

CITY OF NEWTON
LAW DEPARTMENT
INTEROFFICE MEMORANDUM

DATE: November 12, 2021
TO: Rick Lipof, Chairman, Land Use Committee
All Members, City Council
FROM: Jonah M. Temple, Assistant City Solicitor
RE: Special Permit #215-21
697 Washington Street

This petition originally sought four amendments to Council Order #289-18: (a) changes to the hours of operation condition; (b) changes to the appointment-only condition; (c) changes to the approved sign plan, and (d) changes to the approved site plan and landscape plan. In order to better facilitate consideration of the amendments, the petition was separated into the following four items:

- #215-21(A) Hours of Operation,
- #215-21(B) Appointment Only
- #215-21(C) Sign Plan
- #215-21(D) Landscape Plan

The petitioner has since withdrawn its request to amend the sign plan - #215-21(C).

At the Land Use Committee meeting on November 4, 2021, the Committee recommended approval of the remaining three amendments: (A) hours of operation; (B) appointment only; and (D) landscape plan. Attached here is a draft approval decision which reflects the Committee's recommendation of all three items.

The Law Department advises that the City Council take a separate vote on the three remaining amendment items and that the vote on item #215-21(B) *Appointment Only* be taken first.

In the event the City Council does not approve item #215-21(B) that amends the appointment only condition (and which requires a 2/3 vote as a special permit), a denial decision will be created after the meeting that reflects the reasons for the denial as set forth by City Council members in accordance with City Council rules. In that scenario, attached here is an alternative approval decision which only grants approval of amendment items (A) hours of operation and (D) landscape plan.

Please let me know if you have any questions. Thank you.

ATTACHMENTS

- Attachment A:** Approval decision for #215-21(A), (B), and (D)
Attachment B: Alternative approval decision for #215-21(A) and (D) only

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 #289-18, which allowed a co-located marijuana establishment, by modifying the appointment-only condition, modifying the hours of operation, and amending the site and landscape plans, 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 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: #215-21(A),(B),(D)

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

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, and amending the site and landscape plans. 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 by deleting and replacing the plans referenced in Condition #1(b) and #1(h) 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 “h” shall cite: Proposed Landscape Plan, signed and stamped by Randel E. Clemence, Registered Landscape Architect, dated May 8, 2021.
2. Condition # 3 of Council Order #289-18 shall be modified by deleting the original language and replacing with the following: 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.

3. Condition #6(a) of Council Order #289-18 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.
4. At the request of the owners of 22 Court Street, 26 Court Street, and 28 Court Street (the "Owners"), the petitioner shall meet with the Owners to discuss the installation of landscaping and/or fencing on those properties for the purpose of screening the abutting parking area of the petitioner. For Owners that submit to the petitioner, within one year of the date of this Special Permit/Site Plan Approval, a commercially reasonable written cost estimate for said screening from a professional engaged in such work, the petitioner shall pay the professional according to their terms directly, up to a cap of \$12,000 per property.
5. Within one year of the date of this Special Permit/Site Plan Approval, the petitioner shall complete the landscaping in accordance with the plans cited in Condition #1 and shall have paid for the screening in accordance with Condition #4 by:
 - a. Filing with the City Clerk, and the Department of Planning and Development, statements by a registered landscape architect and professional land surveyor certifying compliance with Condition #1.
 - b. Submitting to the Department of Planning and Development, final as-built plans in digital format signed and stamped by a professional land surveyor.
 - c. Filing with the City Clerk 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.
 - d. Provided evidence satisfactory to the Director of Planning and Development indicating compliance with Condition #4.
6. The amendments granted by this Special Permit/Site Plan Approval shall commence when 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; and
 - b. Filed a copy of such recorded council order with the City Clerk and the Department of Planning and Development.

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IN CITY COUNCIL

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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 #289-18, which allowed a co-located marijuana establishment, by modifying the hours of operation and amending the site and landscape plans, 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 changes to the site and landscaping plans will provide screening for the proposed patio and will add to the streetscape, and the changes in the hours of operation to one hour earlier in the morning and one hour later in the evening will not negatively impact traffic, aligns with the hours stated in the Zoning Ordinance, and is consistent with the hours of operation allowed for all other approved marijuana establishments in the City. (§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 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)

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CONSTRUCTION: Brick

EXPLANATORY NOTES: Amendments to Council Order #289-18 regarding the
hours of operation and the site and landscape plans

ZONING: Business Use 2 District

Approved subject to the following Conditions.

This Special Permit/Site Plan Approval amends Council Order #289-18 by modifying the hours of operation condition and amending the site and landscape plans. 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 by deleting and replacing the plans referenced in Condition #1(b) and #1(h) as follows:
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3. Within one year of the date of this Special Permit/Site Plan Approval, the petitioner shall complete the landscaping in accordance with the plans cited in Condition #1 by:
 - a. Filing with the City Clerk, and the Department of Planning and Development, statements by a registered landscape architect and professional land surveyor certifying compliance with Condition #1.
 - b. Submitting to the Department of Planning and Development, final as-built plans in digital format signed and stamped by a professional land surveyor.
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