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ZONING REVIEW MEMORANDUM

Date: January 10, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: 24-26 Elliot Street Realty Trust, owner
Stephen J Buchbinder, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request to co-locate a medical and recreational marijuana dispensary and to amend Special Permit #288-18**

Petitioner: 24-26 Elliot Street Realty Trust	
Site: 24-26 Elliot Street	SBL: 51025 0001
Zoning: BU2	Lot Area: 25,320 square feet
Current use: Hair salon and restaurant	Proposed use: Medical marijuana dispensary and marijuana retailer

BACKGROUND:

The property at 24-26 Elliot Street consists of a 25,320 square foot lot improved with a one-story 7,436 square foot building constructed in 1953 formerly occupied by a hair salon which will relocate and a restaurant. The petitioner was granted a special permit in October 2018 to introduce a medical marijuana dispensary to 4,043 square feet of the existing building, with the remaining space intended for retail or service uses. The petitioner is seeking to convert the approved space to a co-located registered marijuana dispensary and retail marijuana establishment.

The petitioner is seeking a special permit to co-locate a medical marijuana dispensary and retail marijuana establishment per Section 6.10.3 and to amend the existing special permit allowing the Registered Marijuana Dispensary.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by Stephen J Buchbinder, attorney, dated 11/21/2018
- Existing Conditions Plan, signed and stamped by Verne T. Porter, dated 2/14/2018, revised 3/12/2018

- Proposed Site Plan, signed and stamped by Verne T. Porter, dated 2/14/2018, revised 3/12/18, 4/12/18, 4/25/18, 4/27/18, 5/1/18, 6/1/18, 6/19/18
- Parking Calculation
- Floor Plans and elevations, signed and stamped by Jana Gooden Slisby, architect, dated 5/3/2018

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner is proposing to co-locate a medical marijuana dispensary (RMD) and a retail marijuana establishment. This use requires a special permit from the City Council per Section 6.10.3.D of the Newton Zoning Ordinance.
2. The petitioner was granted Special Permit #288-18 in 2018 allowing for the operation of an RMD. The petitioner seeks an amendment to the special permit to add the retail use to the site.
3. Per Section 6.10.3.E.1 a marijuana retailer shall not be located within a radius of 500 feet from a K-12 public or private school, or a lesser distance if the Council deems it appropriately buffered. There is no school within this radius.
4. Section 6.10.3.E.5 states that an RMD or marijuana retailer are subject to the parking requirements of 5.1.4, which requires one stall for every 300 square feet of gross floor area, and one stall for every three employees at the highest shift for a retail use. The petitioners are proposing to use 4,043 square feet for the operation, and the remaining 3,393 square feet is intended for one or two retail or personal service use tenants (the remaining square footage is common area). The proposed uses on site would require 33 parking stalls. The petitioner is proposing to reconfigure the existing parking area with 27 parking stalls.

The previous uses on the site included a 102-seat restaurant and a 5,100 square foot hair salon. The two uses had a combined parking requirement of 58 parking stalls. As stated, the proposed uses have a parking requirement of 33 stalls. The proposed parking demand is less intense than that which was required for the previous uses on the site, creating a "credit" of 25 stalls. No waiver for the number of parking stalls is required.

5. The petitioner will present a sign package to the UDC prior to the special permit hearing, and intends to comply with 105 CMR 725.105(L) and section 5.2 of the Newton Zoning Ordinance, per section 6.10.3.E.6
6. Sections 6.10.3.E.7 require that the RMD's or marijuana retailer's hours of operation have no significant adverse impacts on nearby uses and in no case shall operate outside the hours of 9 a.m. to 9 p.m. The petitioner proposes operating from 9:00 a.m. until 9:00 p.m. Monday through Saturday, and from noon to 6:00 p.m. on Sundays, as is consistent with the approved hours of operation for the special permit to operate the RMD.
7. Section 6.10.3.E.9 requires that no RMD or marijuana retailer may locate within a half-mile radius of an existing or approved RMD or marijuana retailer. The proposed operation is not located within the prescribed radius of any other operations. The intended co-location of the RMD and retailer on the same site is not subject to this buffer requirement.

8. Section 6.10.3.E.15 requires that an RMD or marijuana retailer located on the ground level provide at least 25 percent transparency along the building's front façade at ground level, and that existing buildings shall not be modified to reduce the ground level transparency to less than 25 percent, unless the City Council finds it appropriate. The petitioner will endeavor to meet the transparency requirements for the space intended to be used by the operation. The entire front façade has approximately 27% transparency, however this includes the other uses on site. The operation itself does not appear to meet the transparency requirements, and to the extent necessary seeks a waiver of this requirement.
9. The existing parking is nonconforming with regard to stall dimensions per section 5.1.8.B.1 and 2, which require a stall width of nine feet, and a depth of 19 feet. The petitioner proposes to reconfigure some of the parking and create stalls meeting the dimensional requirements. However, the unchanged stalls' dimensions were not provided. To the extent that the alteration to the existing parking facility requires a waiver for the unchanged existing stalls from the provisions of section 5.1.8.B.2, the petitioner requests a special permit per section 5.1.13.
10. Per section 5.1.8.C.1 and 2, parking facilities with 90 degree parking require a minimum aisle width of 24 feet for two-way traffic. The proposed parking aisle in the rear parking area is less than 20 feet wide. A special permit is required for a reduce aisle width.
11. Section 5.1.9.A requires outdoor parking facilities with more than five stalls to be screened from abutting streets and properties with a strip at least five feet in width and 3.5 feet in height of densely planted shrubs or trees and fencing. The plans indicate proposed landscaping at the corner of the parking on the northern boundary but do not indicate any landscaping or fencing along the perimeter of the rear parking facility. To the extent that the proposed parking does not meet the perimeter screening requirements of section 5.1.9.A, a special permit is required.
12. Section 5.1.9.B requires interior landscaping for outdoor parking facilities with more than 20 stalls. This section requires an area equivalent to at least five percent of the area of the parking facility be landscaped. An interior planting area must consist of at least 25 square feet with no dimension less than five feet. One three-inch caliper tree is required for every ten parking stalls. The 27 parking stalls on the property are divided with 11 at the front of the building, and 16 at the rear. The proposed plans do not indicate any interior landscaping. While the petitioner intends to add landscaping to the site, to the extent that the proposed parking does not meet the interior landscaping requirements of section 5.1.9.B, a special permit is required.
13. Section 5.1.10.A requires that parking facilities which are used at night have security lighting with a minimum intensity of one foot candle on the entire surface of the parking facility. To the extent that any proposed lighting in the parking facility does not meet the requirements of section 5.1.10.A, a special permit is required.

14. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend special permit #288-18	
§6.10.3.D §4.4.1	To allow a marijuana retailer	S.P. per §7.3.3
§6.10.3.E.15	To waive the 25% façade transparency requirement	S.P. per §7.3.3
§5.1.8.B.1 §5.1.8.B.2 §5.1.13	To waive minimum stall dimensions	S.P. per §7.3.3
§5.1.8.C.1 §5.1.8.C.2 §5.1.13	To waive minimum aisle width for two-way traffic	S.P. per §7.3.3
§5.1.9.A §5.1.13	To waive perimeter screening requirements	S.P. per §7.3.3
§5.1.9.B §5.1.13	To waive interior landscaping requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive the lighting requirements	S.P. per §7.3.3