

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 amend Council Order #167-14 to modify conditions pertaining to operation, to allow the retail sale of recreational marijuana (hereinafter “marijuana retail establishment” aka recreational marijuana retail establishment), to allow parking within the front setback, to allow a retaining wall exceeding four feet in the setback, 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 site is an appropriate location for amendments to Council Order #167-14 permitting use of the site for a marijuana retail establishment and medical marijuana because the site received a special permit to operate a Registered Medical Marijuana Dispensary (RMD); the petitioner then received a license for a medical marijuana treatment center prior to July 1, 2017; and M.G. L. c. 94G, sec. 3(a)(1) allows the petitioner to co-locate a marijuana retail establishment use at the same site. (§7.3.3.1)
2. The proposed marijuana retail establishment as developed and operated resulting from amendments to Council Order #167-14 will not adversely affect the neighborhood because the site is located along a mixed use corridor with sufficient on-site parking. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from amendments to Council Order #167-14 because sidewalks will be installed along Court and Washington Streets thereby increasing pedestrian safety and access in the area. (§7.3.3.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles that will come to the site following amendments to Council Order #167-14 because the site is located on a heavily trafficked corridor proximate to regional roadways and public transportation. (§7.3.3.4)

With regard to special permits authorizing the operations of the RMD on site and permitting a marijuana retail establishment use to co-locate at the site, pursuant to §6.10.3.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 lots are at least five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate in a structured, scheduled manner as more specifically described in Guidance for Municipalities Regarding the Medical Use of Marijuana, updated December 13, 2013, issued by the Massachusetts Executive Office of Health and Human Services, or from a house of worship or religious use. (§6.10.3.F.2)
7. The site is designed to provide 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.F.3)
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.F.4)
9. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.F.5)
10. The Petitioner is not proposing to alter the exterior of the building, thereby retaining the structure's and site's compatibility with other buildings in the area and the petitioner will not have 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.F.6)
11. The building and lots are accessible to persons with disabilities. (§6.10.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 hours of operation will have no significant adverse impact on nearby uses. (§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.A.1, §5.1.9.A, §5.1.9.B, §5.1.10.A.1, and §5.1.13:

15. The Council finds that exceptions to the parking requirements, including locating parking within the front setback, waiving the screening requirements, waiving interior landscaping requirements, and waiving the lighting requirements, are in the public interest or in the interest of safety or protection of environmental features for the following reasons:
 - a. Locating parking within the front setback allows for the most efficient layout of the parking lot, including dimensionally compliant parking stalls and a two-way drive aisle;
 - b. Waiving interior landscaping and perimeter screening helps maximize the number of parking stalls available to guests of the marijuana retail establishment, and a sufficient number of trees will be added to improve screening the facility from the residences to the north; and
 - c. Reducing parking lot lighting is in the public interest and the interest of the residential properties to the north.
16. The Council finds that the site consists of three lots under common ownership that have merged for the purposes of zoning and are treated as one lot. This Special Permit/Site Plan Approval hereby governs the site in its entirety.

With regard to special permits for a retaining wall exceeding four feet within a setback, pursuant to §5.4.2 and §7.3.3:

- 17. A retaining wall exceeding four feet within the setback is appropriate given the topography of the lot and the wall height allows for a level parking field.

PETITION NUMBER: #289-18

PETITIONER: Garden Remedies, Inc.

LOCATION: 697 Washington Street, on land known as SBL 23, 19, 1b, containing approximately 16,669 square feet of land

OWNER: 697 Washington Street Realty Trust, Mark Donato, Trustee

ADDRESS OF OWNER: 1211 Washington Street
Newton, MA 02465

TO BE USED FOR: A Registered Medical Marijuana Dispensary and Marijuana retail establishment

CONSTRUCTION: Brick

EXPLANATORY NOTES: §7.3.3 to amend Council Order #167-14 to amend the conditions pertaining to operations of the RMD and to allow a marijuana retail establishment; §5.1.8.A.1 and §5.1.13 to allow parking in the front setback; §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.A.1 and §5.1.13 to waive the lighting requirements; and §5.4.2. and §7.3.3 to allow a retaining wall exceeding four feet in a setback.

ZONING: Business 2 District

Approved subject to the following conditions:

This special permit #289-18 supersedes, consolidates, and restates provisions of special permit #167-14 to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #289-18 are null and void.

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. Area Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated February 28, 2014, revised October 6, 2014, and May 1, 2018
 - b. Topographic Site Plan, Prepared by VTP Associates, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated March 15, 2018.
 - c. Grading and Drainage Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated May 1, 2018.
 - d. Parking and Layout Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated March 15, 2018, revised April 24, 2018.
 - e. Floor Plans, signed and stamped by Michael R. Davis, Registered Architect, dated March 19, 2018.
 - f. Proposed Lighting Plan, prepared by Omni-Lite, Inc., dated May 30, 2018.
 - g. Proposed Plan Detail Wrought Iron Fence Entry, prepared by Phillip H. Bakalchuk, Registered Architect, dated May 20, 2014.
 - h. Proposed Landscape Plan, signed and stamped by Elizabeth Giersbach, Registered Landscape Architect, dated April 24, 2018.
 - i. Sign Plan, prepared by GenSign, dated April 15, 2014.
2. The petitioner shall comply with the Community Host Agreement on file with the City Clerk.
3. The petitioner shall see patients/customers 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/customers arriving to and leaving from the site, to avoid patients/customers waiting outside the building for a customer service representative to be available, and to allow the petitioner to anticipate patient/customer volume.

The petitioner may use reasonable flexibility to accommodate patients/customers where events such as, but not limited to, traffic delays, public transportation scheduling, or changes in patients’ and customers’ schedules affect the appointment schedule. The petitioner shall also accommodate those customers 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/customer. In addition, as part of this “appointment only” condition, the petitioner shall take the following steps no later than the date the marijuana retail establishment commences:

- a. Hire a police detail for the first 90 days of operation;

- b. Hire a private security officer to monitor the exterior of the facility and prevent any patients/customers from lingering outside the building following their transactions as well as monitor entrance and exits from the parking lot on to Court Street;
 - c. Maintain a “real time” indicator clock on its website to enable customers to determine if appointments are running late; and
 - d. Distribute sale coupons to customers to encourage non-peak time visits.
4. After the marijuana retail establishment commences, the petitioner shall attend “look-back review meetings with staff from the Planning Department, Transportation Division of the Public Works Department and the Newton Police Department at intervals of 30, 60 and 90 days, and thereafter at intervals of 6, 12, 18 and 24 months. During the first 90-day period, the petitioner shall keep records detailing the number of appointments per day, and the number of appointments taken outside of established appointment protocols i.e., “first available” as well as early and late appointments. The Planning Department shall also solicit comments from the three Ward 2 councilors, and review any comments from the public. At such time as the Planning Department concludes that this “appointment only” condition is no longer required, the petitioner may seek an amendment to its special permit.
5. Until such time as the petitioner receives a final inspection from appropriate City Departments for the parking facility and interior renovation, the RMD and the marijuana retail establishment shall operate under the following conditions:
 - a. Hours of operation shall be from 10:00 a.m. to 8:00 p.m. Monday through Thursday, and from 10:00 a.m. to 9:00 p.m. on Friday and Saturday; the marijuana establishment shall not be open on Sunday.
 - b. There shall be no more than six employees on site at any one time.
6. Upon receipt of final inspections from appropriate City Departments for the parking facility at 681 Washington Street and the interior renovation, the RMD and marijuana retail establishment may operate under the following conditions:
 - a. Hours of operation shall be from 10:00 a.m. to 8:00 p.m. Monday through Thursday, from 10:00 a.m. to 9:00 p.m. Friday and Saturday and from 12:00 p.m. to 6:00 p.m. on Sunday.
 - b. There shall be no more than twelve employees on site at any one time.
7. The petitioner shall implement a Transportation Demand Management Plan to prevent employees from occupying parking stalls both in the surface parking facility and on-street parking stalls. 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 the site;
 - c. Providing a secure bicycle storage area on site;
 - d. Establishing an on-site car-pool, rideshare program with guaranteed ride home;

- e. Reimbursing employees commuting to the site via transit; and
- f. Subsidizing the cost of parking and the cost of travel to the site 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 such as the bikeshare. Three months after the start of marijuana retail establishment, 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 also meet with the Director of Planning and Development and the Director of Transportation three months after receiving final occupancy certificates for the interior renovation and the surface parking facility. If the interior renovation and parking facility are not completed simultaneously, the three-month deadline shall start from the date of whichever aspect is completed second.

8. The petitioner shall construct the parking facility to contain 11 stalls, with the option to create an additional five stalls, for a total of 16 stalls, should the additional stalls be necessary to satisfy demand. Six months after receipt of final inspections for the parking facility and the interior renovation, the Petitioner shall conduct a parking utilization study in a form outlined and approved by the Director of Planning and Development and the Director of Transportation. The petitioner shall be required to expand the parking facility to 16 stalls should the Directors of Planning and Development and Transportation determine such, based on the findings of the parking study.
9. The petitioner shall employ a City of Newton Police Detail on the site during all operating hours for the first ninety days of the use of the site as a marijuana retail establishment. If at the end of the ninety days, the Director of Planning and Development, in consultation with the Director of Transportation and the Newton Police Department, determines the City of Newton Police Detail is still necessary, the Petitioner shall continue to employ a City of Newton Police Detail until deemed unnecessary by the officials stated. In the event a City of Newton Police Detail is not available, the petitioner shall obtain a private detail.
10. The petitioner shall employ a security professional to monitor the property, including the surface parking lot, during all operating hours. The petitioner shall make the security professional available to consult with the Newton Police Department, Newton Fire Department, and other law enforcement agencies.
11. The petitioner shall limit on-site transactions to one ounce of marijuana, or its equivalent in whatever form the marijuana is dispensed, per customer per site visit, with the balance of the order, if any, delivered to customers' homes, provided home delivery is allowed by the Cannabis Control Commission.
12. Perimeter lighting shall be directed downward, shall not shed light on abutters' properties, and shall comply with the Lighting Plans identified in Condition 1 above.
13. The petitioner shall locate and screen the dumpster to minimize its visibility from the public way. The dumpster(s) shall be kept closed, and the area surrounding the dumpster shall be kept free of debris.

14. The granting of a special permit to allow the RMD and marijuana retail establishment to operate at this site applies only to the petitioner and does not run with the land. At such time as 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 the Cannabis Control Commission, the RMD and marijuana retail establishment granted by this Council Order shall terminate.
15. The petitioner shall maintain its registration with the Massachusetts Department of Public Health and/or the Cannabis 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. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
17. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended or restricted by the Commissioner of Inspectional Services or the Commissioner of Public Works.
18. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
19. Prior to the issuance of any Building Permit for the Project, the petitioner shall pay the sum of \$25,000 to the City for the cost and installation by the City of a bus shelter along the Project's Washington Street frontage. The petitioner shall have no obligation regarding the ongoing maintenance or repair of said bus shelter.
20. Prior to the issuance of any temporary occupancy certificates for the Project, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
21. 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. Made a payment to the City in accordance with Condition #18.
 - d. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City

- Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
- e. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
22. 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 and engineer certifying compliance with Condition 1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - 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 Department and that the O&M plan has been recorded at the Middlesex Registry of Deeds.
 - 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.
23. Notwithstanding the provisions of Condition #22 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings 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.