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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: June 5, 2018
Land Use Action Date: August 14, 2018
City Council Action Date: August 20, 2018
90-Day Expiration Date: September 3, 2018

DATE: June 1, 2018

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Neil Cronin, Senior Planner

SUBJECT: **Petition #289-18**, SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order **#167-14** to allow the retail sale of recreational marijuana, to remove conditions from Board Order #167-14 pertaining to operations, to waive the requirements of parking facilities containing over five stalls, and to allow a retaining wall exceeding four feet in the setback at **681, 691, and 697 Washington Street**, Newtonville, Ward 2, on land known as SBL 23, 19, 0001B, 0001A, 0001 containing approx. 16, 669 sq. ft. of land in a district zoned BUSINESS 2. Ref: §5.1.8.A.1, §5.1.9.A, §5.1.9.B, §5.1.10.A.1, §5.1.13, §5.4.2, §7.3.3, and §7.4 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



697 Washington Street

EXECUTIVE SUMMARY

The subject properties at 681, 691, and 697 Washington Street total 16, 669 square feet in the Business Use 2 (BU-2) zone in Newtonville. The petitioner obtained a special permit (Council Order #167-14) to establish a registered medical marijuana dispensary (RMD) on site in 2014 (**Attachment A**). The petitioner is seeking to expand the RMD into an adjacent tenant space to allow the retail sale of recreational marijuana. Additionally, the petitioner is seeking to modify conditions pertaining to the operations of the RMD and to construct a surface parking facility at 681 Washington Street; therefore, the petitioner requires special permits to amend Council Order #167-14, to allow the retail sale of recreational marijuana, to waive certain requirements of a parking facility containing more than five stalls, and to allow a retaining wall exceeding four feet within the setback.

The petitioner has been operating the RMD on site since October of 2014 without complaint. Additionally, the petitioner is not subject to the moratorium imposed on marijuana establishments because it was licensed prior to July 1, 2017. The petitioner is seeking to increase the operational controls placed upon the RMD by Council Order #167-14, and the petitioner should clarify that reasoning. The Planning Department has some concerns regarding the proposed parking facility and landscaping.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the City Council should consider whether:

- The site is an appropriate location for the proposed amendments to Council Order #167-14 (§7.3.3.1).
- The amendments to Council Order #167-14 as developed and operated will not adversely affect the neighborhood (§7.3.3.1).
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.1).
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.1).
- Literal compliance with the parking requirements is impractical due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.8.A.1, §5.1.9.A, §5.1.9.B, 5.1.10.A.1, and §5.1.13).
- The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

- The site is at least five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, or the site is located at a lesser distance, that the site is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation.
- 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.
- Traffic generated by client trips, employee trips, and deliveries to and from the RMD do not create a significant adverse impact on nearby uses.
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- 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.
- The building and site are accessible to persons with disabilities.
- The site is accessible to regional roadways and public transportation.
- The site is located where it may be readily monitored by law enforcement and other code enforcement personnel.
- The RMD's hours of operation will have no significant adverse impact on nearby uses.

II. MARIJUANA BACKGROUND

A. Medical Marijuana

On November 6, 2012, the voters of Massachusetts voted in favor of Ballot Question 3, "*An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana*, to permit the cultivation and sale of marijuana for medicinal use. On December 2, 2013, the City Council Approved Council Order #309-12(4) to identify the zoning districts in which the RMD use would be allowed, to require the RMD use by special permit; and to establish the review criteria for the RMD use (**Attachment B**). The petitioner obtained a special permit (Council Order #167-14) to establish the RMD on site in 2014.

B. Recreational Marijuana

The voters of Massachusetts approved the ballot initiative to permit the cultivation,

processing, distribution, possession and use of marijuana for recreational purposes in November 2016. Effective December 15, 2016, the law allowed certain personal use and possession of marijuana and on July 28, 2017, Governor Baker signed the General Court's revised law on the subject, "*An Act to Ensure Safe Access to Marijuana*", was adopted as Chapter 55 of the Acts of 2017. The Cannabis Control Commission (CCC) was established in September 2017 to oversee all recreational and medical use marijuana and issued regulations regarding the licensing of commercial (non-medical) marijuana activities. The CCC began accepting license applications for commercial operations in April 2018 and may begin issuing licenses beginning on June 1, 2018, with establishments opening as early as July 1, 2018.

Provided the RMD was registered not later than July 1, 2017, zoning bylaws and ordinances are not permitted to prevent the conversion of an RMD engaged in the cultivation, manufacture or sale of marijuana or marijuana products to a marijuana establishment for recreational use in the same type of activity. The CCC has interpreted conversion to apply not only to replacing the operation of a registered marijuana dispensary entirely with the operation of a recreational marijuana establishment, but also to address adding recreational marijuana establishment operations to the operations of an RMD.

On March 5, 2018 City Council adopted Ordinance B-4, establishing a moratorium for all recreational marijuana establishments until December 31, 2018, to adopt new zoning regulations (**Attachment C**). Ordinance B-4 contains an exemption from the moratorium for any RMD operating in Newton licensed or registered prior to July 1, 2017, thus allowing the petitioner to add the recreational marijuana use prior to the adoption of a recreational zoning ordinance.

While there are not yet any local zoning regulations for recreational marijuana, the petitioner will still need to comply with all state regulations. The state licensing process includes, amongst other requirements, review of operations and security, background checks, confirmation of a community meeting, execution of a Host Community Agreement with the City of Newton, and confirmation that the establishment is not located within 500 feet of a public or private K-12 school and complies with local bylaws and ordinances. The petitioner has executed a Host Community Agreement that includes providing the City with three percent of gross sales of both medical and recreational marijuana (**Attachment D**). Additionally, the petitioner held a neighborhood meeting on March 29, 2018. The City enacted the local sales tax option, which means the City will collect an additional three percent tax on all sales of marijuana by a marijuana retailer to a consumer. Lastly, the subject property is not located within 500 feet of a public or private school and

complies with local ordinances, given the exemption from the moratorium.

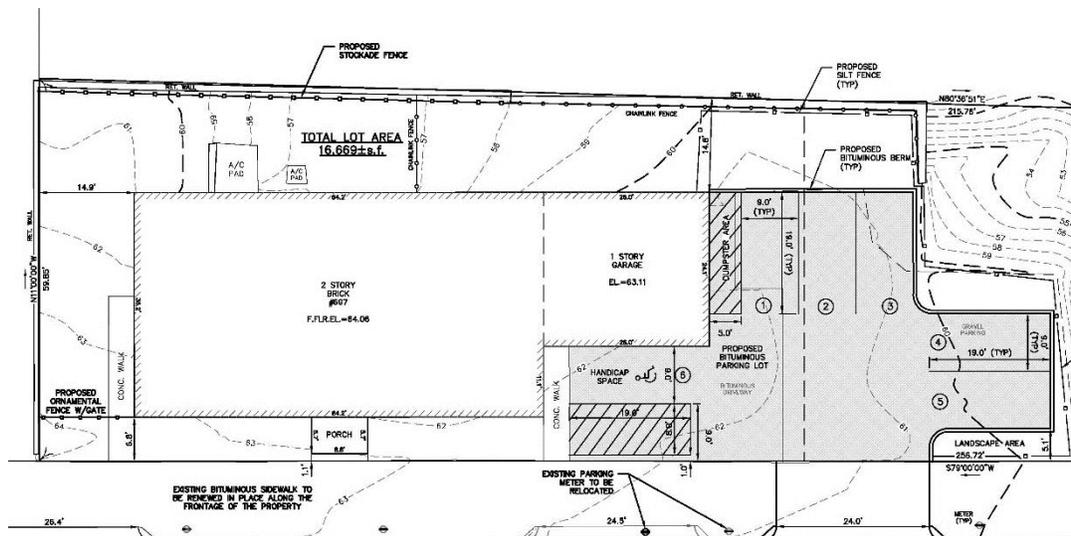
III. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

C. Neighborhood and Zoning

The site is located on Washington Street in the BU-2 zone in Newtonville. The BU-2 zone continues to the east and west along the northern side of Washington Street containing commercial uses to the east and mixed use parcels to the west. To the north are two Multi Residence zones containing single-family as well as multi-family uses. Directly south of the site along Washington Street is a Manufacturing zone containing an industrial use, and farther south lies another Multi Residence zone containing residences (**Attachments E & F**).

D. Site

The site consists of three adjacent properties under common ownership. 697 Washington Street is the westernmost parcel, and is improved with a two-story, 4,480 mixed use building containing four tenants, including the RMD. 691 Washington Street is the middle parcel consisting of a six-stall surface parking facility, and 681 Washington Street is an vacant-wooded corner lot with frontage on Washington and Court Streets. The parcels function as one lot and are treated as such for the purposes of zoning.



IV. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use(s) of the site will remain mixed use with the marijuana establishment, a massage therapist, and an acupuncturist.

B. Operations

Council Order #167-14 requires the petitioner to operate the RMD under the following parameters:

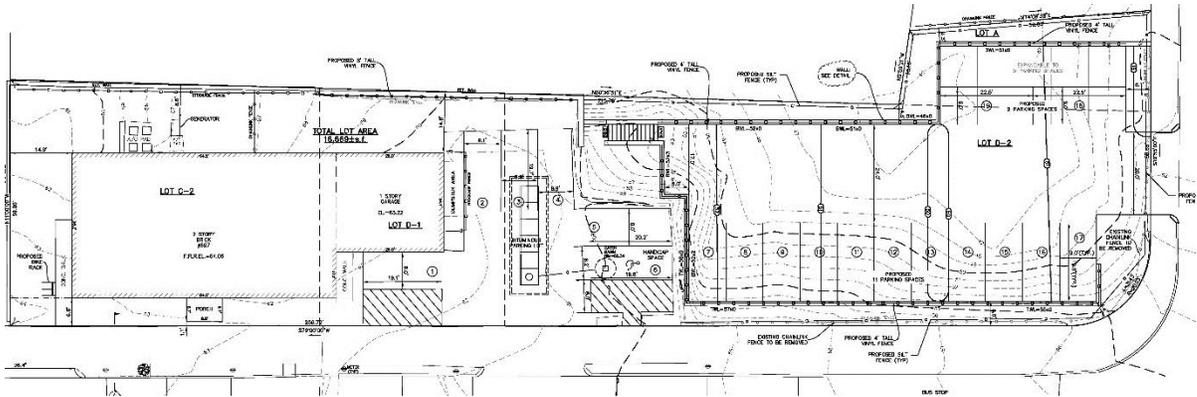
- Patients are served by appointment only;
- No more than six staff members may be on site at any one time;
- The marijuana establishment shall operate from 10:00 a.m. to 8:00 p.m., Monday through Saturday, only
- On-site transactions shall be limited to one ounce of medical marijuana, or its equivalent in whatever form the medical marijuana is dispensed.

The petitioner is seeking to remove the condition regarding appointments, to increase the number of staff to twelve, and to allow the hours of operation from 9:00 a.m. to 9:00 p.m. Monday through Saturday and from 12:00 p.m. to 6:00 p.m. on Sundays.

The condition regarding the number of staff members appears to have been a self-limiting condition on the part of the petitioner because the petitioner envisioned five employees on the largest shift. However, the conditions regarding appointments and the hours of operations were agreed to by the petitioner. The petitioner should address why these conditions should be removed and/or amended.

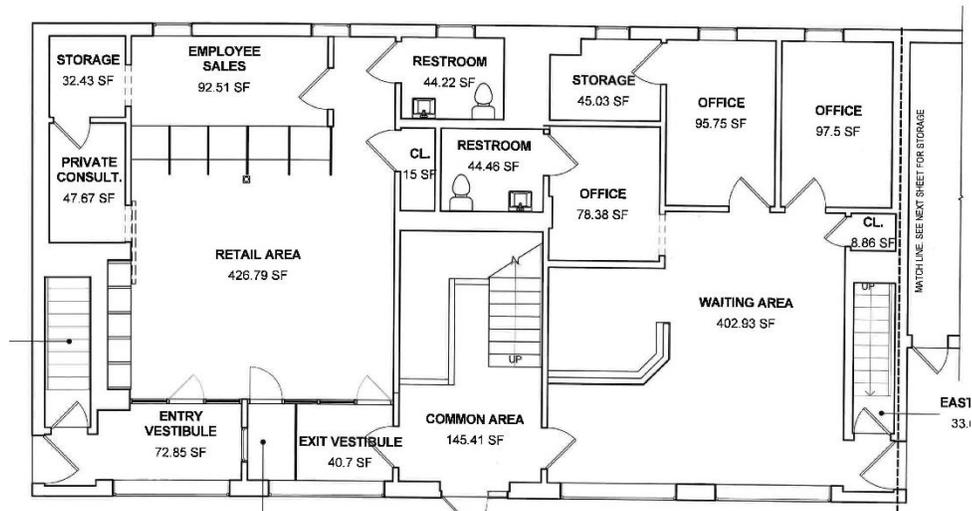
C. Site Design

The petitioner is proposing to construct a surface parking facility on the currently vacant lot at 681 Washington Street. The facility will be accessed from Court Street and will provide access to the marijuana establishment either by stairs at the western portion of the facility, or by using the sidewalk along Court and Washington Streets. The grade of the existing lot is very steep, requiring the petitioner to construct retaining walls along the perimeter of the facility; these walls are seven-foot tall in some areas. Atop the walls, a four-foot tall vinyl fence is proposed, along with significant screening along the Washington Street and Court Street frontages to buffer the facility from the streets.



D. Building Design

The petitioner is not proposing changes to the exterior of the building. Regarding the interior, the petitioner will be expanding into an adjacent tenant space, thereby occupying the entirety of the basement and first floor; the second floor remains dedicated to the other uses on site. Guests will be required to check in with the security desk before being granted access into the retail area via a connecting vestibule.



E. Parking

The petitioner is seeking to construct a surface parking facility on the currently vacant lot at 681 Washington Street accessed via a 20-foot wide curb cut on Court Street. The petitioner is proposing to stripe the lot with eleven stalls at the southern portion of the lot and two parallel stalls at the northern portion; this northern

portion can be expanded to five stalls, increasing the total number of stalls in the lot to 16. The Planning Department believes the two parallel stalls are not necessary at this stage and recommends they be removed from the plan and replaced with pervious material. Should this petition be approved, staff suggests the petitioner be allowed to create the five additional stalls in the northern portion of the lot only if they have submitted satisfactory evidence demonstrating the need to the Director of Planning and Development and the Director of Transportation Operations in the form of a parking study.

There are currently “Two Hour Parking” stalls along the section of Court Street where the petitioner proposes access into the parking facility. Removing these stalls may require approval from the Traffic Council. As such, staff has reached out to the Chair of Traffic Council and will provide the Committee with an update at the public hearing.

As part of the RMD permit, some on-street parking stalls along Washington Street and the MBTA bus stop were moved to allow for more direct vehicular access into the site. To encourage alternative methods of transportation, the petitioner has committed to providing not more than \$25, 000 to the City to purchase a bus shelter. The Planning Department supports this commitment given the proximity to the Newtonville stop of the commuter rail stop for riders transferring between modes.

F. Landscaping

The petitioner is proposing to increase the amount of landscaping along the perimeter of the proposed parking facility. Seventeen arborvitae along with some groundcover will be installed along the frontage of Washington Street. The rear of the site abutting the residences to the north will also be treated with arborvitae to adequately screen the parking facility. Along the Court Street frontage, one flowering tulip tree and decorative shrubs will frame the entrance to the parking facility; the same treatment is proposed at the western portion of the facility. Staff is supportive of the amount of landscaping, but suggests the petitioner consider alternatives to the arborvitae along the Washington Street. Staff feels the arborvitae may seem out of place because they are not located elsewhere in the immediate area.

G. Lighting

The Ordinance requires parking facilities containing more than five stalls to have lighting designed to maintain a minimum intensity of 1-foot candle on the entire

surface of the parking facility. The petitioner requested a waiver from this requirement which staff supports due to the facility's proximity to residences. Staff is supportive of the photometric plan submitted by the petitioner; however, the petitioner shall confirm whether light poles are located within setback distances.

V. REGISTERD MEDICAL MARIJUANA DISPENSARY MINIMUM CRITERIA AND LIMATIIONS ON APPROVAL

The Ordinance does not yet contain language regarding the retail sale of recreational marijuana. The petitioner is seeking to expand into an adjacent tenant space to allow for the sale of recreational marijuana, and to allow for a larger space for medical marijuana. As such, the Planning Department believes the criteria for approval of RMDs are applicable.

A. Location

As stated above, the subject property is not located within a 500-foot radius of 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.

B. Service Area

The Ordinance requires an RMD to be located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by PDH that supplemental service is needed.

C. Traffic

The petitioner submitted an analysis from a certified engineer to model the origin and frequency of trips to the site, the expected modes of transportation used by patients and employees, and the frequency and scale of deliveries. At the time of this writing, the study is being reviewed by the Transportation Division of Public Works. Staff will incorporate the analysis prior to the Working Session.

D. Accessibility

The Ordinance requires the building and lot on which an RMD is located to be handicap accessible. One handicap stall exists in the surface parking facility at 691 Washington Street. The petitioner is not proposing to create a second handicap stall in the proposed surface parking lot at 681 Washington Street due to the change in grade and distance from the building. However, due to the number of stalls proposed, the petitioner would be required to provide one handicap stall.

Therefore, staff suggests the petitioner consider striping a second handicap stall in the existing parking facility at 691 Washington Street.

E. Signage

The Ordinance prohibits graphics, symbols, or images of marijuana or related paraphernalia from being displayed or clearly visible from the exterior of an RMD. Council Order #167-14 approved the size of the existing sign as it is too large. The petitioner is not proposing any changes to the existing signage.

VI. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum (**Attachment G**) provides an analysis of the proposal regarding zoning. Based on the Memorandum, the petitioner is seeking the following relief:

- To amend Council Order #167-14.
- §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.
- §5.4.2. to allow a retaining wall exceeding four feet in the setback.

B. Engineering Review

Associate City Engineer, John, Daghlian, reviewed this petition for conformance with the City of Newton Engineering Standards (**Attachment H**). Mr. Daghlian states the sidewalks along Court Street shall be updated to modern MAAB requirements, and further information is needed pertaining to the stormwater collection system and retaining walls. Lastly, Court Street will be repaved this construction season, the petitioner shall coordinate with the Highway Division of Public Works to avoid conflicts.

VII. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

ATTACHMENTS:

- Attachment A:** Council Order #167-14
- Attachment B:** Council Order #309-12(4)
- Attachment C:** Ordinance B-4
- Attachment D:** Host Community Agreement
- Attachment E:** Zoning Map
- Attachment F:** Land Use Map
- Attachment G:** Zoning Review Memorandum, dated May 8, 2018
- Attachment H:** Engineering Review, dated May 30, 2018

5 pages

#167-14

CITY OF NEWTON

IN BOARD OF ALDERMEN

October 20, 2014

David A. Olson, CMC
Newton, MA 02459

2014 OCT 23 PM 1:02

RECEIVED
Newton City Clerk

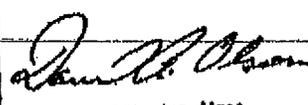
ORDERED:

That the Board, 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), to waive one parking stall, to locate parking in the front setback, and to erect a projecting wall-mounted sign, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Marc Laredo:

697 Washington Street, Newton, MA
Deed Ref: Book 2640, Page 209

1. The site is an appropriate location for the RMD use, as it meets the requirements established in the Newton Zoning Ordinance. (§30-24(d)(1))
2. The proposed use as developed and operated, including the hours of operation, will not adversely affect the neighborhood, as the intensity of the use will not be substantially greater than the previous use, or than other uses allowed by right on the site. (§30-24(d)(2)), (§30-36(f)(10))
3. There will be no nuisance or serious hazard to vehicles or pedestrians, and the petitioner is offering to make a voluntary contribution for improvements to the pedestrian crossing at the intersection of Washington Street and Harvard Street. (§30-24(d)(3))
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. The site is accessible to regional roadways and public transportation, and the building and site are accessible to persons with disabilities. (§30-24(d)(4)), (§30-36(f)(7)), (§30-36(f)(8))
5. Literal compliance with the parking requirements is impractical due to the size and slope of the lot, and granting a parking waiver of one stall would be in the public interest. (§30-19(m))
6. The projecting wall sign is in the public interest, as it will improve way-finding for customers of the proposed use. (§30-20(1))
7. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana. (§30-36(f)(1))
8. The site is 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. (§30-36(f)(2))

A True Copy
Attest



City Clerk of Newton, Mass.

9. 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. (§30-36(f)(3))
10. Traffic generated by client trips, employee trips, and deliveries to and from the RMD does not create a significant adverse impact on nearby uses. (§30-36(f)(4))
11. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§30-36(f)(5))
12. 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. (§30-36(f)(6))
13. The site is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§30-36(f)(9))

PETITION NUMBER: #167-14

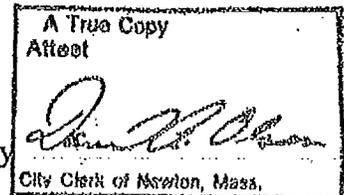
PETITIONER: Garden Remedies, Inc.

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: Registered Medical Marijuana Dispensary



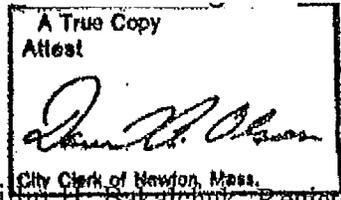
CONSTRUCTION: Brick

EXPLANATORY NOTES: §30-36, to allow a Registered Medical Marijuana Dispensary; §30-19(d)(10) & §30-19(m), to waive one parking stall; §30-19(h)(1) & §30-19(m), to allow parking in the front setback; §30-20(l), to exceed the allowable horizontal projection for a wall sign.

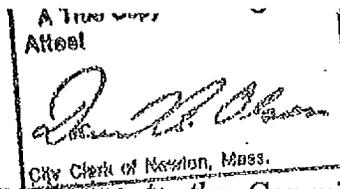
ZONING: Business 2 District

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. Site Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated July 24, 2014, and revised October 6, 2014.
 - b. Parking Layout Plan, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated July 24, 2014, and revised October 6, 2014.



- c. Floor Plans, signed and stamped by Phillip H. Bakalchuk, Registered Architect, dated June 2, 2014.
 - d. Proposed Lighting Plan, prepared by Phillip H. Bakalchuk, Registered Architect, dated May 28, 2014.
 - e. Proposed Plan Detail Wrought Iron Fence Entry, prepared by Phillip H. Bakalchuk, Registered Architect, dated May 20, 2014.
 - f. Sign Plan, prepared by GenSign, dated April 15, 2014.
-
2. The petitioner shall employ a police detail, subject to availability of such police details, on the site during all operating hours for the first week that it is open to customers, and subsequently on an interim basis for ninety (90) days from 4:00 p.m. until 8:00 p.m., Monday through Saturday. The times during the day when a police detail is present may be modified as deemed appropriate by the Newton Police Department.
 3. The petitioner shall see customers on an appointment only basis.
 4. The petitioner shall not have more than six (6) staff on the site at any one time.
 5. The petitioner may only operate between the hours of 10:00 a.m. and 8:00 p.m., Monday through Saturday. The petitioner shall not operate on Sundays.
 6. 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 delivered to customers' homes.
 7. Perimeter lighting shall be directed downward, shall not shed light on abutters' properties, and shall comply with the Lighting Plan identified in Condition 1 above.
 8. The petitioner shall remove any trash on the unimproved portion of the property on a monthly basis.
 9. 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.
 10. 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. 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, the RMD use as well as the 1 stall parking waiver and projecting sign waiver granted by this Board Order shall terminate.
 11. The petitioner shall maintain its registration with the Massachusetts Department of Public Health. 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 Board of Aldermen, the Commissioner of Inspectional Services and the Planning Department. The petitioner shall immediately notify the Clerk of the Board of Aldermen, the Commissioner of Inspectional Services and the Planning Department if its registration is not renewed or is revoked.
 12. At regular intervals, and not less than annually, the petitioner shall seek permission from the Department of Public Health to install an on-site ATM for use by its customers. If such permission is granted, the petitioner shall install an on-site ATM.
 13. 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 Board Order, the petitioner shall monitor the RMD's operation in the following areas and at the following intervals, and

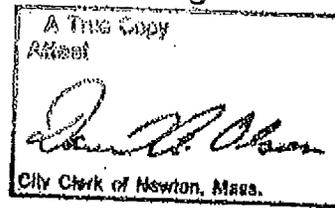


shall provide reports summarizing such monitoring to the Commissioner of Inspectional Services and the Director of Planning and Development, which reports shall also be filed with the Land Use Committee of the Board of Aldermen:

- a. Within ninety (90) days of commencing operations of the RMD, a report regarding the presence of the police detail to determine if the additional security afforded by the police detail is warranted or necessary, and whether such presence as required in Condition 2 should be modified in any respect, including a possible continuation of such presence. Such report shall include a recommendation from the Police Department including the basis for such recommendation; and
- b. 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. The petitioner has agreed to a voluntary contribution of an amount up to \$5,000 to pay for additional mitigations if warranted pursuant to this Condition.

14. 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 board 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 board 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.
15. 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. Made a voluntary contribution in an amount not to exceed \$15,000 to the City of Newton for a curb extension or other pedestrian improvements at the intersection of Harvard Street and Washington Street in Newtonville.



Under Suspension of Rules
Readings Waived and Approved
21 yeas 2 nays (Alderman Baker and Cote) 1 absent (Alderman Harney)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on October 23, 2014. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on 10/23 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

Middlesex South Registry of Deeds
Electronically Recorded Document

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Recording Information

Document Number	: 173904
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Number of Pages(including cover sheet)	: 6
Receipt Number	: 1753999
Recording Fee	: \$75.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.cambridgedeeds.com

 **SCHLESINGER^{AND}
BUCHBINDER, LLP**
ATTORNEYS AT LAW
1200 WALNUT STREET
NEWTON, MASSACHUSETTS 02461-1267

STEPHEN J. BUCHBINDER
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LEONARD M. DAVIDSON
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HEATHER G. MERRILL
PAUL N. BELL
KATHERINE BRAUCHER ADAMS
FRANKLIN J. SCHWARZER
RACHAEL C. CARVER

TELEPHONE (617) 965-3500
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OF COUNSEL
ROBIN GORENBERG

sjbuchbinder@sab-law.com

November 13, 2014

BY HAND

Ms. Linda Finucane
Chief Committee Clerk
Newton Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459-1449

Re: Board Order #167-14/Garden Remedies, Inc./697 Washington Street

Dear Linda,

Enclosed please find a copy of the above-referenced Board Order which was recorded with the Middlesex South District Registry of Deeds on this date in Book 64502, Page 185.

Please feel free to contact me if you have any questions respecting the foregoing.
Best wishes.

Sincerely,



Stephen J. Buchbinder

SJB/mer
Enclosure

cc: (w/enclosure)
Mr. John Lojek, Commissioner
Inspectional Services Department
Ms. Alexandra Ananth, Chief Planner
Department of Planning and Development
(By First Class Mail, w/out enclosure)
Dr. Karen Munkacy

CITY OF NEWTON
IN BOARD OF ALDERMEN

ORDINANCE NO. A-35

December 2, 2013

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be and are hereby further amended relative to Chapter 30 as follows:

Add the following new section:

Sec. 30-36. Registered Marijuana Dispensaries.

(a) *Purpose.* The purpose of this section is to provide for the limited establishment of registered marijuana dispensaries ("RMD") within the City as they are authorized pursuant to state regulations set forth in 104 CMR 725.000. Since RMDs are strictly regulated and will be limited in number by the Massachusetts Department of Public Health, the intent of this section is to permit RMDs where there is access to regional roadways and public transportation, where they may be readily monitored by law enforcement for health and public safety purposes, and where they will not adversely impact the character of residential neighborhoods and business districts.

(b) *RMD uses not allowed as-of-right.* RMD uses are not included within the definition of retail sales or services, agriculture, or any other lawful business permitted as of right or by special permit as provided in Chapter 30.

(c) *RMD uses allowed by special permit.* Use of land, buildings or structures for RMDs shall be allowed only by special permit pursuant to section 30-24 in the following districts, subject to the requirements and criteria of this section: Business 2; Business 5; and Mixed Use 1.

(d) *Minimum criteria and limitations on approval.*

(1) An RMD shall not be located within a radius of five hundred (500) feet from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, but may be located within a lesser distance if the board of aldermen finds that the RMD is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation. Such distance shall be measured in a straight line from the nearest property line of the proposed RMD to the nearest property line of the facility.

(2) An RMD shall be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and shall comply with all applicable state and local public health regulations, public safety code regulations and all other applicable state and local laws, ordinances, rules and regulations. No building permit or certificate of occupancy shall be issued for an RMD that is not properly registered with the Massachusetts Department of Public Health. The RMD shall file copies of its initial certificate of registration and each annual renewal certificate with the clerk of the board of aldermen within one week of issuance, and shall immediately notify said clerk if its registration is not renewed or is revoked. The RMD shall provide the Newton police department with the names and contact information for all management staff and shall immediately notify the police department of any changes.

(3) A special permit granted by the board of aldermen authorizing the establishment of an RMD shall be valid only for the registered entity to which the special permit was issued, and only for the site on which the RMD has been authorized by the special permit. If the registration for the RMD is revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to the issuance of a certificate of occupancy.

(4) An RMD shall be located only in a permanent building and not within any mobile facility. All sales shall be conducted either within the building or by home delivery to qualified clients pursuant to applicable state regulations.

(5) An RMD shall conform to the dimensional requirements applicable to the zoning district in which it is located.

(6) An RMD shall be subject to the number of parking stalls required in section 30-19(d)(10) unless a lesser or greater number of stalls is required by the board of aldermen based on the transportation analysis provided by the applicant

(7) All signage shall conform to the requirements of 105 CMR 725.105(L) and to the requirements of section 30-20 of these ordinances. No graphics, symbols or images of marijuana or related paraphernalia shall be displayed or clearly visible from the exterior of an RMD. The board of aldermen may impose additional restrictions on signage to mitigate impact on the immediate neighborhood.

(8) The RMD's hours of operation shall not adversely impact nearby uses. The board of aldermen may, as a special permit condition, limit the hours of operation of an RMD to mitigate any adverse impact on nearby uses.

(e) *Special permit application and procedure*

The procedural and application requirements of section 30-24 shall apply. In addition to the procedural and application requirements of section 30-24(a), (b) and (c), an application for special permit shall include, at a minimum, the following information:

- (1) *Description of Activities:* A narrative providing information about the type and scale of all activities that will take place on the proposed site, including but not limited to cultivating and processing of marijuana or marijuana infused products (MIP's), on-site sales, off-site deliveries, distribution of educational materials, and other programs or activities.
 - (2) *Service Area:* A map and narrative describing the area proposed to be served by the RMD and the anticipated number of clients that will be served within that area. This description shall indicate where any other RMDs exist or have been proposed within the expected service area.
 - (3) *Transportation Analysis:* A quantitative analysis, prepared by a qualified transportation specialist acceptable to the director of planning and development and the director of transportation, modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to and from the site.
 - (4) *Context Map:* A map depicting all properties and land uses within a minimum one thousand (1,000) foot radius of the proposed site, whether such uses are located in Newton or within surrounding communities, including but not limited to all educational uses, daycare, preschool and afterschool programs. The context map shall include the measured distance to all uses described in section 30-36 (d)(1).
 - (5) *Registration Materials:* Copies of registration materials issued by the Massachusetts Department of Public Health and any materials submitted to that department for the purpose of seeking registration, to confirm that all information provided to the board of aldermen is consistent with that provided to the Massachusetts Department of Public Health.
- (f) *Special Permit Criteria.* In granting a special permit for a Registered Marijuana Dispensary, in addition to finding that the general criteria for issuance of a special permit as set forth in section 30-24(d) of this ordinance are met, the board of aldermen shall find that the following criteria are met:
- (1) The RMD is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by another RMD, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.
 - (2) The site is located at least five hundred (500) feet distant from a school, daycare center, preschool or afterschool facility or any facility in which minors commonly congregate, or from a house of worship or religious use, or the site is located at a lesser distance if the board of aldermen finds that the site is sufficiently buffered such that these facilities or uses will not be adversely impacted by the RMD's operation.

(3) 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.

(4) Traffic generated by client trips, employee trips, and deliveries to and from the RMD shall not create a significant adverse impact on nearby uses.

(5) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

(6) 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.

(7) The building and site are accessible to persons with disabilities.

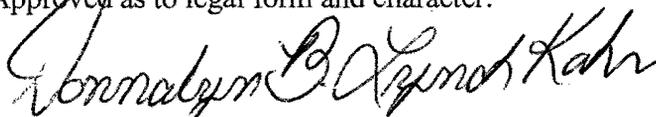
(8) The site is accessible to regional roadways and public transportation.

(9) The site is located where it may be readily monitored by law enforcement and other code enforcement personnel.

(10) The RMD's hours of operation will have no significant adverse impact on nearby uses.

(g) *Severability.* If any portion of this section is ruled invalid, such ruling will not affect the validity of the remainder of the section.

Approved as to legal form and character:

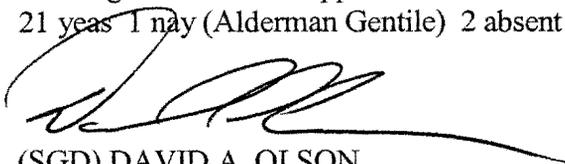


DONNALYN B. LYNCH KAHN
City Solicitor

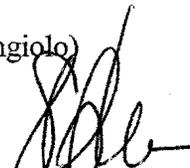
Under Suspension of Rules

Readings Waived and Approved

21 yeas 1 nay (Alderman Gentile) 2 absent (Aldermen Fischman and Sangiolo)



(SGD) DAVID A. OLSON
City Clerk



(SGD) SETTI D. WARREN
Mayor

Date: 12/16/13

CITY OF NEWTON

IN CITY COUNCIL

ORDINANCE NO. B-4

March 5, 2018

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON that the Revised Ordinances of Newton, Massachusetts, 2017, as amended, be and are hereby further amended with respect to **Chapter 30 ZONING** as follows:

INSERT a new section 6.10.4 as follows:

6.10.4 Recreational Marijuana Establishments

- A. Recreational Marijuana Establishment shall mean a non-medical marijuana cultivator, marijuana testing facility, marijuana product manufacturer, marijuana retailer, or any other type of marijuana-related business licensed by the Cannabis Control Commission.
- B. The City hereby adopts a temporary moratorium prohibiting the use of land, buildings or structures in any district for Recreational Marijuana Establishments. This moratorium shall be in effect through December 31, 2018, unless repealed earlier by the City Council. During this moratorium period, the City shall undertake a planning process to address the potential impacts of recreational marijuana establishments on the City, to consider the Cannabis Control Commission's regulations pertaining to recreational marijuana establishments and related uses, and to study and consider adoption of zoning amendments to regulate in what districts and under what conditions licensed marijuana establishments may be allowed.
- C. This moratorium shall not apply to prevent a medical marijuana dispensary operating in Newton that was licensed or registered not later than July 1, 2017 from converting to the retail sale of recreational marijuana under the provisions of MGL c. 94G and any regulations promulgated thereunder.

Approved as to legal form and character:



QUIDA C. M. YOUNG
Acting City Solicitor

Under Suspension of Rules

Readings Waived and Adopted

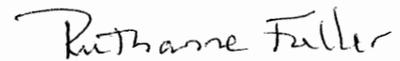
20 yeas 0 nays 4 absent (Councilors Ciccone, Danberg, Gentile, and Lipof)

EXECUTIVE DEPARTMENT

Approved:



(SGD) DAVID A. OLSON
acting City Clerk



(SGD) RUTHANNE FULLER
Mayor

**NEWTON, MASSACHUSETTS
AND GARDEN REMEDIES, INC.
HOST COMMUNITY AGREEMENT**

12th THIS HOST COMMUNITY AGREEMENT (“AGREEMENT”) is entered into as of this day of April, 2018 by and between Garden Remedies, Inc. (“Garden Remedies”), a Massachusetts not-for-profit corporation with a principal office address of 697 Washington Street, Newton, Massachusetts 02458 (“the Company”) and the City of Newton, a Massachusetts municipal corporation with a principal address of 1000 Commonwealth Avenue, Newton Centre, Massachusetts 02459 (“the City”), acting by and through its Mayor.

WHEREAS, the Company seeks to locate a Marijuana Establishment (“ME”), as defined in and subject to the provisions of M.G.L. Chapter 94G and Chapter 55 of the Acts of 2017, in the City, in accordance with regulations issued by the Massachusetts Cannabis Control Commission (“CCC”) at 935 CMR 500.000 *et. seq.*; and

WHEREAS, the Company intends to provide certain benefits to the City in the event that it receives a Final License from the CCC to operate a ME (the “CCC License”), and receives all other required local permits and approvals; and

WHEREAS, the parties agree that the terms, conditions, and funds required herein are reasonable and directly proportional to the costs of addressing the potential health, safety, and other effects or impacts of the ME on the City.

NOW THEREFORE, in consideration of the provisions of this Agreement, the Company and the City agree as follows:

1. The Company agrees to make payments to the City, in the amounts and under the terms provided herein (the “Funds”). The Treasurer of the City shall hold the funds for the purposes of addressing the public health, safety, education, administrative, infrastructure and other effects or impacts as may be identified of the Medical Establishment on the City and on its municipal and school programs, services, personnel, and facilities. The Funds shall be used at the City’s sole discretion, and the City will track expenditures on an annual basis.

2. The Company shall pay to the City the following sums:

- (a) 3% of the Company’s gross revenues from the sale of Medical Marijuana calculated retroactive to March 5, 2018.
- (b) 3% of the Company’s gross revenues from the sale of Adult-Use (i.e. Recreational) Marijuana calculated as of the first date of retail sales.

Payments made pursuant to this provision shall be made on a quarterly basis and shall represent 3% gross revenues from relevant sales made in the preceding quarter. The quarters are to be defined as follows – Quarter 1 is January 1 through March 31, Quarter 2 is

April 1 through June 30, Quarter 3 is July 1 through September 30, and Quarter 4 is October 1 through December 31. Payments to the City representing a percentage of gross revenues received by the Company during a given quarter shall be made on or before the last day of the next month. (As an example, the payment due for sales occurring during Quarter 1 shall be made on or before the last day of the first month of Quarter 2, i.e., April 30.) The Company shall provide the City with copies of its periodic financial filing to the CCC documenting sales, and also a copy of its annual filing as a non-profit, if any, to the Massachusetts Office of the Attorney General.

3. This Agreement shall take effect as of the date first written above and shall run for an initial term of five (5) years with any changes to be approved in writing by both parties. The parties agree to begin negotiation for a successor agreement six months in advance of the fifth anniversary of the Agreement's execution.

4. The purpose of the payments by the Company is to assist the City in addressing any public health, safety, education, administrative, infrastructure and other effects or impacts as may be identified of the Medical Establishment on the City and on its municipal and school programs, services, personnel and facilities. The City may expend the above-referenced payments for these purposes at its sole and absolute discretion.

5. The provisions of this Agreement shall be applicable as long as the Company operates a ME in the City pursuant to a license issued by the CCC.

6. The Company, in addition to any funds specified herein, shall contribute to public charities or private non-profit entities in the City an amount not less than \$2,500.00 in the first year of this Agreement, and shall escalate five percent (5%) annually thereafter. Said charities shall be determined by the Company in its reasonable discretion.

7. The Company will make best efforts to hire qualified employees who are City residents.

8. The Company shall notify the City of the name and relevant information, including but not limited to the information set forth in 95 CMR 500.802, of the person proposed to act as on-site manager of the ME. The submitted information shall include the results of a criminal history (CORI) check on the person proposed to act as on-site manager of the Facility, verifying that the individual is of suitable character to act as on-site manager. This notification process shall also apply to any change of on-site manager.

9. The Company shall provide the City with certification and a written summary of the training which shall be provided to the on-site manager and to all agents of the ME. The Company shall further provide the City with a copy of its policy (as required pursuant to 95 CMR 500.105(1)(a) and (b)) for the immediate dismissal of any dispensary agent who has (a) diverted marijuana, which shall be reported to law enforcement officials and to the CCC; or (b)

engaged in unsafe practices with regard to the operation of the ME, which shall be reported to the CCC.

10. The Company shall work with the Newton Police Department to implement a comprehensive diversion prevention plan to prevent diversion, such plan to be in place prior to the sales commencement date. Such plan will include, but is not limited to, (a) training ME employees to be aware of, observe, and report any unusual behavior in customers, or other ME employees that may indicate the potential for diversion; (b) strictly adhering to maximum sale quantities and time periods for purchases (per CCC and DPH guidelines); (c) in the case of medical patients, rigorous patient identification and verification procedures through the MMJ Online System; (d) utilizing seed-to-sale tracking software to track closely all inventory at the ME; (e) refusing to complete a transaction if the customer (i) requests additional marijuana product because a prior purchase was damaged or lost; (ii) threatens or attempts to coerce an ME employee in order to obtain excess marijuana product; or (iii) attempts to elicit guilt or sympathy from an ME employee in order to obtain excess marijuana product.

11. The Company shall maintain its books, financial records, and any other data related to its finances and operation in accordance with standard accounting practices and any applicable regulations and guidelines promulgated by the Commonwealth. All records shall be retained for a period of at least seven (7) years. The City shall have the right to enter and audit or inspect said records upon reasonable notice to Company, provided, however, that said records shall not become a public record by virtue of the audit or inspection.

12. The Company shall schedule an annual meeting every June with the Mayor, or his or her designee, to review the previous year's operations in the City.

13. At all times during the Term of this agreement, property, both real and personal, owned or operated by the Company shall be treated as taxable, and all applicable real estate and personal property taxes for that property shall be paid either directly by the Company or by its lessor, and the Company shall not object to or otherwise challenge the taxability of such property and shall not seek a non-profit exemption from paying such taxes. Notwithstanding the foregoing, (i) if real or personal property owned or operated by the Company is determined to be non-taxable or partially non-taxable, a determination of which the Company agrees not to seek at any time during this Agreement, or (ii) if the Company is determined to be entitled or subject to exemption with the effect of reducing or eliminating the tax which would otherwise be due if not so exempted, then the Company shall pay to the City an amount which when added to the taxes, if any, paid on such property, shall be equal to the taxes which would have been payable on such property at fair cash value and at the otherwise applicable tax rate, if there had been no abatement or exemption. This payment shall be in addition to the payment made by the Company under Section 1 of this Agreement.

14. The obligations of the Company and the City recited herein are specifically contingent upon the Company obtaining the CCC License for operation of an ME in the City,

and the Company's receipt of any and all necessary local permits and approvals to locate, occupy, and operate an ME in the City. If the Company fails to obtain the necessary CCC License or such local permits and approvals for Adult-Use Sales, then this Agreement shall be of no further force and effect, in which event, the parties shall enter into a revised host agreement, relating to medical sales only if required to do so by state law.

15. This Agreement does not affect, limit, or control the authority of City boards, commissions, and departments to carry out their respective powers and duties to decide upon and to issue, or to deny, applicable permits and other approvals under the statutes and regulations of the Commonwealth, the Zoning Ordinances of the City, or applicable regulations of those boards, commissions, and departments, or to enforce said statutes, bylaws, and regulations. The City, by entering into this Agreement, is not thereby required or obligated to issue such permits, including, without limitation, a special permit issued by the Newton City Council, and approvals as may be necessary for the ME to operate in the City, or to refrain from enforcement action against the Company and/or its ME for violation of the terms of said permits and approvals or said statutes, bylaws, and regulations.

16. The Company shall not assign, sublet, or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the City, and shall not assign any of the monies payable under this Agreement, except by and with the written consent of the City.

17. This Agreement is binding upon the parties hereto, their successors, assigns, and legal representatives. Neither the City nor the Company shall assign or transfer any interest in the Agreement without the written consent of the other.

18. The Company agrees to comply with all laws, rules, regulations, and orders applicable to the ME, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.

19. Any and all notices or other communications required or permitted under this Agreement shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by overnight commercial delivery service, to the parties at the addresses set forth on below or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand; if so mailed, when deposited with the U.S. Postal Service; or if sent by overnight commercial delivery service, when deposited with such delivery service.

City:
City of Newton
Attention: Mayor
Newton City Hall
1000 Commonwealth Avenue

Newton Centre, MA 02459-1449

with a copy (by first class mail, postage prepaid) to:
City Solicitor
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

Garden Remedies:

Garden Remedies, Inc.
Attention: Dr. Karen Munkacy, President
697 Washington Street
Newton, MA 02458

with a copy (by first class mail, postage prepaid) to:
Schlesinger and Buchbinder, LLP
Attention: Stephen J. Buchbinder, Esquire
1200 Walnut Street
Newton, MA 02461-1267

20. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

21. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts, and the Company submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

22. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated Host Community Agreement between the Company and the City with respect to the matters described herein. This Agreement supersedes all prior agreements, negotiations, and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto. This paragraph, however, shall not apply to separate permitting or permit conditions as may be required by the City as noted in paragraph 15, above.

23. This Agreement shall be null and void in the event that the Company shall not locate an ME in the City or shall relocate such ME outside of the City. In the case of any relocation outside of the City, an adjustment of funds due to the City hereunder shall be calculated based upon the period of occupation of the ME within the City, but in no event shall the City be responsible for the return of any funds already provided to it by the Company.

24. The Company shall be deemed to be in default of this Agreement if the Company fails to maintain all necessary licenses and permits required to operate the ME facility in accordance with the CCC License, or if it breaches any term of this Agreement and fails to cure said breach within thirty (30) days of notice thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF NEWTON

Ruthanne Fuller

By: Ruthanne Fuller

Its: Mayor, duly authorized

GARDEN REMEDIES, INC.

Karen Munkacy MD

By: Karen Munkacy

Its: President, duly authorized

Approved as to legal form and character:

Marie M. Lawler

Assistant City Solicitor

(8) 4/10/18

Attachment E Zoning Map Washington St., 697

*City of Newton,
Massachusetts*

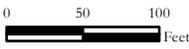
Legend

-  Multi-Residence 1
-  Multi-Residence 2
-  Business 2
-  Manufacturing
-  Building Outlines
-  Surface Water
-  Property Boundaries



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller



Map Date: June 01, 2018



Attachment F Land Use Map Washington St., 697

*City of Newton,
Massachusetts*

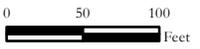
Legend

- Land Use**
-  Single Family Residential
 -  Multi-Family Residential
 -  Commercial
 -  Industrial
 -  Mixed Use
 -  Vacant Land
 -  Building Outlines
 -  Surface Water
 -  Property Boundaries



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller



Map Date: June 01, 2018





Ruthanne Fuller
Mayor

Attachment G

City of Newton, Massachusetts
Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 8, 2018

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Stephen J Buchbinder, Attorney
697 Washington Street Realty Trust
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: Request to allow an Adult-Use Marijuana Establishment, for associated waivers to construct a new parking facility to support an existing commercial building, for a retaining wall over four feet in a setback, and to amend Order #167-14

Applicant: 697 Washington Street Realty Trust	
Site: 697, 691, 681 Washington Street, 2 Court Street	SBL: 23 019 0001B, 23019 0001A, 23019 0001, 23019 0023
Zoning: BU2	Lot Area: 16,669 square feet
Current use: Office/RMD and vacant land	Proposed use: Office/RMD and parking

BACKGROUND:

The property at 697 Washington Street consists of a 16,669 square foot lot improved with a 4,480 square foot mixed use two-story building with four tenants, including a medical marijuana dispensary (RMD), which received a special permit in 2014, and six surface parking stalls. The petitioner proposes to expand the RMD to include the retail sale of recreational marijuana in addition to the sale of medical marijuana. The petitioner seeks to expand its existing facility by incorporating additional space on the same (first) floor of the building. The petitioner proposes to construct a 13-stall parking area adjacent to the existing building, with the option to expand to 16 stalls should the need arise. The petitioner is requesting several waivers to allow for the construction of the proposed parking expansion.

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 3/16/2018
- Existing Conditions Plan, prepared by VTP Associates, dated 3/15/2018

- Parking Layout Plan of Newton, prepared by VTP Associates, dated 3/15/2018, revised 4/24/2018
- Planting Plan, prepared by G2 Collaborative, dated 4/24/2018
- List of Parking Facility Waivers, submitted 3/16/2018

ADMINISTRATIVE DETERMINATIONS:

1. On March 5, 2018, the City Council adopted Ordinance B-4 inserting section 6.10.4 into the Zoning Ordinance, adopting a temporary moratorium prohibiting the use of land, buildings or structures in any district for Recreational Marijuana Establishments, as defined by the Ordinance. However, language as inserted in the provision states that the moratorium shall not apply to prevent a medical marijuana dispensary operating in Newton that was licensed or registered not later than July 1, 2017 from converting to the retail sale of recreational marijuana under the provisions of MGL c. 94G. As Garden Remedies was registered prior to that date, they are exempted from the moratorium and may also sell recreational marijuana on site.
2. The petitioner was granted Special Permit #167-14 in 2014 to allow for an RMD, to waive existing nonconformities within the parking area, and to waive one required parking stall. The petitioner is seeking an amendment to Special Permit to allow for the recreational marijuana use, and to amend the site plan reflecting the changes to the parking areas.
3. The petitioner is proposing two designs for the expanded parking, one which adds 13 stalls and the other adding 16. The petitioner intends to construct the 13-stall design to begin with, but requests to have the 16-stall design approval available should the need for additional parking arise in the future. The 13 stall design results in a total of 19 surface parking stalls, the 16-stall design results in a total of 22. For the purposes of this memo, the 16-stall design will be reviewed, as additional relief is required for the larger number.
4. The petitioner intends to expand the existing dispensary to include a 764 square foot office used by an optometrist, ultimately occupying a total of 1,961 square feet. For the purposes of determining the parking requirement, a marijuana establishment (medical or recreational) is classified as a retail use. Per section 5.1.4, a retail use requires one stall for every 300 square feet, and one stall for every three employees. The proposed marijuana establishment requires 11 parking stalls ("A").

The previous uses of the existing RMD in 1,079 square feet and the optometrist required 10 parking stalls ("B"). Per section 5.1.3.B, when the change of use increases the parking requirement, the formula $A - B + C =$ the required stalls, is utilized to determine the number of parking stalls the proposed use requires. There are six existing parking stalls on the property, which were permitted by the original special permit ("C"). Per this formula:

$$11 \text{ (proposed use)} - 10 \text{ (existing uses)} + 6 \text{ (existing stalls)} = 7 \text{ stalls required for the proposed use}$$

Seven parking stalls are required for the proposed use. Should the proposed expanded parking facility be approved, there will be a minimum of 13 additional parking stalls available for use, meeting the expanded parking requirement.

5. Section 5.1.8.A.1 requires that no parking locate within any required front or side setbacks. The parking is located in an area to the east of the building fronted by both Washington and Court Streets. The petitioner is proposing parking 6.1 feet from the front lot line, which is within the required 10 foot front setback from Court Street. A waiver from this provision is required to allow parking within the required front setback.
6. 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 do not indicate any landscaping or fencing along the perimeter of the 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.
7. 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 proposed plans do not indicate any interior landscaping. While landscaping is proposed around the perimeter of the property, the proposed parking does not meet the interior landscaping requirements of section 5.1.9.B, a special permit is required.
8. 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.
9. To accommodate the grade changes in the proposed parking area, the petitioner is proposing retaining walls around the perimeter of the new parking area. The retaining walls are as tall as seven feet. Per section 5.4.2, a retaining wall of four feet or more within a setback requires a special permit. The retaining wall proposed on the northern boundary of the property is within the required 15 foot rear setback, which requires a special permit.

10. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	To amend Special Permit #167-14	
§5.1.8.A.1 §5.1.13	To allow parking in the front setback	S.P. per §7.3.3
§5.1.9.A §5.1.13	To waive the perimeter screening requirements	S.P. per §7.3.3
§5.1.9.B §5.1.13	To waive the interior landscaping requirements	S.P. per §7.3.3
§5.1.10.A.1 §5.1.13	To waive lighting requirements	S.P. per §7.3.3
§5.4.2	To allow a retaining wall more than four feet in height in a setback	S.P. per §7.3.3

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Gregory Schwartz, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – #697 Washington Street

Date: May 30, 2018

CC: Barney Heath, Director of Planning
Jennifer Caira, Chief Planner
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Neil Cronin, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

*Grading & Drainage Plan
Showing Proposed Grading & Drainage at
#697 Washington Street
Prepared by: VTP Associates, Inc.
Dated: May 1, 2018*

Executive Summary:

This project entails the creation of a parking lot for 13 additional stalls on a portion of the property that is currently wooded and undeveloped on 2- separate lots A & D-2. The access for the parking lot will be from Court Street, the sidewalk and curbing along Court Street are currently not compliant to Architectural Access Board or current DPW Standards; these should be updated in concert with the installation of a new proposed driveway apron.

The engineer of record has designed a stormwater collection and infiltration system for the most part to be in accordance to DEP & DPW Stormwater Policy, however, on site soil testing was not provided at the time of this review. Soil tests are required to determine the on-site groundwater elevation and soil profile to ensure proper design

assumptions. Prior to a Building permit the engineer of record shall perform on site soil testing and must be witnessed by the Engineering Division before final approval of the drainage system is allowed. Additionally, small portion of the parking lot [from a high point at elevation 51' towards Court Street is uncontrolled, the engineer needs to add a trench drain to capture and collect this runoff and connect it to the proposed underground gallies.

In order to achieve the proper grading requirements of the parking lot and access requirements, retaining walls are proposed to achieve the grading differential. The grade change from the top of the site is at elevation 59-feet and slopes towards northeast to a low elevation of approximately 52-feet. One wall along near Washington Street is approximately 100-feet long and is 6-feet high. A wall near the residential abutters varies in height with an average of 4-feet. All the walls have a safety fence along its perimeter as required by the State Building Code. Detailed design documents of the retaining walls that shall include calculations for [stability, turnover, sliding and settlement] shall be submitted to the Inspectional Services Department as part of the Building Permit.

If the special permit is approved an Approval Not Required (ANR) plan will be needed in accordance to Massachusetts General Laws Chapter 41 Section 81P requiring the three separate lots be combined into one lot.

Court Street is to be paved by the DPW this construction season, the applicant should coordinate their construction activities with the Highway Division in order to avoid conflicts.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. It shall also address any anticipated dewatering during construction, site safety & stability, and impact to abutting properties.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

Drainage:

1. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the

Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.

2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

General:

1. All trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.

6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading, improvements and limits of restoration work. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material, and swing ties from permanent building corners. *This note must be incorporated onto the final contract plans.*

7. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.