

CITY OF NEWTON

IN CITY COUNCIL

December 20, 2021

RECEIVED
2021 DEC 22 AM 11:30
CITY CLERK
NEWTON, MA. 02459

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 allow a marijuana establishment, to allow parking in the side setback, to reduce minimum aisle width requirement for two-way traffic, to allow assigned parking, to waive one parking stall, to waive perimeter screening requirements, to allow non-accessory parking, and to waive the lighting requirements as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed marijuana retailer due to its location in the Business 2 zoning district and proximity to mix of uses contained within Newton Centre. (§7.3.3.1)
2. The specific site is an appropriate location for the waiver of one required parking stall due to the availability of public parking within the Newton Centre. (§7.3.3.1)
3. The proposed marijuana retailer as developed and operated will not adversely affect the neighborhood because the site is adjacent to commercial uses. (§7.3.3.2)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved because the petitioner is limiting on-site parking, thereby reducing vehicle trips to the site. (§7.3.3.3)
5. There will be no nuisance or serious hazard to vehicles or pedestrians due to the internal site improvements and the petitioner's proposed parking arrangement. (§7.3.3.4)
6. Assigning the parking stalls on the western side of the structure to only employees is in the interest of safety to minimize vehicular trips to the site and limit to users with lower turnover. (§5.1.3.E, §5.1.13)
7. A waiver of one parking stall is in the public interest because the stall will accommodate parking for a nearby business. (§5.1.4, §5.1.13)
8. Literal compliance with the lighting and screening requirements of parking facilities containing more than five stalls are in the public interest due to its location in a Village Center and the site conditions requiring relief which reflect the existing conditions. (§5.1.13)

9. Parking in the side setback and reducing the minimum aisle width for two-way traffic is in the public interest due to its location in a Village Center and the site conditions requiring relief which reflect the existing conditions. (§5.1.13)

With regard to special permits concerning the Marijuana Establishment on site, pursuant to (§6.10.3.H.1.):

10. The lot 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 due to its location in Newton Centre, its internal improvements for alternate modes of transportation. (§6.10.3.H.1.a)
11. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.H.1.b)
12. The Marijuana Establishment is designed to minimize any adverse impacts on abutters because the petitioner is renovating the existing structure and its parking arrangement will reduce vehicle trips on site. (§6.10.3.H.1.c)
13. The Marijuana Establishment has satisfied all of the conditions and requirements in this section. (§6.10.3.H.1.d)

Additional criteria for Marijuana Retailers (§6.10.3.H.2):

14. The lot location complies with Sec. 6.10.3.F.1. (§6.10.3.H.2.a)
15. Traffic generated by client trips, employee trips, and deliveries to and from the Marijuana Retailer will not create a significant adverse impact on nearby uses as demonstrated by the petitioner's traffic impact assessment and the City's on-call consultant. (§6.10.3.H.2.b)
16. 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 structure complies with the transparency requirement. (§6.10.3.H.2.c)
17. The building and site are accessible to persons with disabilities. (§6.10.3.H.2.d)
18. The lot is accessible to regional roadways and public transportation. (§6.10.3. H.2.e)
19. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.H.2.f)
20. The Marijuana Retailer's hours of operation will have no significant adverse impact on nearby uses. (§6.10.3.H.2.g)

PETITION NUMBER: #125-21

PETITIONER: The Green Lady Dispensary II

LOCATION: 740 Beacon Street, on land known as Section 61 Block 38 Lot 6, containing approximately 10,969 square feet of land

OWNER(S): 740 Beacon Street, LLC

ADDRESS OF OWNER(S): 14 Sheafe Street
Newton, MA 02467

TO BE USED FOR: Marijuana Retailer

CONSTRUCTION: Concrete

EXPLANATORY NOTES: Special Permit per §7.3.3 of the Newton Zoning Ordinance to:

- allow a marijuana retailer (§6.10.3.D, §4.4.1)
- allow parking in the side setback (§5.1.8.A.1, §5.1.13)
- reduce the minimum aisle width requirement for two way traffic (§5.1.8.C.1, §5.1.13)
- allow non-accessory parking (§4.4.1)
- waive one parking stall (§5.1.4, §5.1.13)
- allow assigned parking (§5.1.3.E, §5.1.13)
- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)

ZONING: Business 2 District

The prior Special Permit/Site Plan Approval governing this property is #70-14. This Special Permit/Site Plan Approval supersedes #70-14. As such, #70-14 is null and void.

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. A plan entitled "740 Beacon Street, Proposed Conditions Site Plan," dated December 21, 2020, most recently revised November 11, 2021, prepared by Verne T. Porter.

- b. Architectural plans entitled "The Green Lady Dispensary II" prepared by SHED Studio, signed and stamped by Rachmimala Ramaswamy, Registered Architect, comprised of the following sheets:
 - i. Proposed Floor Plan (A.1.b), dated March 30, 2021
 - ii. Proposed Front Elevation and Transparency Diagrams (A.1.c), dated March 30, 2021
 - iii. Exterior Elevations (A-2B), dated March 30, 2021
 - c. Sign Plan, prepared by Signworks Group, dated March 1, 2021, comprised of the following sheets:
 - i. Sign Details, page 1
 - ii. Sign Location, page 2
 - d. Photometric Plan, prepared by Robert J. Lindstrom, dated March 24, 2021,
2. The petitioner shall see all visitors of the Marijuana Retailer on an appointment only basis. Given that the petitioner requires each customer to be served individually by a customer service representative, the "appointment only" requirement is intended to ensure a smooth flow of customers arriving to and leaving from the site, to avoid customer waiting outside the building for a customer service representative to be available, and to allow the petitioner to anticipate customer volume.

The petitioner may use reasonable flexibility to accommodate customers where events such as, but not limited to, traffic delays, public transportation scheduling, or changes in customers' schedules affect the appointment schedule. The petitioner shall also accommodate those customers who need to wait inside the building either before or after their scheduled appointments. This "appointment only" condition will permit "first available" (i.e., no waiting period) appointments only when a customer service representative is immediately available to serve that customer.

Six months after commencement of operations for the Marijuana Retailer authorized by this Order, the petitioner may submit a letter to the Commissioner of Inspectional Services, the Director of Planning and Development and the Clerk of the Council requesting to no longer require that all customers be served by appointments only. Such letter shall only be filed after the petitioner has completed the following:

- Met with the Director of the Transportation Division of Public Works, the Director of Planning and Development, and the Newton Police Department to discuss pedestrian and traffic safety and site security.
 - Met with the Director of the Transportation Division of Public Works and the Director of Planning and Development regarding Transportation Demand Management in accordance with Condition #6 below.
3. The Commissioner of Inspectional Services and the Director of Planning and Development may administratively waive the "appointment only" requirement if they determine that the petitioner is able to maintain an orderly flow of patrons, accommodate all patrons waiting to see a customer service representative inside the building, and accommodate patron parking on site without the "appointment only" requirement. Prior to any decision on the petitioner's waiver request, the Commissioner of Inspectional Services and the Director of Planning and

Development shall consult with the Land Use Committee of the City Council regarding the waiver request in the same manner as the Land Use Committee is consulted when a "consistency" ruling on a special permit is requested from the Commissioner of Inspectional Services.

4. If the appointment only condition is removed and 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.
5. The Marijuana Retailer may only operate between the hours of 9:00 a.m. and 9:00 p.m., Monday through Saturday, and from 12:00 p.m. to 6:00 p.m. on Sunday.
6. Should the petitioner seek to offer delivery operations to customers, an amendment to this special permit is required.
7. Should any line form following the possible conclusion of the appointment only condition, lines for customers waiting must form only on the internal pedestrian path on the left (east) side of the property and must not form along Beacon Street.
8. The Marijuana Retailer may not have more than five points of sale.
9. There shall not be more than nine (9) staff members on site at any one time not including delivery personnel.
10. Employees shall not park on public streets in the vicinity of the site.
11. The Marijuana Retailer shall discourage customers from parking on residential side streets via messaging on the website and signage within the store.
12. As shown on the plans referenced in Condition 1, the thirteen on-site parking stalls shall be reserved as follows:
 - a. Nine stalls shall be reserved for the petitioner's employees.
 - b. One stall, stall #1 as shown on the plans, shall be reserved for deliveries to Green Lady only.
 - c. One stall, stall #2 as shown on the plans, shall be reserved for an employee of 740A Beacon Street. Should the current restaurant no longer operate at 740A Beacon Street, the assigned stall shall not be available to any successor tenants at 740A Beacon Street and shall only be available for the petitioner's employees. The petitioner shall notify the Director of Planning and Development of such change.
 - d. Two stalls shall be reserved for the petitioner's customers with disabilities and appropriately designated as accessible stalls.
 - e. There shall be a sign at the foot of the passageway leading to the site stating, "Green Lady Parking for Customers with a disability placard and/or disability license plate, and Employees Only," or words to that effect approved by the Director of Planning and Development.
13. For at least the first six months of operation, the petitioner shall employ a parking attendant at the Union Street curb cut during all hours of operation. The parking attendant shall inform

all visitors of the parking restrictions set forth in Conditions #11-12. After the first six months of operation, the Petitioner shall meet with the Director of Planning and Development to determine whether there is an ongoing need for the parking attendant. The Director of Planning and Development, in consultation with the Director of Public Works and the City of Newton Police Department, shall determine whether the parking attendant shall be continued during all operating hours, reduced to specific periods, or removed entirely. The Director of Planning and Development shall notify the Land Use Committee and Ward 6 Councilors of the decision.

If the parking attendant is reduced or removed and at any time the Director of Planning, in consultation with the Director of Public Works and the City of Newton Police Department, determines there is a public safety concern due to the reduction or removal of the parking attendant, the petitioner shall meet with the Director of Planning to discuss and implement measures to address concerns, including resuming a parking attendant during peak periods.

14. The petitioner shall install signage on site indicating that parking on site is assigned in accordance with Condition #12. The petitioner shall also communicate the parking arrangement to customers via its website and communications around appointments.
15. Prior to the issuance of a building permit, the Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site as described in a memorandum dated May 3, 2021 on file with the Planning Department and the City Clerk, to be reviewed and approved by the Division of Public Works and the Planning Department. These measures include but are not limited to:
 - a. A one-time \$5,000 payment to the City's bike share system.
 - b. \$100 transit subsidy per month per employee to cover the cost of transit, bike share, car share, NewMo rideshare, and off-site parking stipend.
 - c. Covered bicycle parking for at least eight bikes.

The Petitioner shall keep records detailing how employees are commuting to and from the site, including the number of employees utilizing transit, and using alternative methods of transportation such as the bikeshare. Two months after the commencement of operations for the Marijuana Retailer, 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. The petitioner shall be required to meet again with the officials above at six months and at 12 months after the receipt of a temporary or a final certificate of occupancy.

16. Security lighting shall be in accordance with the standards imposed by the Cannabis Control Commission. Additionally, security lighting shall be directed downward, shall not shed light on abutters' properties, and shall comply with the Site Photometric Plan identified in Condition 1 above.
17. The petitioner shall locate, secure, and screen any dumpster(s) on the site to minimize its visibility from the public way. Any dumpster(s) shall be kept closed and secured and the area surrounding the dumpster(s) shall be kept free of debris.

18. The granting of a special permit to allow a Marijuana Retailer to operate at this site applies only to the petitioner and does not run with the land. When the petitioner has permanently stopped operations at the site, for whatever reason including but not limited to the loss of its registration with the Cannabis Control Commission, the Marijuana Retailer use as well as the additional relief granted by this Order shall expire.
19. Snow shall not be stored on site.
20. Should the petitioner seek to extend the Marijuana Retailer authorized by this Order, including but not limited to, increasing the number of employees, or extending the hours of operation, it shall seek an amendment to this Order.
21. 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.
22. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
23. The petitioner shall maintain its registration with the Cannabis Control 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.
24. In order to provide information to the City regarding the operation of the Marijuana Retailer and the effectiveness of the mitigations and conditions imposed through this Council Order, the petitioner shall monitor the Marijuana Retailer'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, and such reports shall also be filed with the Land Use Committee of the City Council:
 - a. Within six (6) months and again at twelve (12) months of commencing operations of the Marijuana Retailer, a report on pedestrian and traffic safety concerns, if any, that may have arisen from the operation of the Marijuana Retailer 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 have concerns and/or 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 Marijuana Retailer at this site, the petitioner shall meet with the Director of Planning to see if further mitigations on the operation of the Marijuana Retailer are warranted to address such public safety or security of the facility concerns.

25. Prior to the issuance of any building permit, the petitioner shall submit engineering site plans for review and approval to the City Engineer, the Director of Planning and Development, and the Commissioner of Public Works for the internal improvements within the site of a stamped colored asphalt pedestrian passageway as shown in "Exhibit 1A, Conceptual Intersection

Improvements Beacon Street at Union Street, Newton MA” dated October 25, 2021. Prior to the issuance of any certificates of occupancy, and at the petitioner’s sole cost and expense, the petitioner shall complete this work in accordance with the approved plans.

26. Three months after recording this special permit, the petitioner shall submit engineering plans for review and approval to the City Engineer, the Director of Planning and Development, and the Commissioner of Public Works for the improvements at the intersection of Union Street and Langley Road as shown in “Exhibit 1A, Conceptual Intersection Improvements Beacon Street at Union Street, Newton MA” dated October 28, 2021. Such plans shall indicate that the southwest corner of the intersection complies with ADA/MAAB regulations and the petitioner shall be responsible for securing a waiver or updating the ramp as necessary. Prior to the issuance of a final certificate of occupancy, and at the petitioner’s sole cost and expense, the petitioner shall complete this work in accordance with the approved plans. The Commissioner of Public Works shall inspect and approve the improvements upon completion.
27. Prior to the issuance of a temporary certificate of occupancy, the petitioner shall submit a state approved security plan to the City of Newton Police Department for review and approval.
28. Prior to the issuance of a temporary certificate of occupancy, the petitioner shall submit a state approved emergency response plan to the City of Newton Fire Department for review and approval.
29. Prior to the issuance of a temporary certificate of occupancy, the petitioner shall submit a state approved Operation and Management plan to the Inspectional Services Department and the Department of Planning and Development for review and approval.
30. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department and the Health and Human Services Department for review and approval prior to issuance of any demolition or building permit. Copies of such approvals shall be provided to the Department of Planning and Development.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration. The Pest Control Operator shall maintain a written record of all pest control measures performed within the subject property and shall provide progress reports to Inspectional Services Department and the Health and Human Services Department upon request.
 - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development, Inspectional Services Department and the Health and Human Services Department summarizing the methods

used, whether off-site migration occurred, the frequency and dates of service, and a post-construction site and neighborhood assessment.

- e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
31. Prior to the issuance of any building permit for the Project the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
- a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Mayor or designee.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all trucks and construction vehicles before exiting the site.
 - f. Proposed methods of noise, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
32. 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 Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

- c. Received approval of the final engineering, utility, and drainage plans 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, Department of Public Works and the Director of Planning and Development.
 - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
 - e. Submitted plans to the appropriate City Departments for review and approval in accordance with Conditions #25-26
33. 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 statements by a registered architect and a professional land surveyor 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. 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.
 - 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.
 - e. Submitted to the Director of Planning and Development evidence of completion of off-site improvements in accordance with Conditions #25-26.
34. Notwithstanding the provisions of Condition #33 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building 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.
35. Notwithstanding the provisions of Conditions #26 and 33 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of the off-site improvements 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 site improvements to secure completion of off-site and internal site improvements.

Under Suspension of Rules
Readings Waived and Approved
23 yeas 0 nays 1 absent (Councilor Markiewicz)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council 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 December 22, 2021. 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) CAROL MOORE, City Clerk
Clerk of the City Council

I, Carol Moore, as the Clerk of the City Council 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 Newton City Council in the Office of the City Clerk on December 22, 2021 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



(SGD) CAROL MOORE, City Clerk
Clerk of the City Council