



Ruthanne Fuller  
Mayor

**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 Caira, 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	
<b>Site:</b> 697, 691, 681 Washington Street, 2 Court Street	<b>SBL:</b> 23 019 0001B, 23019 0001A, 23019 0001, 23019 0023
<b>Zoning:</b> BU2	<b>Lot Area:</b> 16,669 square feet
<b>Current use:</b> Office/RMD and vacant land	<b>Proposed use:</b> 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:**

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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:

<b>Zoning Relief Required</b>		
<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