



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

#289-18
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: August 3, 2018
MEETING DATE: August 7, 2018
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Neil Cronin, Senior Planner
CC: Petitioner

In response to issues raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearings.

PETITION #289-18

697 Washington Street

Special Permit/Site Plan Approval to amend Council Order #167-14 to allow the retail sale of recreational marijuana, to remove conditions from Council Order #167-14 pertaining to operations, to waive requirements of parking facilities containing more than five stalls, to allow parking within the front setback, and to allow a retaining wall exceeding four feet within the setback.

The Land Use Committee (The "Committee") held public hearings on this petition on Tuesday, June 5, 2018, and Tuesday June 26, 2018; the public hearing was closed at the June 26th meeting. The petitioner submitted a letter answering outstanding questions concerning the petition. This memo reflects the information contained in the letter and additional information concerning the petition.

Operations

The petitioner is seeking to amend Council Order #167-14 to allow the retail sale of recreational marijuana, to increase the number of employees, and to remove conditions pertaining to operations. The petitioner has revised their initial request to the following:

- Increase the hours of operation from 10:00 a.m. to 8:00 p.m. Monday through Saturday to 10:00 a.m. to 8:00 p.m. Monday through Thursday, from 10:00 a.m. to 9:00 p.m. on Friday and Saturday, and from 12:00 p.m. to 6:00 p.m. on Sunday.
- Increase the number of employees from six to twelve.

The increase in staff will consist of three cashiers, one security professional, and one manager. The petitioner currently books 28 appointments per hour, with the additional employees, the petitioner hopes to book 38 appointments per hour.

The petitioner also sought to remove a condition requiring appointments for all guests. The petitioner no longer seeks that change and has implemented an appointment system requiring a three-hour interval between making the appointment and arriving on site. This change has resulted unforeseen implications, such as patients waiting after arriving early. The City's ADA Coordinator, Jini Fairley, has heard from concerned patients that they will need some sort of reasonable accommodation to wait inside the facility and to ensure their appointment is not canceled if they are late for reasons beyond their control. For these reasons, Ms. Fairley has recommended that flexibility be provided to accommodate these patients.

Staff recommends that the appointment issue be discussed by the Committee to find a solution that will allow for some flexibility for the petitioner as well as for patients and future customers while minimizing potential disruptions to the surrounding uses and neighbors. Staff recommends that any proposed appointment policy leave some allowance to serve customers who arrive before or after a scheduled appointment time to process customers expeditiously and reduce the number of people on site at any given time and the number of parking spaces occupied. At the end of 90 days, staff recommends review from the Planning Department, the Transportation Division, and the Police Department as well as the Petitioner's head of security to determine if any changes need to be made to operations. The petitioner has also proposed a number of measures meant to reduce processing times and to encourage people to avoid peak periods, such as allowing orders to be placed online and picked up in store, providing wait times on the website, and incentivizing appointments during non-peak times as well as delivery.

The petitioner is also seeking to expand into an adjacent tenant space. However, due to the parking requirements of the Ordinance, the petitioner cannot increase the number of employees or expand without additional parking. As such, the petitioner is seeking to construct a surface parking facility on an unimproved lot at the corner of Washington and Court Streets. The Planning Department believes the site, as exists, can accommodate the retail sale of recreational marijuana with the increased hours on Friday and Saturday, but staff suggests the petitioner be required to complete the surface parking facility and interior expansion prior to opening on Sundays.

Parking and Access

The increases in square footage and employees require seven additional parking stalls. The proposed surface parking facility will be constructed to contain 13 stalls with the option of expanding to 16 stalls. The Planning Department, in consultation with the Director of Transportation, recommends a condition requiring the petitioner to complete a parking study, in a form approved by Planning and Transportation, six months after recreational marijuana sales have begun. After such study, Planning and Transportation will determine whether the parking facility should be expanded to 16 stalls.

A comment during the public hearings concerned whether access to the parking facility could be provided from Washington Street and not Court Street. The petitioner submitted a letter highlighting

the challenge the grade presents to such an alternative. Additionally, the staff believes access from Court Street is preferable for access management.

Security

The petitioner currently employs one security professional to monitor the interior of the facility. Once the expansion is complete, the petitioner will employ an additional security professional to monitor the site itself. Furthermore, the petitioner has offered to retain a police detail for the first 90 days of recreational sales. After such term, the Director of Planning and Development, Director of Transportation, and City of Newton Police will determine whether to continue the detail.

Transportation Demand Management (TDM)

The petitioner will implement a TDM plan to prevent employees from parking on site or in the area to ensure the surface parking facility is available for customers while maintaining on-street parking for residents and patrons of other Newtonville businesses. The plan will provide subsidies to encourage transit use, will reimburse the cost of parking and the cost of travel from satellite parking locations such as the Riverside or Woodland MBTA lots, and will purchase memberships for the bike share program. The petitioner has also committed to providing the City \$25,000 for the purchase and installation of a bus shelter for the bus stop along the Washington Street frontage. The Planning Department believes the TDM plan is appropriate and supports the commitment to the bus shelter.

ATTACHMENTS:

Attachment A: DRAFT Council Order

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #167-14 to modify conditions pertaining to operation, to allow the retail sale of recreational marijuana, 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 the amendments to Council Order #167-14 because the existing Registered Marijuana Dispensary (RMD) meets the standards of the Newton Zoning Ordinance concerning Registered Medical Marijuana Dispensaries. (§7.3.3.1)
2. The proposed marijuana establishment as developed and operated resulting from the 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 the 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 involved because the site is proximate to regional roadways and public transportation. (§7.3.3.4)

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

5. The RMD is located to serve an area that currently does not have reasonable access to medical marijuana. (§6.10.F.1)
6. The lot 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. (§6.10.F.2)

7. The lots are designed such that it provides convenient, safe, and secure access and egress for clients and employees arriving to and leaving from the site, whether driving, bicycling, walking or using public transportation. (§6.10.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.F.4)
9. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.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 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.F.6)
11. The building and lots are accessible to persons with disabilities. (§6.10.F.7)
12. The lots are accessible to regional roadways and public transportation. (§6.10.F.8)
13. The site is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.F.9)
14. The marijuana establishment's hours of operation will have no significant adverse impact on nearby uses. (§6.10.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, to waive the screening requirements, to waive interior landscaping requirements, and to waive the lighting requirements are in the public interest or in the interest of safety or protection of environmental features for the following reasons:
 - a. The location of parking within the front setback allows for the most efficient layout of the parking lot, including compliant parking stalls and a two-way drive aisle;
 - b. The waivers of interior landscaping and perimeter screening helps maximize the number of parking stalls available to guests of the marijuana establishment, and a sufficient number of trees will be added to improve screening from the residences to the north; and
 - c. The waiver to allow for reduced parking lot lighting is in the public interest and the interest of the residential properties to the north.

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

16. A retaining wall exceeding four feet within the setback is appropriate given the grade of the lot and the wall 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: Marijuana Establishment

CONSTRUCTION: Brick

EXPLANATORY NOTES: §7.3.3 to amend Council Order #167-14 to amend the conditions pertaining to operations and to allow the sale of adult use (recreational marijuana); §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 supersedes, consolidates, and restates provisions of prior special permits 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, unsigned and unstamped, dated February 27, 2014.
 - 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 and customers on an appointment only basis, with a minimum of three hours between the time between scheduling the appointment and arriving on site.
 4. Until such time as the petitioner receives a final inspection from appropriate City Departments for the parking facility and interior renovation, the petitioner shall operate the RMD under the following conditions:
 - a. Hours of operation shall be from 10:00 a.m. to 8:00 p.m. Monday through Saturday only.
 - b. There shall be no more than six employees on site at any one time.
 5. Upon receipt of a final inspection from appropriate City Departments for the parking facility at 681 Washington Street, the petitioner shall allow the sale of recreational marijuana and shall operate the marijuana establishment 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.
 6. The petitioner shall implement a Transportation Demand Management Plan to prevent employees from occupying parking stalls 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 work;
 - 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.
 7. Six months after receipt of occupancy certificates for the parking facility and the interior renovation, the Petitioner shall conduct a parking utilization study 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 determine such based on the findings of the parking study.

Additionally, 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.

8. The petitioner shall employ a City of Newton Police Detail on the site during all operating hours for the first ninety days of recreational use sales. 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 is not available, the petitioner shall obtain a private detail.
9. 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.
10. 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 delivered to customers' homes, provided home delivery is allowed by the Cannabis Control Commission.
11. 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.
12. 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.
13. The granting of a special permit to allow a marijuana 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 marijuana establishment granted by this Council Order shall terminate.
14. 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. 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 board 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.
21. 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.
22. Notwithstanding the provisions of Condition #21 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.