the amount to be delivered would be due at the time of delivery, and would not be collected from the patient at the dispensary. It is Garden Remedies' expectation that this policy of limiting onsite sales to one ounce at a time will limit the amount of cash that is coming into the dispensary, as well as limiting the amount of product which a patient carries out of the dispensary.

The second update relates to installing an ATM machine onsite. DPH informed Garden Remedies that dispensaries will not be permitted to install ATM machines onsite because DPH has determined that banking is not a permitted activity within a dispensary.

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<sup>1</sup> Please note that DPH also explained that Garden Remedies must dispense some product to patients at the dispensary, and that the latter may not function solely as an educational facility, with products available only by delivery.

**SCHLESINGER AND BUCHBINDER, LLP**

Ms. Alexandra Ananth  
September 30, 2014

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Please let me know if you have any other questions or require further information prior to the continued hearing on October 7th, 2014.

Very truly yours,



Stephen J. Buchbinder

SJB/mer

cc: (By Email)  
Linda Finucane, Chief Committee Clerk  
Mr. Stephen Pantalone, Senior Planner  
Alderman Susan Albright  
Alderman Marcia Johnson  
Alderman Emily Norton  
Dr. Karen Munkacy

**CITY of NEWTON  
ENGINEERING DIVISION**

**MEMORANDUM**

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 697 Washington Street

Date: October 1, 2014

CC: Lou Taverna, PE City Engineer  
Linda Finucane, Associate City Clerk  
Alexandria Ananth, Chief Planner  
Stephen Pantalone, Sr. Planner

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In reference to the above site, I have the following comments for a plan entitled:

*Parking Layout Plan Showing Proposed Conditions at  
#697 Washington Street  
Newton, MA  
Prepared by: VTP Associates, Inc.  
Dated: July 24, 2014*

Executive Summary:

The drainage calculations are correct; however the soil needs to be tested to confirm the design assumptions. An impervious barrier is required along the downstream side of the proposed system.

The proposed parking lot configuration and the existing driveway apron **configuration is unacceptable**, anyone entering or existing the parking lot must traverse over a HP parking stall and which is unacceptable. The applicant will have to relocate the curb cut and existing on-street parking stall to reconfigure a conflict free access driveway apron.



As a Public benefit, the applicant should improve the sidewalk along the frontage for the benefit of its patrons and seeing that the driveway apron has to be relocated this is a must.

If approved the applicant will have to make arrangements with the Engineering Division to inspect the on-site soil test and drainage installation.

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.