

October 7, 2014

To the Marc Laredo, Chair, members of the Land Use Committee, and the full Board of Aldermen,

I am writing to oppose Petition 167-14 by Garden Remedies for a special permit for a medical marijuana dispensary at 697 Washington Street, Newtonville due to its proximity to residences, schools, and Newtonville village. In addition to the inappropriate siting of the proposed dispensary, there are a number of issues with the petitioner's special permit application.

There are some discrepancies between details Garden Remedies provided in their application with the State of Massachusetts Department of Health in comparison with their special permit application with the City of Newton. The Department of Health has said they will investigate inaccuracies in applications for RMDs. Although the State of Massachusetts is overseeing the application process for RMDs, it is unlikely they are checking applicants' documentation for zoning approval at the municipal level. Similarly, the Planning Department may not be comparing the applicant's special permit documentation with their state application. Consequently, it is important that you are aware of the discrepancies and issues with this special permit application.

Referring to the Garden Remedies Special Permit Application and application with the Mass. Department of Health at the links below, the following is a list of discrepancies between some of these documents or other issues noted with specific documents.

<http://www.newtonma.gov/civicax/filebank/documents/59408> (Special Permit application)

<http://www.mass.gov/eohhs/docs/dph/quality/drugcontrol/medical-marijuana/applications/garden-remedies-app.pdf> (Garden Remedies DOH application)

1. Exhibit 1 of the special permit application states:

A. "30-36(d)(1) The site is not located within five hundred (500) feet of a school, daycare center, preschool or after school facility, or any facility in which minors commonly congregate, or from a house of worship or religious use. ***In fact, the site has a buffer of greater than one thousand (1,000) feet from such uses***" [emphasis added]

Although the proposed location meets Newton's zoning ordinance by being more than 500 feet from a daycare center, Central Discovery, a family daycare licensed with the State of Massachusetts is located at 84 Central Avenue, between Washington and Chesley. Central Discovery's address is within the 1000 ft. radius outlined in the Context Map (Exhibit 5 of the special permit application at the following link <http://www.newtonma.gov/civicax/filebank/documents/59414>).

Similarly, Garden Remedies application with the Dept. of Health (DOH) states on pg. 28-29 that 697 Washington St is located more than 1000 ft. from any school or daycare center, despite Central

Discovery appearing on maps of licensed child care centers available on the state website at the link below.

<http://www.eec.state.ma.us/ChildCareSearch/ProvDetail.aspx?providerid=59691>
<http://www.discoverycentrallearning.com/>

B. “30-36(d)(6) The applicant will be requesting a parking waiver of two (2) stalls pursuant to the enclosed parking calculation. ***There is ample-on street parking to support the waiver. As shown on the enclosed area plan, there are eleven 1-hour spaces, seventeen 2-hour spaces and fifty 12-hour spaces within close proximity to the site.***” [emphasis added]

Although the petitioner has stated there is sufficient parking available based on the number of metered spaces on Washington Street, their estimates of parking demand are not comprehensive since they do not include increasing patient visit and total employee projections which are included in their state application in their *Three- Year Business Plan Budget Projections* chart below, which appears on page 116 of the Garden Remedies’ state application.

**THREE-YEAR BUSINESS PLAN BUDGET PROJECTIONS
(Exhibit 4.5)**

This exhibit must be completed and submitted as part of the application.

Corporation Name: Garden Remedies, Inc.

Application # (if more than one): N/A

Fiscal Year Time Period: 05/2014 – 04/2017

Projected Start Date for the First Full Fiscal Year: 04/01/2014

	FIRST FULL FISCAL YEAR PROJECTIONS 2015	SECOND FULL FISCAL YEAR PROJECTIONS 2016	THIRD FULL FISCAL YEAR PROJECTIONS 2017
Projected Revenue	\$1,496,055	\$5,734,940	\$8,096,386
Projected Expenses	\$1,685,011	\$3,209,698	\$3,406,108
TOTAL :	\$(188,956)	\$2,525,242	\$4,690,279
Number of Patients	881	1,468	2,350
Number of Patient Visits	15,859	70,487	112,778
Projected % of growth rate annually	N/A	Net Increase in Assets/Net Income: N/A Number of Patients: 66.6% Number of Visits: 344.5%	Net Increase in Assets/Net Income: 85.7% Number of Patients: 60.1% Number of Visits: 60%
Total FTE in staffing	18 FTE	32.5 FTE	47 FTE
Projected Medical Marijuana Inventory	599 Lbs. (Cumulative) 75 Lbs. (Year-End Inventory)	1275 Lbs. (Cumulative) 150 Lbs. (Year-End Inventory)	1800 Lbs. (Cumulative) 150 Lbs. (Year-End Inventory)

The data in this chart indicates the numbers of patients, visits, sales, inventory, and employees are expected to increase exponentially from the first to the second, and second to third years, however this anticipated growth is not mentioned in their special permit application in terms of projected increases in parking demand over time.

C. “30-36(d)(8) The applicant proposes the following hours of operation under the special permit application: 10:00 a.m. until 8:00 p.m. Monday through Saturday, and 10:00 a.m. until 6:00 p.m. on Sundays.... **As a practical matter, for at least the first year of operation, the applicant anticipates operating under a modified schedule of 4:00 p.m. until 8:00 p.m. Monday through Thursday, 12:00 p.m. until 8:00 p.m. on Fridays and Saturdays, and 12:00 p.m. until 6:00 p.m. on Sundays, as it develops its patient base.**” [emphasis added]

Note in item 30-36(d)(8) above, the petitioner describes a year long abbreviated schedule, as they develop their business. Despite making this statement about their schedule, they do not mention in their special permit application that they are basing quantitative estimates for parking demand and traffic on their first year of operation, when they know they will have reduced hours and fewer patients as they grow their client base than they estimate they will have in subsequent years. The 5/14/14 Zoning Memorandum, does not mention a modified schedule being proposed for the first year. Item 8 of the Zoning Memorandum states:

“Sections 30-36(d)(8) and 30-36(f)(10) require that the RMD's hours of operation have no significant adverse impacts on nearby uses. The applicant proposes opening from 10:00 a.m. until 8:00 p.m. Monday through Saturday, and from 10:00 a.m. until 6:00 p.m. on Sundays.”

A reader who reviews the Zoning Memorandum may not be aware that a compressed dispensary schedule in the first year might correspond to lower initial forecasts for business intensity, such as traffic and parking utilization, than which would be likely to occur as the business expands.

2. Exhibit 2, *Description of Activities* states:

“...As shown on the floor plan, there will be a secure reception area where a receptionist will check patients' credentials before buzzing them into the dispensary.”

<http://www.newtonma.gov/civicax/filebank/documents/59411> (Exhibit 2 document)

In contrast, in the Zoning Review Memo it states under item 10:

The applicant is developing a security plan to monitor patients from arrival to when they leave the site. The applicant proposes to station an employee outside to greet patients. [emphasis added]

Garden Remedies' statement about an employee being stationed outside to greet patients is not included in Exhibit 2. This difference could lead a reader of the Zoning Memorandum to believe that the facility will be offering more security by having an employee stationed outside than is outlined in the 'Description of Activities' document.

Garden Remedies' attorney submitted a letter dated 8/6/14 in which he summarizes Garden Remedies plans to hire a police detail for their first week of from 4:00pm – 8:00 pm Mon – Sat, and on an interim basis for 90 days, pending discussion with the Newton Police Department.

There is no mention in the letter of plans for an employee to be stationed outside to greet patients. For clarity in the special permit process, it would be advisable for Garden Remedies to submit a statement

that they no longer plan to have an employee staffed outside the dispensary on a permanent basis if that is no longer the case.

During the public hearing Garden Remedies' security vendor described how the interior and perimeter of the building will be monitored by cameras. The security vendor said the cameras are not allowed to monitor the surrounding area beyond the perimeter of the building, such as the sidewalk because of privacy issues. In addition, Garden Remedies mentioned during the public hearing that employees may escort some patients to their cars, however they emphasized this would not be done for security reasons, and that they were not in the security business. As a result, they are essentially outsourcing security for the dispensary beyond the building perimeter to the Newton police department, at taxpayer expense.

3. Exhibit 3 -Service Area (Pursuant to Section 30-36(e)(2)) states:

“The applicant anticipates serving primarily Newton residents. However, due to the limited number of licenses available at (sic) the time being, it may also serve residents of neighboring communities. It is impossible to predict at this time how many patients will register with the DPH.”
[emphasis added]

While the petitioner makes the statement above in their special permit application, they include detailed patient and service area estimates provided by consultants in their application with the DOH.

For example, on pages 19 and 20 of their DOH application, they state the following about the derivation of their patient estimates:

“Our projections come from estimates provided by BBC Research and Consulting. BBC is an independent firm that provides analysis of emerging markets and public sector issues...

Colorado capture rates are used because not all patients suffering from qualified conditions are accepting of medical marijuana as treatment. Colorado was chosen from a group of five states that have adopted medical marijuana enabling legislation because it was the only state that satisfied the following criteria: (1) a regulated dispensary market model; (2) tracking of license holders by qualifying condition; (3) maturity in the system to allow for doctor and patient adoption; (4) a regulatory system that allows for physician discretion to determine additional conditions that will benefit from medical marijuana. The methodology assumes that eligible patients in Massachusetts will elect to use medical marijuana for treatment of their condition in roughly the same frequency as patients in Colorado.

BBC estimated the number of potential medical marijuana patients in Massachusetts based on the prevalence of the qualifying conditions in the state's population and capture rates calculated using data from a regulated, mature medical marijuana state. Based on available data and reasonable assumptions, we estimated that initially 145,120 Massachusetts residents will potentially seek medical marijuana licensure, and this number may range from 140,560 to 151,440.

... Arizona may be a more applicable model when estimating the growth of registered patients. Arizona saw 17.6% of their estimated patient population register in the first year of the program. Growth slowed in year 2 and 3 and is currently 26%. Based on our estimates, we have built our model on a registration growth rate of 15% in year one, 25% in year 2, and 40% in year three. We have also based our growth and demand model on the assumption that five RMDs will be licensed for operation in Middlesex based on its population related to the overall Massachusetts population. We assume a 17.5% capture rate for Garden Remedies of the number of patients assumed to reside in Middlesex, estimating that some patients will be drawn to other counties based on ease of access.

From the preceding statements in Gardent Remedies' state application, it is clear that they have specific estimates which they could have included in Exhibit 3 about the potential number of patients in the service area. In addition to the omission of service area estimates in this document, changes in the statewide medical marijuana licensing process since the June 17th public hearing have resulted in far fewer dispensaries targeted to open in the initial licensing cycle. Boston's two RMD applicants and Cambridge's applicant were eliminated by the DOH at the end of June, due to issues with their applications. The RMD application for Brookline is on hold while application issues are investigated by the DOH and Town of Brookline. Consequently, Garden Remedies' proposed dispensary for Washington St would include a significantly larger portion of the regional service area until more dispensaries become available. This point was not mentioned in follow up letters submitted by Garden Remedies' attorney on August 8th or September 30th. By attracting patients from a much larger service area, the extent of utilization at the proposed Washington Street location could be significantly higher than presented in the special permit application.

4. Exhibit 4 -Transportation Analysis (Pursuant to Section 30-36(e)(3))

Page 1 of the VHB Transportation Analysis states:

This memorandum includes an evaluation of the existing traffic operations and safety; ***assessment of future conditions without the project; an estimate of projected traffic volumes for the project; and its potential impact on future traffic operations in the area.***[emphasis added]

From the preceding statement, the reader would conclude that the transportation analysis would include Garden Remedies' projections for growth over time, and how this would impact traffic in the area.

On page 7 of the transportation study it states "A five year horizon (2019) was used for the evaluation.". The study then says '*Standardized traffic generation information for these types of facilities is not readily available*' [emphasis mine,] despite the fact that Garden Remedies' state application includes estimates of projected numbers of patients likely to patronize the proposed dispensary in the *Three- Year Business Plan Budget Projections* chart. Garden Remedies should have provided that data to the transportation consultant to that they could estimate trip generation as the business expands over the next few years.

On pg. 8 of the transportation study, VTP makes the following statements:

"For the purpose of this assessment, we have assumed traffic generation projections for the ultimate operations that could be realized (expanded hours). It is possible that such a level of operation will never be realized but for ***the purpose of this assessment the "worst-case" has been evaluated and is presented below.*** Given all of the operational consideration described above and the anticipated appointment schedule, the site would generate a ***maximum*** of approximately ***30 customer trips on a daily basis, a maximum of 8 daily trips for employees (trips to work and a potential midday trip by some employees),*** and a maximum of one daily trips for delivery services." [emphasis added]

VTP's Trip generation chart below appears to present incomplete data for the proposed site, since it does not take into account growth in patient visits and the number of employees which appear in the *Three- Year Business Plan Budget Projections* chart which is included in the state application.

**Table 5
Trip Generation Summary**

<u>Time Period</u>	<u>Movement</u>	<u>Existing Use Office Trips^a</u>	<u>Proposed Dispensary Trips^b</u>	<u>Net New Trips</u>
Weekday		10	78 ^c	68
Weekday Evening	Enter	0	14	14
Peak Hour	<u>Exit</u>	<u>1</u>	<u>14</u>	<u>13</u>
	Total	1	28 ^d	27
Saturday		2	78	76
Saturday Midday	Enter	0	14	14
Peak Hour	<u>Exit</u>	<u>0</u>	<u>14</u>	<u>14</u>
	Total	0	28	28

a Trip Generation estimate based on ITE LUC 940 (Office) for 828 sf of space.

b Trip Generation estimate based on data provided by Garden Remedies.

c Daily trip generation based on 30 customer trips, 8 employee trips, and 1 delivery trips per day.

d Peak hour trip generation based on 12 customer and 2 employee trips within the peak hour.

5. Item 10 of the Zoning Review Memorandum states:

Per section 30-36(f)(3), the site must be designed so as to provide ***convenient, safe and secure access and egress for clients and employees utilizing all modes of transportation.*** [emphasis added]

697 Washington St. does not meet these requirements in several respects:

- According to Garden Remedies' lease at 697 Washington St, the proposed location has no dedicated off street parking spaces
- The available parking is on-street parking, which is out of range of the proposed dispensary's security cameras. The spokesperson for their security vendor said that the dispensary's security system will only be able to monitor the interior and perimeter of the building, but not the sidewalk, due to privacy issues.
- Many of the on-street parking spaces are located across Washington St, a busy thoroughfare.
 - Pedestrians would have to cross a busy intersection which does not have a light.
- According to Garden Remedies' traffic study, there have been 11 accidents at the intersection of Washington and Harvard in the last 3 years, two of which involved pedestrians being hit by cars.
 - The traffic study states 'this indicates that traffic queues up at that intersection.'

- When the Planning Dept. inquired about Garden Remedies' plans for mitigation funding, they replied they planned to offer **no more than \$15,000** toward sidewalk improvements for pedestrian safety, *despite the fact their traffic study includes there have been 11 accidents at Washington and Harvard Streets in the last three years.*
- *When the Planning Dept. asked if Garden Remedies if they would contribute funds toward a HAWK signal to improve pedestrian safety at Washington and Harvard, they replied that they would **not** contribute (mitigation) funds toward that, despite the City's suggestion.*
- The commuter rail is not handicapped accessible. Emphasizing the value of a mode of transportation which may not be accessible to many of the patients who go to the dispensary is misleading.

6. During the June 17th Public Hearing, Alderman Albright asked how much inventory the petitioner anticipated the dispensary would have on site at a time. Instead of replying with the patient and inventory estimates included on pgs 19 and 20 of their state application, Garden Remedies replied that the intent was not to have a lot of inventory onsite but there was no way of estimating the average inventory.

"Given the similar nature of the Colorado and Massachusetts structure, we have adopted the utilization rate offered by our Colorado consultants who have operated multiple facilities in different areas of the state. We have projected that patients will utilize 1 gram of raw material per day for a monthly total of 1.1 ounces or 13 ounces per year."

Since 697 Washington Street is not an appropriate site for a medical marijuana dispensary due to its location in a neighborhood close to homes, schools, and Newtonville Square, and since there are issues with the petitioner's special permit application, I urge you to deny the special permit for Petition 167-14. Please see the attached petition signed by 105 Newton residents opposing the location at 697 Washington Street.

Sincerely,

Sarah Quigley
Atwood Ave, Newtonville