

# Department of Planning and Development



**PETITION #254-22**  
**1185 CHESTNUT STREET**

SPECIAL PERMIT/SITE PLAN APPROVAL TO ALLOW A RETAIL MARIJUANA ESTABLISHMENT, TO ALLOW PARKING WITHIN THE SIDE SETBACK, TO WAIVE PERIMETER SCREENING REQUIREMENTS, TO WAIVE LIGHTING REQUIREMENTS, TO WAIVE *THE 500 FT. BUFFER FOR AN EXISTING KINDERGARTEN*, AND TO WAIVE THE 25% FAÇADE TRANSPARENCY REQUIREMENT T

*SEPTEMBER 13, 2022*



# Requested Relief



## Special Permit per §7.3.3:

- allow a marijuana retailer (§6.10.3.D, §4.4.1)
- allow parking within the required side setback (§5.1.8.A.1, §5.1.13)
- allow parking stalls with reduced length (§5.1.8.B.2, §5.1.13)
- alter and extend the nonconforming driveway width (5.1.8.D.1; §7.8.2.C.2)
- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)
- waive the 500 foot buffer for an existing kindergarten (§6.10.3.F.1)
- waive the 25% façade transparency requirement ((§6.10.3.E.15)

# Updates



## Adjacent Day Care Operations

Additional relief requested- City Council allow the proposed facility to operate adjacent to a kindergarten

- the petitioner has indicated that it has worked with abutting childcare facility to identify modifications to “enhance the existing screening and buffering between the two parcels” and that such “commitments be added as conditions of any land use approval granted.”
- installation of a six-foot-tall fence along the shared property line to screen the view of proposed facility from the adjacent parking lot and from within the childcare facility
- would install plantings on the abutting parcel’s side of the fence;
- use personnel and security cameras to monitor the parking area & to “mitigate any illegal parking or on-site consumption,”
- clean up/maintain some open space at rear of both parcels
- enhance childcare facility’s existing playground area.

# Updates



## Responses to Previous Comments

The petitioner submitted responses to comments made in Planning Department's April 29, 2022, memo and May 3 Land Use Committee public hearing (see letter dated July 21, 2022):

- modified its proposed photometric plan to include security lighting with a minimum intensity of one-foot candle on the parking area's entire surface
  - "All lighting will be downcast, dark sky compliant lighting as so not to result in light pollution to abutting properties."
  - believed previously sought relief no longer required
  - petitioner ensure that any lighting does not impact any neighboring residences.
- posts/chain between the sidewalk and the stockade fence along the left property line to provide "additional visual separation from the abutting driveway" while maintaining vehicular and pedestrian safety

# Updates



## Responses to Previous Comments (cont.)

- temporary snow storage areas shown in parking area.
- improve encroachment into adjacent MBTA-owned Greenway property with landscaping and to provide a gravel pathway and gate for access between facility's bicycle parking and Greenway.
- a turning movement plan has been added to the site plans showing how vehicles would be able to safely enter and exit the site.

# Updates



## ***Transportation Peer Review***

- Planning Department on-call transportation consultant, performing peer review of traffic and transportation-related materials submitted by the petitioner.
- initial response requested additional data be collected related to existing traffic levels and conditions, crash data and safety within study area, an assessment of Sight Distances, and a speed study
- in response to peer reviewer comments, site plans have been updated to include solid yellow centerline line and stop bar at site driveway and swept path analysis for proposed parking lot's most restricted parking spaces.
- a turning movement plan has been added to the site plans showing how vehicles would be able to safely enter and exit the site.

# Updates



## ***Transportation Peer Review (cont.)***

- peer reviewer requested Traffic Impact Statement be revised to discuss the parking demand and supply using either typical ITE parking generation rates, empirical data or operational criteria
  - ✦ petitioner responded that per ITE Parking Generation Manual parking demand is 2.2 spaces per 1,000 square feet on weekdays or 11 spaces
  - ✦ proposed facility would have 18 parking stalls (including one accessible parking space).
  - ✦ the petitioner has indicated it will commission complete Traffic Impact Assessment (TIA) with a Level of Service (LOS) analysis but requests the completion of such a study that indicates that the project “not decrease the LOS for this intersection below the lesser of the existing conditions or LOS D,” be a condition of a special permit

(per petitioner, proposed use would be expected to generate approximately 48 “vehicle trips ends” during the weekday afternoon peak hour and approximately 49 “vehicle trips ends” during Saturday midday peak hour)

# Updates



## ***Proposed Transportation Demand Management (TDM) Plan***

- MBTA pass subsidies (to “federal fringe limit”) for full time employees and prorated passes for part time employees
- lockers and indoor bicycle storage for employees; an air pump and bicycle repair tools to employees and customers; and annual reimbursements for walking and/or athletic shoes to employees
- Transportation Coordinator to implement TDM plan and maintain on-site information on pedestrian and bicycle facilities; MBTA maps and schedules; and car-pooling
- implement a “ride home plan” that will cover cost of one ride share or taxi ride home per quarter in case of illness or emergency for employees using alternative transportation.
- provide bicycle, pedestrian, and transit route information on website
- explore membership in a transportation management association and the Planning Department also notes the petitioner would provide ten on-site bicycle parking stalls.



# Transportation



Petitioner has indicated it will commission complete Traffic Impact Assessment (TIA) with a Level of Service (LOS) analysis but requests the completion of such a study that indicates that the project “not decrease the LOS for this intersection below the lesser of the existing conditions or LOS D,” be a condition of a special permit

Peer reviewer initial response requested additional data be collected related to existing traffic levels and conditions, crash data and safety within study area, an assessment of Sight Distances, and a speed study

# Findings



- See draft pdf

# Conditions



- See draft pdf

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

- allow a marijuana retailer (§6.10.3.D, §4.4.1)
- allow parking within the required side setback (§5.1.8.A.1, §5.1.13)
- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)
- waive the 500 foot buffer for an existing kindergarten (§6.10.3.F.1)
- waive the 25% façade transparency requirement (§6.10.3.F.15)

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 within the Business Use 2 zone. (§7.3.3.1)
2. The proposed Marijuana Retailer as developed and operated will not adversely affect the neighborhood given its proximity to the mixed uses along Chestnut Street and the petitioner's proposals to manage traffic and parking. (§7.3.3.2)
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved given the projected trip generation associated with the proposed use (§7.3.3.3)
4. There will be no nuisance or serious hazard to vehicles or pedestrians due to the petitioner's upgrades to the site (§7.3.3.4)

With regard to special permits concerning the Marijuana Retailer on site, pursuant to §6.10.3.G:

5. 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. (§6.10.3.H.1.a)
6. Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.H.1.b)
7. The Marijuana Retailer is designed to minimize any adverse impacts on abutters with fencing, landscaping and reduced lighting (§6.10.3.H.1.c)

8. The Marijuana Retailer is designed to minimize any adverse impacts on the abutting existing private day care facility that includes kindergarten students (§6.10.3.H.2.a)
9. 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 stated by the petitioner's transportation analysis and as confirmed by the City's on-call consultant and because of the appointment only system set forth in Condition #2. (§6.10.3.H.2.b)
10. 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. (§6.10.3.H.2.c)
11. The building and site are accessible to persons with disabilities. (§6.10.3.H.2.d)
12. The lot is accessible to regional roadways and public transportation due to its location on Beacon Street and proximity to the MBTA's bus route 59. (§6.10.3.H.2.e)
13. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.H.2.f)
14. The Marijuana Retailer's hours of operation will have no significant adverse impact on nearby uses given the mixed-use nature of the surrounding area along Chestnut Street and presence of commercial uses nearby that operate during similar hours. (§6.10.3.H.2.g)

PETITION NUMBER: #254-22

PETITIONER: Nuestra LLC  
198 Tremont Street, Suite 228  
Boston, MA 02116

LOCATION: 1185 Chestnut Street, on land known as Section 51 Block 45  
Lot 9, containing approximately 17,091 square feet of land

OWNER(S): 1185 Chestnut St. Trust  
Kegagioglu Panagiotis, Trustee

ADDRESS OF OWNER(S): 1185 Chestnut Street  
Newton, MA 02464

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 within the required side setback (§5.1.8.A.1, §5.1.13)

- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- To waive the lighting requirements (§5.1.10, §5.1.13)
- waive the 500 foot buffer for an existing kindergarten (§6.10.3.F.1)
- waive the 25% façade transparency requirement (§6.10.3.F.15)

ZONING: Business Use 2 District

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 set of plans entitled “Site Plan, Proposed Marijuana Retailer, 1185 Chestnut Street, MA,” dated December 23, 2021, as revised through July 20, 2022, prepared by Hayes Engineering, Inc., comprised of the following sheets:
    - i. Cover Sheet and Index (C1)
    - ii. Existing Conditions (C2)
    - iii. Site Preparation (C3)
    - iv. Proposed Site Plan (C4)
    - v. Landscape Plan (C5)
    - vi. Lighting Plan (C6)
    - vii. Details (C7)
  - b. Architectural plans and drawings, entitled “Boston Garden, Newton, MA, ” prepared by BKA Architects, comprised of the following sheets:
    - i. Floor Plan (A-1), dated November 9, 2021
    - ii. Street Elevation Transparency (*sic*), (A-2), dated October 7, 2021
    - iii. View 1- Chestnut Street Approach (A-3), dated July 21, 2021
    - iv. View 2- Main Entrance (A-4), dated July 21, 2021
    - v. Exterior Elevations (A-2B), dated May 13, 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. 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 Noon to 6:00 p.m. on Sunday.
  5. 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.
  6. Should any line form following the possible conclusion of the appointment only condition, lines for customers waiting must form only on the internal sidewalk on the right (west) side of the property and must not form along Chestnut Street.
  7. There Marijuana Retailer may not have more than six points of sale.
  8. There shall not be more than nine (9) staff members on site at any one time not including delivery personnel.
  9. Employees of the Marijuana Retailer shall not park on residential streets in the vicinity of the site. The Marijuana Retailer shall provide messaging to customers and employees in that parking on residential streets is prohibited.

10. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary, as determined by the Police Chief, for traffic control at such times when the nearby seasonal farmers market is in operation.
11. The Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site as described in a memorandum submitted by the petitioner, entitled "Transportation Demand Management Plan, The Boston Garden- Proposed Retail Dispensary, 1185 Chestnut Street, Newton, Massachusetts," from Anthony M. Capachietti, PE, to Newton City Council, dated July 18, 2022, on file with the City Clerk's Office and the Planning Department.

The Petitioner shall keep records detailing how employees are commuting to and from the site, including the number of employees utilizing public transit, parking at satellite lots, and using alternative methods of transportation such as the bikeshare and ridesharing. 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 certificate of occupancy.

Further, in the event that it is determined by one or more relevant City departments (i.e. the Newton Police Department, Planning Department and/or Public Works) and/or third party engineers designated by mutual agreement of the petitioner and one or more of said relevant City departments, that the parking provided onsite is insufficient and additional parking is required, petitioner shall timely obtain rights for off-site parking at such location(s) where said use is permitted either by-right or pursuant to a special permit so as to cure the identified parking deficiency.

12. 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.
13. 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.
14. Maintain plantings to ensure sight distance.
15. 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.
16. Snow shall not be stored on site.



17. 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.
18. 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.
19. 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.
20. 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.
21. 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. If the Commissioner of Inspectional Services and Director of Planning and Development have concerns regarding public safety or the security of the facility, 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.

22. Prior to the issuance of a temporary certificate of occupancy, 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 and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.

23. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved security plan to the City of Newton Police Department for review and approval.
24. Prior to the issuance of a temporary certificate or occupancy, the petitioner shall submit a state approved emergency response plan to the City of Newton Fire Department for review and approval.
25. Prior to the issuance of a temporary certificate or 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.
26. Prior to the issuance of any occupancy certificate, the petitioner shall conduct pre-demolition and post-construction closed-circuit television inspections of the City's drainpipe in concert with the proposed overflow connection and provide an electronic copy of such inspection to the Commissioner of Public Works.
27. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the petitioner shall hire a licensed pest control operator (the "Operator") to assess the property for pest and rodent activity and develop and implement a pest remediation action plan (the "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 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. Copy of such approvals shall be provided to the Department of Planning and Development.
  - c. The 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 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 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 assessment.
28. 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 truck 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;
    - impacts on abutting properties.
29. 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, 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.
30. 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 engineer 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. Provided the City Engineer, Department of Inspectional Services, and the Department of Planning and Development with a recorded copy of the Operation and Maintenance (O & M) plan for Stormwater Management in accordance with Condition #20.
  - e. 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.
31. Notwithstanding the provisions of Condition #30 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.