



Land Use Committee Report

City of Newton In City Council

Tuesday, November 1, 2022

Present: Councilors Lipof (Chair), Kelley, Bowman, Downs, Greenberg, Laredo, Lucas, and Markiewicz

Also Present: Councilors Albright, Crossley, and Humphrey

City Staff Present: Senior Planner Michael Gleba, Chief Planner Katie Whewell, Senior Planner Cat Kemmett, and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at the following link <https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-1058>. Presentations for each project can be found at the end of this report.

#475-22 Request to amend Council Order #443-20 at 232 Boylston St
DACOS REALTY LLC, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order 443-20 to replace the Petitioner as stated in Council Order #443-20 from MME Newton Retail LLC to Pharmacannis Massachusetts Inc. d/b/a Verilife at 232 Boylston Street, Newton, Ward 7, on land known as Section 82 Block 02 Lot 09, containing approximately 16,570 sq. ft. of land in a district zoned BUSINESS 4. Ref: 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 7-0-1 (Councilor Lipof Recused); Public Hearing Closed 11/1/22**

Note: Attorney Michael Ross of Prince Lobel Tye, LLP, with offices at One International Place, Suite 3700, Boston represented the petitioner and presented an orientation of the property as well as the proposed plans, and general petition information which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92518/638024735755326346>

The petitioner is proposing to amend Council Order 443-20 to replace the Petitioner as stated in Council Order #443-20 from MME Newton Retail LLC to Pharmacannis Massachusetts Inc. doing business as Verilife.

Pharmacannis has indicated that they do not seek any additional amendments to the Special Permit and seeks to open and operate at the premises in compliance with all other terms and conditions of the Special Permit.

Senior Planner Michael Gleba presented the requested relief, criteria for consideration, land use, zoning and proposed plans which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92725>

Public Comment

The Acting-Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Committee Comments

Committee Members questioned what would happen to the Permit that the petitioner held at its previous address. Atty. Ross responded that “that permit was currently under agreement with the sale.” The petitioner is planning to transfer that permit to a new applicant who would have to go through a similar process with the Land Use Committee.

Assistant City Solicitor Temple noted that he anticipated the operator of the previous site to be coming before the Land Use Committee shortly with an amendment to adopt Pharmacannis’ previous Special Permit like this petition.

Committee members also asked that since all elements of the Special Permit would be transferred to Pharmacannis, did that additionally include the land scape plan. Atty. Ross stated that was correct and that Pharmacannis would adhere to and inherit all conditions of the Special Permit.

Councilor Laredo motioned to close the Public Hearing which carried 7-0. Councilor Laredo motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. The Committee voted in favor of approval 7-0-1 (Councilor Lipof Recused).

#476-22 Request to amend Special Permit #180-18 to allow an increase in the number of shuttles for the accessory parking shuttle service at 199 Boylston St

MALL at CHESTNUT HILL LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow an increase in the number of shuttles for the accessory parking shuttle service at 199 Boylston St, Newton, Ward 7, on land known as Section 65 Block 08 Lot 100, containing approximately 324,691 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 8-0; Public Hearing Closed 11/1/22

Note: Attorney Frank Stearns, of Holland & Knight, LLP, with offices at 10 St. James Ave #1200, Boston, represented the petitioner. Atty. Stearns did not have a multimedia presentation, but did brief the petition, including history, site plans and operational use orally.

Atty. Stearns was joined by Assistant General Manager at the Simon Group/General Manager of the Mall at Chestnut Hill Jim Riccio as well as Ed Pitts, Executive Director of Facilities and Support Services at Brigham and Women’s Faulkner Hospital.

Senior Planner Cat Kemmett presented an orientation of the property as well as the proposed plans, general site information and landscape plans as well as the requested relief, criteria for consideration, land use, zoning which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92723>

The petitioner is seeking to amend Condition 5 to increase the number of shuttles allowed as well as to expand the shuttle service area.

With the amended petition the petitioner is seeking to create a second shuttle service going from the Mall at Chestnut Hill to the Faulkner Hospital in Jamaica Plain, Boston and has already received that approval from the Public Safety and Transportation Committee.

Shuttles would run from 5:00 am – 8:55 pm, pickup and drop-off would be at the existing MBTA bus stop, the current route to Brigham and Women’s Hospital would be maintained with 49 shuttles per day and the new route to the Faulkner Hospital in Jamaica Plain would add an additional 75 shuttle runs per day.

Public Comment

The Chair opened for Public Comment. No member of the public wished to speak regarding this proposal.

Committee Comments

Committee Members that also service on the Public Safety and Transportation Committee noted that this petition was thoroughly vetted through Public Safety and Transportation and reiterated that Public Safety and Transportation approved the elements of the petition that were under their purview.

Committee Members additionally noted support for the petition. Members believe that responsibility for this petition and similar petitions should be bifurcated between the Land Use Committee and the Public Safety and Transportation Committee.

Land Use should retain overview of waivers to parking requirements, but how buses operate, and their frequency should be a Public Safety and Transportation issue.

Councilor Laredo motioned to close the Public Hearing which carried 8-0. Councilor Laredo motioned to approve the petition. Committee members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 8-0.

#29-22 Petition to allow a drive-in business and associated perimeter parking and lighting waivers at 940 Boylston Street

MILDRED K. MCMULLEN, TRUSTEE OF MIL MAC TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze a portion of the existing building and reconfigure the existing parking to allow for a construction of a drive-in and relief for a free-standing sign at 940 Boylston, Ward 5, Newton, on land known as Section 51 Block 26 Lot 03, containing approximately 12,060 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 4.4.1, 6.4.11, 5.1.9.A, 5.1.13, 5.2.13, 5.10.A of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Denied 5-1-2 (Councilor Lucas Nay) (Councilors Greenberg and Markiewicz Abstained); Public Hearing Closed 11/1/22

Note: Attorney Laurance Lee of Rosenberg, Freedman & Lee, LLP, with offices at 246 Walnut Street, Newton represented the petitioner and presented an update including an orientation of the property as well as the proposed plans, general site information and landscape plans which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92731>

Atty. Lee was joined by the operator of the site, Alex DiPietro as well as Atty. Jason Rosenberg and Traffic Consultant Amy Archer.

The petitioner is seeking to allow a drive through and two free standing, principal signs (menu board). The petitioner would also be eliminating 14 parking stalls to allow for the construction of the drive through as part of the proposed project.

Additionally, sections of the right portion of the building would be removed to allow for the construction of the drive through. Removing large portions of the indoor seating would occur to accommodate the drive through essentially rendering this Dunkin' Donuts location a pick-up/drive through option only. Dine in seating would be eliminated.

Chief Planner Katie Whewell presented an orientation of the property as well as the proposed plans, general site information and landscape plans as well as the requested relief, criteria for consideration, land use, zoning which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92729>

Ms. Whewell noted that City Staff have concerns about the expected queue spillover onto Route 9 with the lack of an on-site queue mitigation offered. Ms. Whewell additionally noted that the concerns stemmed from vehicle wait times between ordering and proceeding to the pick-up window.

The petitioner has not provided on-site mitigation measures that the City can evaluate.

Public Comment

DAVINA FANKHAUSER, who did not provide an address, stated she was very much in favor of the proposed project and cited her past patronage of the site spanning over a decade. Ms. Fankhauser also noted that last week, was backing out of a spot at the site and backed into her. Ms. Fankhauser asserted that if the site had had the drive through option, that accident certainly would not have occurred.

JASON ROSENBERG, who did not provide an address, advocated in favor of the petition. Atty. Rosenberg noted that he has been living as a person with disabilities since 1955 at the outset of the Polio Virus. Atty. Rosenberg outlined the challenges he faces daily in finding adequate parking, entering and exiting a vehicle, other drivers parking over the lines and the lack of enforcement for those who erroneously park in handicap parking.

LUCIE CHANSKY, who did not provide an address, noted her support for the petition as a person with a mobility disability and as the parent of a child with disabilities. Ms. Chansky also noted how she must go to Needham to utilize their drive through accommodations. She cited that a drive through in Newton for those with mobility issues is an appropriate accommodation.

SEAN ROCHE, 42 Daniel Street, Newton, voiced opposition to the project. Mr. Roche stated that Newton should not add more drive throughs, as drive throughs promote driving, which increases congestion. Mr. Roche also offered as a solution in lieu of a drive through, a curbside pickup option. In this option each parking space would be equally accessible and there would be little to no need for designated parking for residents with disabilities.

JINI FAIRLEY, who did not provide an address, noted that the City's Commission on Disabilities did support the drive through as well as the designs and plans for both the pedestrian access and drive through access.

Committee Comments

Committee Members repeatedly questioned the safety of the drive through design and site plan. The drive through is only accessible by a sharp right hand turn from Route 9 into the drive through. The most optimistic numbers presented by the petitioner is 12 cars can be held in the queue without bleed over onto Route 9.

Committee Members also cited the lack of mitigation and contingencies for when cars do extend out onto Route 9 creating a safety issue.

Committee Members also asked the maximum number of employees on site at any given time considering that 14 parking stalls would be removed to accommodate the drive through.

Mr. DiPietro answered that the maximum is five employees: four plus a manager. Mr. DiPietro also noted that he polled current workers and roughly 95 percent of them took public transit or carpooled, eliminating the parking concern.

Committee Members also noted that if approved, this would be the last drive through Dunkin' Donuts before you get into Boston, creating a possible chaotic scene in the mornings. Members noted increase traffic would be driven to the site by vehicles from I-95, 128 North and 128 South.

Committee comments centered around safety and the lack of mitigation and contingencies by the petitioner.

Councilors not on the Committee also spoke on this petition.

Councilors echoed earlier sentiments of this site becoming a driver only site by the elimination of seating options inside and forcing customers into vehicles. Councilors echoed Mr. Roche's comments of this becoming potentially a curbside pick-up location.

Councilor Downs motioned to close the Public Hearing which carried 8-0. Councilor Downs motioned to deny the petition. The Committee voted in favor of denial 5-1-2. Councilor Lucas voted “nay” and Councilors Greenberg and Markiewicz abstained.

#457-22 Request to allow a 6-unit residential dwelling at 416 & 418 Langley Road

416-418 LANGLEY ROAD, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze two dwellings, merge two-lots and construct a six-unit multifamily dwelling with below grade parking accommodating 12 vehicles in addition; to allow ground floor residential use with residential above; to allow a three-story structure with 36 feet in height; to extend a nonconforming side setback; to extend a nonconforming rear setback; to allow an FAR of 1.47; to allow a reduced parking stall width; to allow restricted end stalls; to reduce the driveway width for two-way traffic and to allow a retaining wall exceeding four feet in height within a setback at 416 and 418 Langley Road, Ward 6, Newton, on land known as Section 65 Block 10 Lot 27 and Section 65 Block 10 Lot 28, containing approximately 11,176 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4, 4.4.1, 4.1.2.B.3, 4.1.3, 7.8.2.C.2, 5.1.8.A.1, 5.1.13, 5.1.8.B.6, 5.1.8.D.1, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 6-0-2 (Councilors Laredo and Lucas Abstained); Public Hearing Closed 11/1/22

Note: Attorney Laurance Lee of Rosenberg, Freedman & Lee, LLP, with offices at 246 Walnut Street, Newton represented the petitioner and presented an overview including an orientation of the property as well as the proposed plans, general site information and landscape plans which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92737>

The petitioner is to raze two dwellings and merge two lots while additionally constructing a six-unit multifamily dwelling with below grade parking accommodating 12 vehicles. The petitioner is also looking for approval to allow a three-story structure, to extend a nonconforming side setback and rear setback and to allow a reduced parking stall width.

Michael Gleba Whewell presented the requested relief, criteria for consideration, land use and zoning which can be found at the following link:

<https://www.newtonma.gov/home/showpublisheddocument/92719>

Public Comment

SEAN ROACHE, of 42 Daniels Street, stated he was generally in favor of the proposed project, adding it fits neatly into the neighborhood of apartment buildings and condominiums.

Mr. Roache questioned how the petitioner arrived at the number of six units and asked rhetorically if these units would be above the City’s current median income considering they were 2,100 sq. ft and three-bedroom units.

Mr. Roache additionally asked if the petitioner would consider smaller sized units and more units.

Atty. Lee responded that the number of proposed units at the site was being primarily driven by the shape and size of the lot. The odd shape of the lot presented challenges coupled with the underground garage. Additionally, how many units could be sold, what they can be sold for and what it cost to build the project were all taken into consideration.

Mr. Roache additionally rhetorically questioned how the petitioner arrived at 12 parking stalls, which is two per unit, though Atty. Lee in his presentation touted the area as transit accessible.

Committee Comments

Committee Members generally expressed favorable sentiments to the project. One issue of note was the amount of blasting that would be occurring at the site considering how much rock was present.

Atty. Lee introduced a consultant named Scott who represented Baystate Blasting.

When asked by the Committee just how much rock was present, Mr. Scott was unsure of the exact amount of rock, as some time had passed since he was last at the site but did acknowledge that it was not a large quantity, and the project would be quick as far as Baystate Blasting was concerned.

The Chair took this time to note to the public that the City has existing rules and regulations in place as it pertains to blasting and those regulations would be followed should this project move forward.

Committee Members additionally questioned the accessibility of at least one of the units being a Group 2 or fully accessible unit.

Atty. Lee introduced Eric Zachrison, the project architect. Mr. Zachrison noted that to date, all the units are Class 1, but given the size of the units, it would not be difficult to make any of them Group 2.

Atty. Lee interjected and stated for the record that Unit 1 is a Group 2 accessible unit.

Committee Members additionally noted their appreciation of bike parking as well as electronic vehicle (EV) charging stations.

Additionally, Members noted the retaining wall to the left of the proposed driveway and asked Atty. Lee for the wall's approximate height.

Atty. Lee responded that the wall was under three feet in height. A follow-up question was asked of the Planning Department as to whether City Staff had any concerns about drivers exiting the driveway and potentially not seeing pedestrians over the retaining wall.

Mr. Gleba responded that the Planning Department did mention this very concern in the memo and suggested that the petitioner explore options to transfer visibility, such as keeping landscaping down and to maximize vehicle visibility.

Councilor Bowman motioned to close the Public Hearing which carried 8-0. Councilor Bowman motioned to approve the petition. Committee members reviewed the draft findings and conditions as is shown in the attached presentation. The Committee voted in favor of approval 6-0-2 with Councilors Laredo and Lucas abstaining.

The Committee adjourned at 10:04 p.m.

Respectfully Submitted,

Richard Lipof, Chair