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**Barney S. Heath**  
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## ZONING REVIEW MEMORANDUM

Date: May 8, 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  
Cypress Tree Management, Petitioner  
Stephen J Buchbinder, Attorney  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Associate City Solicitor

**RE: Request to operate a medical marijuana dispensary**

Petitioner: Cypress Tree Management	
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

### BACKGROUND:

The property at 24-26 Elliot Street consists of a 25,320 square foot lot improved with a one-story 7,585 square foot building constructed in 1953 currently occupied by a hair salon which will relocate and a former restaurant which recently closed. The petitioner proposes 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 will construct an entry vestibule which would separate the dispensary from the other two uses.

The petitioner is seeking a special permit to operate a medical marijuana dispensary per Section 6.10.3, and associated parking waivers.

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 3/19/2018
- Existing Conditions Plan, signed and stamped by Verne T. Porter, dated 2/14/2018, revised 5/1/2018
- Proposed Conditions Plan, signed and stamped by Verne T. Porter, dated 2/14/2018, revised 5/1/2018
- Parking Calculation
- Floor Plan, prepared by Perkins-Eastman, dated 2/16/2018, revised 5/3/2018

**ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioner is proposing to use the site as a medical marijuana facility. This use requires a special permit from the City Council per Section 6.10.3.B and 6.10.3.C of the Newton Zoning Ordinance.
2. Per Sections 6.10.3.D.1 and 6.10.3.F.2 a registered marijuana dispensary (RMD) shall not be located within a radius of 500 feet from a school, daycare center, preschool or afterschool facility or any facility in which children or minors congregate, or from a house of worship or religious use, or a lesser distance if the Council deems it appropriately buffered. The proposed property is within 300 feet of a Spanish immersion school, which is located across Boylston Street, and requires a waiver from this provision.
3. Section 6.10.3.D.2 requires that a petitioner for a registered marijuana dispensary (RMD) must be properly registered with the Massachusetts Department of Public Health (DPH) pursuant to 105 CMR 725.100. The petitioner has submitted an application for a license from DPH.
4. Section 6.10.3.D.3 requires that any special permit authorizing the establishment of an RMD is valid for only the registered entity to which it was issued, and only for the lot on which it has been authorized.
5. Per section 6.10.3.D.4, an RMD must be located in a permanent building and not within a mobile facility. All sales must be either within the building or by home delivery. The petitioner will dispense its products at the proposed site, and will make home delivery available to its established customers.
6. Section 6.10.3.D.5 requires that an RMD conform to the dimensional requirements applicable to the zoning district in which it is located. The building was built by building permit in 1953 in what was then the Business B zoning district, which had no front or side setback requirements. The current dimensional requirements found in section 4.1.3 state that a building must meet a front setback equal to the average setback of the buildings on either side up to a maximum of 10 feet. The structure has an existing legally nonconforming front setback of 6.9 feet.

Section 4.1.3 requires a side setback of half the building height, or equal to the abutting side yard setback. The adjacent parcel at 978 Boylston Street is U-shaped, with one large building spanning between the lot and the 980 Boylston Street parcel. The building at 978 Boylston Street is located directly on the side lot line, with a zero setback. The petitioner's building is located 6.9 feet from the side lot line, meeting the setback requirement.

The Acting City Solicitor and the Commissioner of Inspectional Services have interpreted section 6.10.3.D.5 to apply to new structures, and alterations and additions to existing nonconforming structures to be used for RMDs. The building is legally nonconforming with regard to the front setback, and meets all other dimensional requirements.

7. Section 6.10.3.D.6 states that an RMD is subject to the parking requirements of 5.1.4, which requires one stall for every 300 square feet, 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 dispensary, 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 31 parking stalls. The petitioner is proposing to reconfigure the existing parking area with 30 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 30 stalls. The proposed parking demand is less intense than that which was required for the previous uses on the site, creating a "credit" of 28 stalls. No waiver for the number of parking stalls is required.

8. Any signage proposed by the petitioner must conform to the requirements of 105 CMR 725.105(L) and to section 6.10.3.D.7 of the Newton Zoning Ordinance.
9. Sections 6.10.3.D.8 require that the RMD's hours of operation have no significant adverse impacts on nearby uses. 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.
10. Sections 6.10.3.E.2 and 6.10.3.F.1 require that an RMD must be located to serve an area that currently does not have reasonable access to medical marijuana or an area established by DPH as requiring supplemental service as well as the anticipated number of clients the proposed dispensary will serve. An RMD has been permitted and is operating at 697 Washington Street in Newtonville. No information regarding the intended service area was provided as part of this application.
11. Per sections 6.10.3.E.3 and 6.10.3.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. The petitioner proposes to reconfigure the existing parking lot to provide 30 stalls. The petitioner intends to provide a transportation analysis conducted by VHB as part of its special permit application.
12. The petitioner has hired VHB to perform a transportation study, per section 6.10.3.F.4 to determine the impact of traffic generated by client trips, employee trips and deliveries to and from the site.
13. Per section 6.10.3.F.5 loading, refuse and service areas must be designed to be secure and shielded from abutting uses. The petitioner must design the site with these criteria in mind.
14. Section 6.10.3.F.6 requires the building and site to be compatible with the neighborhood, and to mitigate any negative aesthetic impacts due to security measures. The proposed site is an existing building requiring mainly interior modifications to comply with required security.
15. The building and site must be fully accessible to persons with disabilities, per section 6.10.3.F.7.

16. The site must be fully accessible to regional roadways and public transportation, per section 6.10.3.F.8.
17. Section 6.10.3.F.9 requires that the site be located where it may be readily monitored by law enforcement and other code enforcement personnel.
18. Per section 6.10.3.F.10, the RMD's hours of operation can have no significant adverse impacts on nearby uses.
19. 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.
20. 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.
21. 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.
22. 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 30 parking stalls on the property are divided with 14 at the front of the building, and 16 at the rear. The proposed plans do not indicate any interior landscaping. 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.
23. 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.

24. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§6.10.3	To allow a registered medical marijuana dispensary	S.P. per §7.3.3
§6.10.3.D.1 §6.10.3.F.2	To allow an RMD to locate within 500 feet of a school	S.P. per §7.3.3
§6.10.3.D.5 §4.1.3 §7.8.2.C.2	To allow an RMD in a nonconforming structure	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