

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; to waive the 25 percent transparency requirement; to amend Council Order #774-85 to allow a free standing sign; to allow parking within the side setback; to allow tandem parking; to allow parking managed by an attendant; to waive the parking stall dimensions; and to waive certain requirements of parking facilities containing more than five stalls, 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 Boylston 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. (§7.3.3.4)
5. Literal compliance with applicable parking facility requirements requiring that no parking stall be located in the side setback (§5.1.8.A.1, §5.1.13), a width of nine feet for parking stalls (§5.1.8.B.1, §5.1.13), a depth of 19 feet for parking stalls (§5.1.8.B.2, §5.1.13), certain minimum dimensions for accessible parking stalls (§5.1.8.B.4, §5.1.13), and certain minimum aisle width requirements for two-way traffic (§5.1.8.C.1, §5.1.13), is impracticable due to the nature of the use, size, shape and grade of the lot and these exceptions would be in the public interest as they would reduce the space needed to accommodate the number of required parking stalls on the property. (§5.1.13)
6. Allowing tandem parking and parking managed by an attendant would be in the public interest and in the interest of safety as it would reduce the space needed to accommodate the number of required parking stalls on the property. (§5.1.8.E.1; §5.1.8.E.2; §5.1.13)
7. Literal compliance with applicable parking facility perimeter screening requirements is impracticable due to the size and grade of the lot. (§5.1.9.A; §5.1.13)
8. Literal compliance with applicable parking facility lighting requirements is in the public interest as it will limit light overspill onto adjoining properties. (§5.1.10, §5.1.13)

9. The requirement that a Marijuana Retailer located at the ground level provide at least 25 percent transparency along the building's front façade at ground level is waived as the petitioner is occupying an existing structure and utilizing existing windows and doorways, and impacts to security, and aesthetics have been appropriately mitigated by other security measures and landscaping. (§6.10.3.E.15)

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

8. 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.G.1.a)
9. Loading, refuse, and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.G.1.b)
10. The Marijuana Retailer is designed to minimize any adverse impacts on abutters. (§6.10.3.G.1.c)
11. The Marijuana Retailer is not located within a 500-foot radius of a public or private K-12 school. (§6.10.3.G.2.a)
12. The lot location complies with Sec. 6.10.3.E.1. (§6.10.3.G.2.a)
13. 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 due to the appointment only system and traffic and parking demand management approaches set forth herein. (§6.10.3.G.2.b)
14. 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.G.2.c)
15. The building and site are accessible to persons with disabilities. (§6.10.3.G.2.d)
16. The lot is accessible to regional roadways and public transportation due to its location on Boylston Street and proximity to public transit services. (§6.10.3.G.2.e)
17. The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.G.2.f)
18. 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 Boylston Street and the presence of commercial uses nearby that operate during similar hours (§6.10.3.G.2.g)

With regard to amending Special Permit #774-85:

16. The specific site is an appropriate location for the proposed signage because a free standing sign has existed at this site for many years (§7.3.3.1)
17. The proposed signage will not adversely affect the neighborhood given the presence of similar signs (§7.3.3.2)
18. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.3)
19. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.4)

PETITION NUMBER: #457-22

PETITIONER: Pharmacannis Massachusetts Inc. d/b/a Verilife

LOCATION: 232 Boylston Street, on land known as Section 82 Block 2 Lot 9, containing approximately 16,570 square feet of land

OWNER(S): Dacos Realty, LLC

ADDRESS OF OWNER(S): 232 Boylston Street
Newton, MA 02459

TO BE USED FOR: Marijuana Retailer

CONSTRUCTION: Brick

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 width requirement for parking stalls (§5.1.8.B.1, §5.1.13)
- reduce the depth requirement for parking stalls (§5.1.8.B.2, §5.1.13)
- reduce dimensions for accessible parking stalls (§5.1.8.B.4, §5.1.13)
- reduce the minimum aisle width requirement for two-way traffic (§5.1.8.C.1, §5.1.13)
- allow tandem parking and parking managed by an attendant (§5.1.8.E.1, §5.1.8.E.2, §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 25% front façade ground floor transparency requirements (§6.10.3.E.15)
- Amend Order #774-85
 - To allow a free-standing sign (§5.2.3, §5.2.8, §5.2.13)

ZONING: Business Use 2 District

This Order is being reissued due to a change of the proposed operator of the facility, as identified above as the "PETITIONER."

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 site plans entitled "232 Boylston Street, Newton, MA," prepared by Verne T. Porter Jr., PLS, signed and stamped by Verne T. Porter Jr., Registered Professional Land Surveyor, dated December 2, 2019, as revised through February 9, 2021 consisting of three sheets.
 - b) A photometric plan entitled "232 Boylston Street, Newton, MA, Section 83 Block 2 Lot 9, Existing Conditions Plan," prepared by Verne T. Porter Jr., PLS, signed and stamped by Verne T. Porter Jr., Registered Professional Land Surveyor, dated June 14, 2019, including information Plan prepared by Kimley-Horn and Associates, Inc., denoting information from a "Photometric survey conducted on 11/4/2020 at 8:30 pm utilizing Extech Instruments Foot Candle / Luxe Meter at a hight (sic) of 4' above pavement surface by Kimley-Horn and Associates, Inc."
 - c) A set of landscaping plans entitled "232 Boylston St, Newton, MA, prepared by G2 Collaborative, dated April 12, 2021, consisting of the following sheets.
 - i. Overall Planting"
 - ii. Planting- Front
 - iii. Planting- Back
 - d) Architectural Floor Plans and Elevations entitled "MedMen 232 Boylston Newton MA" prepared by TPG Architecture dated October 16, 2020, comprised of the following sheets:
 - i. Cover Sheet (TS-001)
 - ii. Basement- Proposed Floor Plan (A-101)
 - iii. Ground Floor, Proposed Floor Plan- Floor Plan (A-102)
 - iv. Second Floor, Proposed Floor Plan- Floor Plan (A-103)
 - e) A signage plan set consisting of eight sheets entitled "MedMen, 232 Boylston Street" prepared by North American Signs, dated September 1, 2020 and revised February 5, 2021.
2. The petitioner shall see all visitors of the Marijuana Retailer on an appointment only basis. The "appointment only" requirement is intended to ensure a smooth flow of customers arriving to and leaving from the site, to avoid customers 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.

3. All on-site parking shall be for customers only. Employees are prohibited from parking on-site. The petitioner shall inform all employees of this requirement and take all necessary steps to ensure compliance.
4. The petitioner shall never operate more than eight point of sale stations. Any increase beyond six point of sale stations must be in accordance with Condition 5 herein.
5. For the first six months of operations, the petitioner shall only operate six of its point of sale stations. During this time, the Department of Planning and Development shall engage a third party to monitor the parking lot operations (“the Parking Monitor”). The reasonable costs of the Parking Monitor shall be paid by the petitioner. The scope and nature of the activities of the Parking Monitor, as directed by the Director of Planning and Development, shall include, but not be limited to making periodic unscheduled visits to obtain first-hand observations of the operation of the parking lot, the use and occupancy of general and managed parking stalls onsite, use of adjacent off-site parking areas by petitioner’s customers and/or staff, arrivals by petitioner’s customers and/or staff by alternative transportation modes (e.g., bicycle, taxi and/or transportation network company services, public transit, etc.), and parking congestion, all for purpose of ascertaining whether the following standards are being met:
 - a. that the site is providing sufficient parking for customers and accommodating parking demand on site;
 - b. that the site is accommodating vehicular traffic without vehicles spilling over or queueing onto adjacent streets or properties;
 - c. that employees are not parking on site; and
 - d. that there are no other adverse impacts or nuisances to the surrounding properties resulting from the petitioner’s parking operations.

The Parking Monitor shall submit observation reports to the Planning Department as directed by the Director of Planning and Development . In the event that the Parking Monitor identifies that any of the above listed standards are not being met, the petitioner shall, in consultation with the Planning Department, adjust its operations in order to satisfy the standards.

At the conclusion of this initial six-month period, the Parking Monitor shall submit a report summarizing the site’s parking operations as observed during that period (the “Six-Month Report”) to the petitioner and the Planning Department. Thereafter, the Planning Department and the petitioner shall meet to discuss the report’s findings (“the Six-Month Check-in Meeting”).

If the Planning Department concludes that the petitioner’s parking operation meets the above listed standards and that there is sufficient evidence that the site can adequately accommodate the additional parking demand and vehicular traffic associated with the expansion of two additional points of sale, the petitioner shall be permitted to schedule appointments at eight point of sale stations (“Full Operations”).

During the first three months of Full Operations by the petitioner with eight points of sale, the Parking Monitor shall continue to monitor the parking lot operations as directed by the Planning Department (the reasonable costs of which shall be paid by the petitioner), consistent with the protocols and standards described above, including but not limited to making periodic

unscheduled visits to the parking lot and submitting observation reports to the Planning Department as often as bi-weekly.

At the conclusion of the initial three-month period of Full Operations, the Parking Monitor shall submit a report summarizing the site's parking operations as observed during that period (the "Nine-Month Report") to the petitioner and the Planning Department. Thereafter, the Planning Department and the petitioner shall meet to discuss the report's findings ("the Nine Month Check-in Meeting"). In the event that that any of the above listed standards are not being met, the petitioner shall, in consultation with the Planning Department, adjust its operations as necessary in order to satisfy the standard, which may include reducing the number of point of sale locations.

6. The Petitioner shall implement a Transportation Demand and Parking Management (TDPM) Plan to prevent employees from parking onsite and reduce vehicle trips and associated parking at the site. The Final TDPM Plan shall include, but not be limited to, the following measures which are outlined in the petitioner's TDPM plan of April 15, 2021:
 - a) The proposed parking management plan for the site.
 - b) Prohibiting employees from parking on site.
 - c) The petitioner's commitment to subsidize the cost of having its employees park off-site as well as the cost of their transportation to/from off-site parking areas.

The Petitioner shall keep records detailing how employees are commuting to and from the site, including the number of employees utilizing transit, parking at satellite lots, and using alternative methods of transportation, as well the expenses incurred by the petitioner for the above-referenced subsidies.

This TDPM Plan, which shall be reviewed and approved by the Planning Department and the Transportation Division in advance of the issuance of any Building Permit pursuant to this Special Permit, shall be kept on file with the City Clerk's Office and the Planning Department.

7. Six months after commencement of Full Operations, as defined in Condition 5, with eight points of sales, 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.
 - a. Such letter shall only be filed after the petitioner has completed the following:
 - i. 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; and
 - ii. 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 above.
 - b. The Commissioner of Inspectional Services and the Director of Planning and Development, jointly, 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 satisfy the parking standards set forth in Condition 5 without the "appointment only" requirement.

- c. 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.
 - d. If the appointment only condition is removed, and at any time the Director of Planning, in consultation 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.
8. 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.
 9. There shall not be more than twenty-one (21) staff members, on site at any one time, not including delivery personnel.
 10. Petitioner shall provide administrative support to the City relative to its efforts to establish a shuttle serving the Chestnut Hill business community. In that regard, the petitioner will organize and host a kickoff meeting for major area property owners and businesses. The petitioner shall collaborate with the City's Planning Department and Transportation Division on identifying the optimal route and service radius and shall make a one-time payment to the City of \$25,000 in advance of the issuance of any Building Permit pursuant to this Special Permit to be used as the City sees fit for the planning and development of the shuttle.
 11. The petitioner shall design and construct a raised crosswalk along Florence Street, its exact location to be subject to the review and approval of the Transportation Division, the Planning Department, and the Newton Fire Department. Said crosswalk, which shall be installed prior to the issuance of a final Certificate of Occupancy pursuant to this order, shall include any drainage infrastructure deemed necessary by the Commissioner of Public Works, and shall be constructed at the sole expense of the petitioner with no upset limit as to its cost.
 12. 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. 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.
 15. Snow shall not be stored on site.
 16. Should the petitioner seek to extend the Marijuana Retailer authorized by this Order, including but not limited to, increasing the number of employees it shall seek an amendment to this Order.

17. 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.
18. 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.
19. 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.
20. 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.
21. Prior to the issuance of a temporary certificate of occupancy, the petitioner shall submit an emergency response plan to the City of Newton Fire Department for review and approval.
22. 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.
23. 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.
 - e. Provided payment to the City in accordance with Condition #10 above.
24. 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 a statement by a registered architect, engineer or 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 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. Received approval from the Commissioner of Public Works for the raised crosswalk in accordance with Condition #11 above.
25. Notwithstanding the provisions of Condition #24 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.