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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 21, 2018
MEETING DATE: September 25, 2018
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Neil Cronin, Senior Planner
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 hearings.

PETITION #288-18

24-26 Elliot Street

Special Permit/Site Plan Approval to allow a registered medical marijuana dispensary (RMD) within five hundred feet of a school, and to waive certain requirements of parking facilities containing more than five stalls.

The Land Use Committee held public hearings on this petition on Tuesday, June 5, 2018 and Tuesday July 10, 2018. The public hearing was closed at the July 10th meeting, and the Committee received an update from the petitioner on August 7, 2018. The Planning Department provided a Working Session Memorandum dated August 3, 2018 in advance of that meeting.

Attached is a Draft Council Order incorporating discussion items from the public hearing and subsequent working sessions.

ATTACHMENTS:

Attachment A: DRAFT Council Order

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 a registered medical marijuana dispensary (RMD) within 500 feet of a school, and to allow waivers to the requirements of parking facilities containing more than five stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the RMD due to its location in the Business 2 zone along the Boylston Street/Route 9 corridor. (§7.3.3.1)
2. The proposed RMD as developed and operated will not adversely affect the neighborhood because the intensity of the RMD will not be greater than other uses allowed as of right. (§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 location along the Boylston Street/Route 9 corridor and proximity to regional roadways. (§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)

With regard to special permits concerning the RMD on site, pursuant to §6.10.F:

5. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana. (§6.10.3.F.1)
6. The site is located within five hundred (500) feet of a school, but the site is adequately buffered from the school by Boylston Street/Route 9. The school's population is also of an age which will not be adversely impacted by the RMD. (§6.10.3.F.2)
7. The site 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.F3)

- 8. Traffic generated by client trips, employee trips, and deliveries to and from the RMD will not create a significant adverse impact on nearby uses. (§6.10.3.F4)
- 9. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.F5)
- 10. 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.F6)
- 11. The building and site are accessible to persons with disabilities. (§6.10.3.F 7)
- 12. The site is accessible to regional roadways and public transportation. (§6.10.3.F 8)
- 13. The site is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.F 9)
- 14. The RMD's hours of operation will have no significant adverse impact on nearby uses given the mixed use nature of the Boylston Street/Route 9 corridor. (§6.10.3.F 10)

With regard to special permits for the number of parking stalls and various requirements for the design of parking facilities, pursuant to §5.1.8.B, §5.1.8.C, §5.1.9, §5.1.10, and §5.1.13:

- a. The Council finds that exceptions to the parking requirements, including waiving the minimum stall dimensions, waiving the minimum aisle width for two-way traffic, waiving the perimeter screening requirements, waiving the interior landscaping requirement, and waiving the lighting requirements are in the public interest because the rear parking facility was developed before current standards and reserving this area valet parking offers convenience for patients and increases site security;
- b. Reducing the required landscaping allows for the most efficient parking layout; and
- c. The security lighting will comply with the standards imposed by the Department of Public Health.

PETITION NUMBER: #288-18

PETITIONER: Cypress Tree Management, Inc.

LOCATION: 24-26 Elliot Street, on land known as SBL 51, 25, 01, containing approximately 25, 320 square feet of land

OWNER: 24-26 Elliot Street Realty Trust, Alan Chow, Trustee

ADDRESS OF OWNER: P.O. Box 265
Brookline, MA 02446

TO BE USED FOR: Registered Medical Marijuana Dispensary

CONSTRUCTION: Brick

EXPLANATORY NOTES: §6.10.3 and §7.3.3 to locate a RMD within five hundred feet of a school; §5.1.8.B and §5.1.13 to waive the minimum stall dimensions; §5.1.8.C and §5.1.13 to waive the minimum aisle width for two-way traffic; §5.1.9.A and §5.1.13 to waive the perimeter screening requirements; §5.1.9.B and §5.1.13 to waive the interior landscaping requirements; §5.1.10 and §5.1.13 to waive the lighting requirements

ZONING: Business 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 Verne T. Porter, Professional Land Surveyor, dated February14, 2018, and revised May 1, 2018.
 - b. Proposed Site Plan signed and stamped by Verne T. Porter, Professional Land Surveyor, dated February14, 2018, and revised June 19, 2018.
 - c. Area Plan signed and stamped by Verne T. Porter, Professional Land Surveyor, dated February14, 2018.
 - d. Architectural Plans, signed and stamped by Jana Gooden Silsby, Registered Architect, dated May 3, 2018.
 - e. Proposed Landscape Plan, signed and stamped by Elizabeth Giersbach, Registered Landscape Architect, dated June 27, 2018.
 - f. Proposed Lighting Plan, prepared by Elizabeth Giersbach, Registered Landscape Architect.
2. The petitioner shall employ a police detail, subject to availability of such police details, on site from 3:45 p.m. to 7:45 p.m. Monday through Friday for 180 days from the issuance of a temporary certificate of occupancy. At the end of such term, the Director of Planning and Development, in concert with the Transportation Division of Public Works and Newton Police Department, shall determine whether the term for the detail shall be extended or whether other changes shall be made to address queuing along Elliot Street.
3. The petitioner shall see patients of the RMD on an appointment only basis. Given that the petitioner requires each patient/customer to be served individually by a customer service representative, the “appointment only” requirement is intended to ensure a smooth flow of patients arriving to and leaving from the site, to avoid patients waiting outside the building for a customer service representative to be available, and to allow the petitioner to anticipate patient volume.

The petitioner may use reasonable flexibility to accommodate patients where events such as, but not limited to, traffic delays, public transportation scheduling, or changes in patients' and patients' schedules affect the appointment schedule. The petitioner shall also accommodate those patients 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 patient.

4. The RMD may only operate between the hours of 9:00a.m. and 9:00p.m., Monday through Saturday, and from 12:00 p.m. to 6:00 p.m. on Sunday.
5. There shall not be more than fourteen (14) staff members, including valet attendants, on site at any one time.
6. The petitioner shall update the sidewalks along the Elliot Street frontage and install a trench drain at the entrance to the site to the satisfaction of the City Engineer. Such improvements shall be completed prior to the issuance of a temporary occupancy certificate.
7. The petitioner shall implement a Transportation Demand Management Plan to mitigate employees from parking on site. The Plan shall include, but not be limited to:
 - a. Displaying all transit schedules in the immediate area, including a pedestrian wayfinding map, in a central location within the facility;
 - b. Participating in the City of Newton Bikeshare program. If the program is unsuccessful, the petitioner shall purchase no less than three bikes for employees to commute to and from work;
 - c. Providing a secure bicycle storage area on site;
 - d. Establishing an on-site car-pool, rideshare program with guaranteed ride home; and
 - e. Subsidizing the cost of parking and the cost of travel to and from the site and to and from satellite parking facilities.

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 petitioner receives a temporary certificate of occupancy, 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.

8. The petitioner shall offer valet parking during all operating hours for the first 60 days of operations. At the end of such term, the Director of Planning and Development, in consultation with the Director of Transportation and City of Newton Police Department, shall determine whether valet parking shall be continued during all operating hours or reduced to specific periods.

9. The petitioner shall limit on-site transactions to one ounce of medical marijuana, or its equivalent in whatever form the medical marijuana is dispensed, per customer per site visit, with the balance of the order, if any, delivered to customers' homes.
10. 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.
11. 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.
12. The granting of a special permit to allow an RMD 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 Massachusetts Department of Public Health and/or Cannabis Control Commission, the RMD use as well as the additional relief granted by this Order shall expire.
13. Snow shall not be stored on site.
14. Should the petitioner seek to extend the RMD authorized by this Order, including but not limited to incorporating adult use sale of recreational marijuana, increasing the number of employees, or extending the hours of operation, it shall seek an amendment to this Order.
15. The petitioner shall maintain its registration with the Massachusetts Department of Public Health and/or 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.
16. In order to provide information to the City regarding the operation of the RMD and the effectiveness of the mitigations and conditions imposed through this Council Order, the petitioner shall monitor the RMD'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 RMD, a report on pedestrian and traffic safety concerns, if any, that may have arisen from the operation of the RMD 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 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 RMD at this site, or if at the time the reports are filed, but independent of the information contained in the reports, 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 return to the Land Use

Committee to see if further mitigations on the operation of the RMD are warranted to address such public safety or security of the facility concerns.

17. 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.

18. 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. 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.

19. Notwithstanding the provisions of Condition #17 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.