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Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: September 17, 2021

MEETING DATE: September 21, 2021

TO: Land Use Committee of the City Council

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

CC: Petitioner

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

PETITIONS #215-21

697 Washington Street

Petition #215-21 to amend Council Order #289-18 to remove the appointment only condition, amend the hours of operation, to remove the sign plan as a control document and to amend the site plan and landscape plan in Ward 2, Newton at 697 Washington Street (Section 23 Block 19 Lot 01B), 691 Washington Street (Section 23 Block 19 Lot 01A), 681 Washington Street (Section 23 Block 19 Lot 01) and 2 Court Street (Section 23 Block 19 Lot 23), containing approximately 16,669 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: 7.3.3, 7.4 of the City of Newton Rev Zoning Ord, 2017.

Background

The petitioner obtained a special permit (Council Order #289-18) to operate a co-located marijuana establishment in 2018 which required customers to visit the establishment by appointment only. The petitioner is seeking to remove this condition in addition to increase the hours of operation, pursue minor changes to the site plan, and to amend the signage plan. The Planning Department engaged Green International Affiliates, Inc. ("Green") to peer-review the petitioner's transportation memorandum and Green's initial review was presented to the Land Use Committee on July 27, 2021.

Operations

Council Order #289-18 requires the petitioner to operate the co-located marijuana establishment by appointment only. Council Order #289-18 also limits the hours of operation 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 noon to 6:00 p.m. on Sunday.

The petitioner is seeking to remove the appointment-only condition, and to increase the hours of operation from 9:00 a.m. to 9:00 p.m. Monday through Saturday; there would be no change to the Sunday hours. These hours would match the maximum hours for marijuana uses stated in the zoning ordinance.

Transportation

The petitioners submitted a transportation memorandum, dated April 20, 2021, in support of removing the appointment-only condition. The City's on-call consultant, Green, conducted a peer-review, dated July 21, 2021, which was presented to the Committee at the July 27th public hearing. Green requested more information on operations including, pre-Covid 19 data, recent post-Covid-19 data, average duration of customer visits, and requested the parking data separate off-street from on-street parking stalls. Green also noted the co-located marijuana establishment exceeded the trip projections contained in the transportation memorandum that accompanied the 2018 special permit application and requested the "Build Condition Capacity Analysis" be updated to reflect the current trip generation to examine whether the additional trips were impacting adjacent intersections.

Green also reviewed the turning movement counts for Court Street which suggested few vehicles travelling on Court Street turn into the parking facility. This, coupled with observations from a site visit, suggests the Court Street parking facility is underutilized. Green agrees directional signage for the parking facility would reduce customer-parking on adjacent streets and properties.

The petitioner provided the information requested and Green reviewed their responses and issued an updated peer review memo (**Attachment A**).

Increased Trips and Updated Build Condition Capacity Analysis

The petitioner updated the estimated trip generation based upon appointment data which indicates the peak hour occurs on Friday at 5:30 p.m. and on Saturday at 4:00 p.m. The updated build analysis found an increased delay for the southbound approach at the intersection of Court Street and Washington Street. Green reviewed the updated analysis and concurred that the traffic generated by Garden Remedies has no significant impact on traffic operations at nearby intersections, except an increase in delay at the southbound approach at Court Street and Washington Street. Green agrees that this delay is likely mitigated by the fact that customers will continue to utilize on-street parking along Washington Street.

Walk-in customer data

Green requested data regarding walk-in customers in addition to appointment data to better understand if the removal of the appointment-only condition will result in a substantial increase in customers. The petitioner stated that all customers are required to make an appointment, however they do not track those made in advance versus upon arrival. The petitioner also noted that during their peak operating period, available appointments are at most 61 percent booked, therefore the appointment-only restriction is not a deterrent to customers who intend to walk-in. Based on this information, along with the fact that additional adult use marijuana retailers have opened in the area

since the opening of Garden Remedies, Green agrees that a substantial increase in customers is not expected with the removal of the appointment only condition.

Parking lot capacity

Green requested additional information on the duration of customer visits to determine if the capacity of the parking lot will exceed peak demand. The petitioner responded that the average customer dwell time in the parking lot is six minutes, therefore the parking lot can accommodate 190 vehicles in one hour. Green agrees that the parking lot capacity exceeds current and expected demand.

Based upon the updated peer review, staff are comfortable with the removal of the appointment-only condition and recommend a substitute condition be included that allows for appointments to be reinstated during peak periods if the Director of Planning, Chief of Police, and Commissioner of Public Works find appointments are necessary due to impacts to public safety and traffic. This is the same condition present in other Council Orders for adult use marijuana establishments.

Signage

In October of 2014, the petitioner obtained a special permit (Council Order #167-14) to operate a registered medical dispensary. The approval included relief to install a projecting wall-mounted sign. As such, any future signs would be required to be “consistent” with the approved sign plan, requiring a consistency determination from either the Commissioner of Inspectional Services or the Land Use Committee.

In 2020, the petitioner received approval for two wall-mounted signs from the Urban Design Commission and received a permit from Inspectional Services to install the signs because they complied with the zoning ordinance. However, the signs did not receive a consistency ruling. The petitioner now seeks to “abandon” the relief granted by Council Order #167-14 by removing the projecting wall-mounted sign from the site. As a result, the special permit would not include any reference to signage; current and future signage would be subject to the size dimensions provided for in the zoning ordinance. The attached council order amends Council Order #289-19 by deleting the reference to the sign plan.

ATTACHMENTS

- Attachment A:** Peer Review Memorandum, dated September 8, 2021
- Attachment B:** DRAFT Council Order


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September 8, 2021

Mr. Neil Cronin
 Chief Planner
 Planning and Development Department
 Newton City Hall
 1000 Commonwealth Ave
 Newton, MA 02459

Subject: **Review of Responses to Comments
 Recreational Marijuana Use
 697 Washington Street
 Newton, Massachusetts**

Dear Mr. Cronin:

On behalf of the City of Newton (the City), Green International Affiliates, Inc. (Green) is submitting this letter of review of Fuss and O'Neill's responses to the original comments submitted by Green to the City on July 21, 2021 from our engineering peer review of the application package for the recreational marijuana use on Washington Street. The Applicant seeks to remove the appointment-only restriction that has been in place since October 2018 per City Council Order #289-18. This review included an examination of the following documents submitted in support of the proposed project:

- Technical Memorandum titled "Traffic Assessment, Garden Remedies, Inc. – 697 Washington Street, Newton, MA", prepared by Fuss & O'Neill, dated April 20, 2021.
- Supporting Statement titled "Amendment to Special Permit (Council Order #289-18), 697, 691, 681 Washington Street; 2 Court Street – Garden Remedies, Inc.," prepared by Prince Lobel, dated May 12, 2021.
- PowerPoint Presentation titled "Garden Remedies Update – Appointment Only Removal," prepared by Garden Remedies, Inc.
- Recorded Council Order titled "#289-18, 687 Washington St., Amending #167-14," prepared by the City of Newton City Council, dated October 1, 2018.

After Green's initial review, we found that the trips were higher than what was originally estimated and that the information provided was not sufficient to determine the impacts of removing the appointment-only condition. As a result, we requested additional Build analysis to determine whether these trips were impacting traffic. In addition, we requested the following information from the Applicant to quantify the impacts of removing the appointment-only condition:

- Appointment data from pre-COVID conditions (last 30 days of first 90 days per council order), with a breakdown of appointments booked in advance versus on site.
- Appointment data from post-COVID conditions (most recent 30 days)
- Average duration of visits
- Parking occupancy data separating parking lots from on-street parking

The Applicant provided the average trip duration and all transaction data for January 2020 through June 2021. We then used this information to complete our review and estimate the effects of removing the appointment-only condition.

What follows are the original comments submitted by Green, followed by the corresponding Fuss and O’Neill response in italicized text, followed by Green’s latest comments in bold text.

April 2021 Traffic Assessment Memorandum

1. Green’s original comment: The appointment data provided shows that the dispensary generates significantly more trips than were originally projected. Please update the Build Condition capacity analysis to reflect the higher trip generation experienced under current conditions.

Fuss and O’Neill Response: The 2018 traffic study used the ITE Trip Generation Manual, 10th Edition, to estimate the number of trips generated by the dispensary land use. Data from the Trip Generation Manual was collected in Colorado in Oregon in the 2010s and is not necessarily indicative of dispensary traffic in the state of Massachusetts. Additionally, Garden Remedies is small in square footage, and based on the ITE Trip Generation Rates would be anticipated to generate relatively few trips. Therefore, while the study in 2018 was performed correctly in our opinion, the number of trips estimated was low, especially given that Garden Remedies was one of the first recreational dispensaries to open in an emerging market.

The appointment data for the week of April 2, 2021 indicates that the weekday afternoon peak hour occurs on Friday at 5:30 PM, when 96 of an available 168 appointments are booked, and the Saturday peak hour occurs at 4 PM, when 76 appointments are booked. In counting vehicle trips generated, each driving customer makes two trips to the dispensary: one entering, and one exiting. Therefore, were all the customers to arrive via single occupancy vehicle, the dispensary would generate 192 trips during the afternoon peak hour, and 152 trips during the Saturday peak hour.

In order to estimate the actual number of vehicle trips generated during peak dispensary operating periods, the number of potential trips was adjusted based on US Census commuter mode share data for the City of Newton. This data indicates that approximately 62 percent of individuals drove alone to work, approximately eight percent carpooled, and the other 30 percent used an alternate mode of transportation to get to work. Therefore, in order to be conservative, it is assumed that 80 percent of people arriving to the dispensary will do so by vehicle.

Additionally, a vehicle occupancy ratio of 1.13 as determined in the 2009 National Household Travel Survey was used to account for customers that travel to the dispensary in the same vehicle.

Therefore, the dispensary would be expected to generate 136 vehicle trips (68 entering, 68 exiting) during the weekday afternoon peak hour and 108 vehicle trips (54 entering, 54 exiting) during the Saturday peak hour. Trip generation calculations are summarized in Table 1 below. Census and National Household Travel Survey data has been included as an attachment to this letter.

Table 1 – Trip Generation Summary

	Customers	Person Trips¹	Person Trips by Vehicle²	Vehicle Trips³
Afternoon	96	192	154	136
Entering		96	77	68

Exiting		96	77	68
Saturday	76	152	122	108
Entering		76	61	54
Exiting		76	61	54

¹Assumes two trips per customer

²Assumes 80 percent of customers travel by vehicle

³Assumes average of 1.13 customers per vehicle

In order to provide an assessment of the impact of the trips generated, the trips in Table 1 have been distributed to the adjacent roadway network in accordance with the anticipated trip distribution in the initial traffic study completed in May of 2018 by VHB and are depicted in the attached Figure 3.

This trip generation was then added to the 2025 No-Build condition in the original traffic study to reflect an updated 2025 Build condition, depicted in the attached Figure 4.

Capacity and queue analyses under the updated 2025 Build Condition was performed at the following study intersections:

- Washington Street and Harvard Street
- Washington Street and the Site Driveway
- Washington Street and Court Street
- Court Street and the Site Driveway

The results of the updated analyses are summarized below in Tables 2 through 3.

Table 2 – Signalized Intersection LOS Summary: 2025 Build Condition

Intersection	PM Peak Hour	Saturday Peak Hour
Washington St/Harvard St	0.55/LOS B*	0.45/LOS B

*v/c Ratio/Level of Service

Table 3 – Unsignalized Intersection LOS Summary: 2025 Build Condition

Intersection/Critical Movement	PM Peak Hour	Saturday Peak Hour
Washington St/Site Driveway		
Eastbound Left Turn	LOS B	LOS A
Southbound Approach	LOS C	LOS B
Washington St/Court St		
Eastbound Left Turn	LOS B	LOS A
Southbound Approach	LOS F	LOS D
Court St/Site Driveway		
Northbound Left Turn	LOS A	LOS A
Eastbound Approach	LOS A	LOS A

Table 4 – Queue Length Summary: 2025 Build Condition

Intersection/Movement	PM Peak Hour	Saturday Peak Hour	Available Storage
Washington St/Harvard St			
Eastbound Approach	110 ft*	120 ft	1,400 ft
Westbound Approach	250 ft	165 ft	900 ft
Northbound Approach	65 ft	65 ft	550 ft
Washington St/Site Driveway			
Eastbound Left Turn	0 ft	0 ft	80 ft
Southbound Approach	0 ft	0 ft	-
Washington St/Court St			
Eastbound Left Turn	5 ft	0 ft	230 ft
Southbound Approach	75 ft	60 ft	-
Court St/Site Driveway			
Northbound Left Turn	0 ft	0 ft	150 ft
Eastbound Approach	5 ft	5 ft	-

**Queue lengths have been rounded to the nearest five feet*

The only movement that experiences significant delay at any of the study intersections is the southbound movement at the intersection of Court Street and Washington Street, where vehicles are expected to experience an average of 62 seconds of delay during the afternoon peak hour. The capacity analysis in the 2018 traffic study indicates that this movement operates at LOS D during the afternoon peak hour under the 2025 No-Build condition and vehicles experience an average of 26 seconds of delay.

Queue lengths are not expected to exceed available storage lengths at any of the intersections. At the intersection of Court Street and Washington Street, queue lengths on the southbound approach are not expected to exceed three vehicle lengths. Queues at the site driveways are expected to be less than one vehicle length.

It is important to note that this assessment conservatively assumes that the peak demand of the dispensary coincides with the peak hour of adjacent street traffic during the weekday afternoon and on Saturday. Additionally, the trip distribution assumes that all vehicle traffic will utilize the on-site parking lot, but in reality, a significant portion of vehicles will continue to utilize the public street parking provided along Washington Street when it is available.

Green Response: We have reviewed the updated build analysis and concur that traffic generated by the dispensary has no significant impact on traffic operations at the intersections of Washington Street at Harvard Street, Washington Street at the site driveway, and Court Street at the site driveway. Based on the updated analysis, the southbound approach at the intersection of Court Street and Washington Street is expected to operate at LOS F with a delay of 62 seconds during the afternoon peak hour. Green concurs that this impact is likely to be mitigated by the fact that customers may choose to utilize on-street parking instead of the Court Street lot. The

increase in delay on this approach would be a result of a shift in traffic to the off-street parking lot. No further action required.

2. Green's original comment: In addition, data regarding appointments versus walk-in customers is needed to determine whether there will be a substantial increase in customers relative to the current condition and if additional analysis would be needed for that scenario.

Fuss and O'Neill Response: All customers at the dispensary today are required to make an appointment to shop. Garden Remedies does not collect data indicating what percentage of appointments are booked in advance versus upon arrival at the dispensary.

We note that during the dispensary's peak operating period, available appointments are at most 61 percent booked. Consequently, the appointment-only restriction is not a deterrent to customers who intend to walk-in.

Additionally, over the past two years since Garden Remedies first opened, seven additional adult-use dispensaries have opened within 10 miles. Thus, it is reasonable to conclude that a considerable amount of the previously unmet local and regional market demand no longer exists, and that removal of the appointment only restriction at Garden Remedies will not generate significant additional traffic.

Green Response: We have reviewed the transaction data provided by the Applicant and concur that a substantial increase in customers is not expected with the removal of the appointment-only condition.

3. Green's original comment: Green concurs that traffic on Court Street would not be significantly affected by the removal of the appointment-only restriction and no further action is required.

Fuss and O'Neill Response: Noted.

Green Response: Upon reviewing the updated build analysis, Green concurs that the portion of Court Street north of the project parking lot is not impacted, but the Court Street southbound approach at Washington Street may be impacted by vehicles exiting the parking lot and continuing onto Washington Street.

4. Green's original comment: It is our opinion that with proper signage directing customers to utilize the Court Street parking lot, the on-site parking spaces provided would accommodate the vehicles generated by the dispensary. In addition to installing signage, the Applicant should add language to their website directing customers to utilize the Court Street parking lot.

Fuss and O'Neill Response: We concur with the recommendation to include information about the Court Street parking lot on the Garden Remedies website.

Green Response: No further action required.

5. Green's original comment: The capacity of the parking lot is greater than the existing demand; however, to determine the demand, we need the average duration of customer visits. Please refer to the previous request for data.

Fuss and O'Neill Response: Sufficient data has since been provided by Garden Remedies to determine the average customer dwell time in the parking lot to be six minutes. Assuming a trip duration of six minutes, the 19 on-site parking spaces can accommodate 190 vehicles in one hour. As the dispensary currently operates, 68 vehicles visit the site during the peak hour. Thus, the on-site parking can accommodate an increase in vehicle traffic of approximately 179 percent.

Given that appointments are always available at the dispensary as it currently operates, any increase in vehicle traffic with the removal of the appointment restriction is not expected to be significant enough to exceed the available on-site parking capacity.

Green Response: We have reviewed the additional data provided and concur that the on-site parking capacity exceeds current and expected demand.

6. By utilizing both on-site parking lots for customers, the dispensary has increased the customer parking capacity beyond what was originally approved. This reduces the demand for on-street parking near the site. No additional information is required.

Fuss and O'Neill Response: Noted.

Green Response: No further action required.

If either the City staff or the Applicant's engineer would like to discuss any of these comments further, please feel free to contact me at 978-843-5214.

Sincerely,
Green International Affiliates, Inc.



Corinne Tobias, P.E., PTOE
Transportation Planning Group

cc: W. Wong, Green
W. Scully, Green

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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, as defined below, 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 #96-17, which allowed a co-located marijuana establishment, by removing the appointment-only condition, modifying the hours of operation, amending the site and landscape plans, and removing the signage plan as a control document, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee, through its Chairman, Councilor Richard Lipof.

1. The specific site is an appropriate location for the amendments to Council Order #289-18 because the site contains a co-located marijuana establishment. (§7.3.3.C.1)
2. The site as developed and operated resulting from the amendments to Council Order #289-18 will not adversely affect the surrounding neighborhood because the City's on-call transportation engineering consultant has reviewed the petitioner's traffic memoranda and finds the trips generated will not impact adjacent intersections. (§7.3.3.C.2)
3. The amendments to Council Order #96-17 will not create a nuisance or serious hazard to vehicles or pedestrians because the petitioner's on-site parking facility which has sufficient capacity to meet the demand of the petitioner's operation as stated by City's on-call transportation engineering consultant. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved as demonstrated in the petitioner's transportation memoranda, as reviewed by the City's on-call transportation engineering consultant. (§7.3.3.C.4)

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: Co-located marijuana establishment

CONSTRUCTION: Brick

EXPLANATORY NOTES: Amendments to Council Order #289-18 regarding the appointment-only condition, the hours of operation, the site and landscape plans, and removing the signage plan as a control document

ZONING: Business Use 2 District

Approved subject to the following Conditions.

This Special Permit/Site Plan Approval amends Council Order #289-18 by removing the appointment-only condition, modifying the hours of operation, amending the site and landscape plans, and removing the signage plan as a control document. All other conditions of Council Order #289-18 remain in full force and effect.

1. Condition #1 of Council Order #289-18 shall be modified as follows:
 - a. Subsection “b” shall cite: Topographic Site Plan, Prepared by VTP Associates, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated May 10, 2021 Revised September 14, 2021.
 - b. Subsection “b” shall cite: Proposed Landscape Plan, signed and stamped by Randel E. Clemence, Registered Landscape Architect, dated May 8, 2021.
 - c. Subsection “i” shall be deleted entirely.
2. Condition #6.a shall be revised to state: The Hours of operation shall be 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 Sunday.
3. If at any time, the Director of Planning in conjunction with the Commissioner of Inspectional Services, Chief of Police, and Commissioner of Public Works, determines there is a public safety concern due to the lack of appointments, the petitioner shall meet with the Director of Planning to discuss and implement measures to address concerns, including resuming appointments during peak periods.

4. The petitioner shall remove the blade sign from the site within thirty (30) days of the issuance of this Special Permit/Site Plan Approval.
5. No certificate of occupancy for the use covered by this Special Permit/Site Plan approval shall be issued until the petitioner has:
 - a. Recorded a certified copy of this council order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. 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.