Town of Brookline
Massachusetts

BOARD OF APPEALS
Jesse Geller, Chairman
Christopher Hussey
Jonathan Book

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Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2015-0002
OWNER: WASHINGTON 160 LLC

Petitioner, New England Treatment Access Inc. (NETA), applied to the Building Commissioner for permission to use an existing commercial building at 160 Washington Street (Parcel ID 185-02-00) for a Registered Marijuana Dispensary. The application was denied and an appeal was taken to this Board.

The Board administratively determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals, and fixed April 23, 2015 at 7:00 p.m. in the Selectmen's Hearing Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on April 9, 2015 and April 16, 2015 in the Brookline TAB, a newspaper published in Brookline. A copy of said notice is as follows.

Notice of Hearing

Pursuant to M.G.L., C. 40A, the Board of Appeals will conduct a public hearing at Town Hall, 333 Washington Street, Brookline, on a proposal at:

160 WASHINGTON ST – CONVERT BANK INTO MEDICAL MARIJUANA DISPENSARY in a G-2.0, General Business, zoning district, on April 23, 2015, at 7:00 PM in the 6th Floor Selectmen's Hearing Room (Petitioner: NEW ENGLAND TREATMENT ACCESS INC; Owner: WASHINGTON 160 LLC) ***Precinct 6***

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law:

1. **Section 4.07: Table of Use Regulations, Use #20B**
2. **Section 4.12: Registered Marijuana Dispensary**

Hearings may be continued by the Chair to a date/time certain, with no further notice to abutters or in the TAB. Questions about hearing schedules may be directed to the Planning and Community Development Department at 617-730-2130, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in Town programs and services may make their needs known to ***Robert Sneirson, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2328; TDD (617)-730-2327; or email at rsneirson@brooklinema.gov.***

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Publish: April 9, 2015 & April 16, 2015

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Board Chairman Jesse Geller, and Board Members Avi Liss and Christopher Hussey. The Petitioner's attorney Frank Stearns, having a business address at K&L Gates LLP, One Lincoln Street, Boston, Massachusetts (then changed to Holland & Knight LLP, 10 St. James Avenue, Boston, Massachusetts), presented case details on the Petitioner's behalf.

Mr. Geller reviewed standard hearing procedure. Mr. Stearns waived the reading of hearing notice for the record.

Mr. Stearns introduced Amanda Rositano (New England Treatment Access, Director of Operations), Norton Arbelaez (NETA Consultant), Jim Segel (NETA Advisor), Paul Hauser (Vision 3 Architects), and Rick Bryant (Stantec Independent Traffic Consultant).

Because additional public meetings and public hearings were held related to this Petition, the following additional background information is provided:

On July 21, 2015 the Board met in public meeting (with public hearing notice publication dates of August 13, 2015 and August 20, 2015 – Exhibit A) and voted unanimously to agree with the Petitioner to an extension of time through September 15, 2015 for the written decision on this petition to be filed with the Town Clerk. Thereafter on August 27, 2015 the Board met in public hearing (with public hearing notice publication dates of August 13, 2015 and August 20, 2015 – Exhibit B) and voted unanimously (i) to re-open the public hearing in order for the Board to consider a modified Site Plan; (ii) to make a finding that section G. 7 of the Board's Rules and Regulations is not applicable to the Petitioner's request to re-open the hearing because the final action had not yet been taken on the petition, such action being filing of the written decision with the Town Clerk; (iii) to treat the modified Site Plan being presented by the Petitioner as a material change requiring that an additional public hearing be scheduled to hear the special permit petition with respect to the modified Site Plan; (iv) to ask the Planning Board to review the modified Site Plan; and (v) to further extend the date by which the Board's final written decision should be filed with the Town Clerk through November 20, 2015.

On October 8, 2015 the Board met in public hearing (with public hearing notice publication dates of September 24, 2015 and October 1, 2015 – Exhibit C) to review the changes

to the previously approved Site Plan in relation to the RMD. The detailed record of the October 8, 2015 public hearing is contained in this written decision after the discussion of the content of the April 23, 2015 public hearing.

Presentation (April 23, 2015 hearing)

Mr. Stearns provided a background of recent local and state referendums, town meeting votes and committee meetings related to the advent of medical marijuana in Brookline. In summary, in 2012 a Massachusetts Ballot referendum authorized the use of medical marijuana by qualifying patients. In Fall 2013, Brookline Town Meeting voted to adopt local RMD zoning regulations (By-Law Section 4.12). In Fall 2014, a Supplemental Town Meeting warrant article to expand RMD buffer zones established by Zoning By-Law Section 4.12 to include daycare centers or any facility in which children commonly congregate was rejected at Town Meeting by a 147 to 60 vote.

Mr. Stearns stated that significant public process and Town review of this proposal has occurred over the past two years including Town Meeting votes, public health study committees, zoning amendments, licensing review, safety/security review, and traffic review.

Mr. Stearns clarified that the ZBA now is charged with evaluating relevant zoning and land use criteria pertinent to the site and application. A companion Town Bylaw requires that the RMD use receive an annual operating license review and approval from the Brookline Board of Selectmen. The Brookline Board of Selectmen Licensing Review Committee has approved draft conditions to be recommended to the full Board of Selectmen to govern the operations of New England Treatment Access at the 160 Washington Street site. Therefore, Mr. Stearns suggested that the Board and public defer discussions relating to operations and/or conditions of operation to the Board of Selectmen.

Adopted Zoning By-Law Section 4.12 states that an RMD use may only be located within General Business districts, and must be located beyond 500 feet from all primary and secondary schools. Viable town locations for this particular use are limited by these zoning requirements. The Petitioner is seeking special permit relief to convert the bank use to an RMD use at 160 Washington Street. Criteria for the grant of this special permit relief are outlined specifically in Section 4.12 and more generally in Section 9.05.

The structure at 160 Washington Street was built in the 1920's and the Petitioner is not proposing any new construction or significant exterior modification. Minimal interior tenant fit-out is required. This proposal represents a use conversion of the building. The historic character of the structure will be preserved.

Mr. Stearns first reviewed compliance with Section 4.12. NETA has received a valid Certificate of Registration from the Massachusetts Department of Public Health for its cultivation and processing facility in Franklin, Massachusetts and a valid provisional license for its dispensary facilities in Northampton and Brookline, Massachusetts. This 160 Washington Street location is more than 500 feet from elementary/secondary schools and NETA will be the sole tenant of the structure. There will be no direct access to the facility from the public right of way (Boylston Street and Washington Street) and a secure entry vestibule will serve as the only point of access for patients. Proposed signage has not been finalized but will conform with both Department of Public Health and local Town regulations and be subject to Planning Board review. Mr. Stearns also confirmed that submitted security plans were reviewed and approved by Brookline public safety officials.

Mr. Stearns then reviewed compliance with all special permit standards outlined in By-Law Section 9.05. The 160 Washington Street location is appropriate because it is included in an

active general business district that contains a variety of medical-related uses. Pedestrian, vehicle, and public transit access to the area is adequate. The structure itself is also built for security and its vaults are intact.

Mr. Stearns also stated that there is no anticipated adverse community impact. From a traffic and parking perspective this proposed retail use is replacing the prior retail use that presented similar site activity. The Stantec traffic estimates support this conclusion. The Town Director of Transportation has reviewed and approved the Traffic Study. Potential adverse impact on pedestrian/vehicular safety is mitigated by an approved Transportation Demand Management (TDM) plan. Milestone traffic monitoring will also occur in collaboration with town transportation officials. The parking lot layout at the site is not ideal but no parking related zoning relief is required, as it is a lawful pre-existing non-conformity. The Petitioner stated its intention to restripe the parking area to include among the total parking spaces 2 compact and 2 handicapped spaces.

Lastly, adequate and appropriate facilities will be provided in accordance with all licensing and operating standards to be established by the Board of Selectmen. Mr. Stearns concluded by stating that the Petitioner is comfortable with all proposed conditions for special permit relief as recommended by the Planning Board.

Zoning Board Questions (April 23, 2015 hearing)

Board Member Hussey requested additional detail regarding the secure entry vestibule. Mr. Arbelaez stated that a trained full-time employee will monitor the entry vestibule with additional security officers on site. Patients will present valid registration cards and identification prior to entry. "Live system" review also allows the security employee to monitor purchasing patterns and amounts. No patient will be provided access to the facility without this security check.

Board Member Liss questioned how many Brookline sites comply with the zoning district and buffer requirements. Mr. Stearns stated that the Petitioner did engage in a lengthy site selection process. Tenant lease negotiations further impacted potential site viability. Mr. Stearns did indicate that a potential site near Beacon and Summit Streets was previously pursued but was determined not feasible. Mr. Stearns did agree that the compilation of regulations and available commercial building stock resulted in a "handful" of potential sites with the 160 Washington Street location emerging as the most viable.

Board Chairman Geller requested information regarding anticipated employees and visitors, and the capacity for available parking to handle the demand. Mr. Stearns reiterated the fact that parking relief is not requested nor required for the Petitioner's proposed use conversion. Ms. Rositano stated that NETA anticipates 10-12 employees at a given time.

Mr. Bryant explained the submitted travel demand study in greater detail. Employees will not be provided with on-site parking but will be provided with subsidized transit passes so that all on-site spaces will be available to visitors. Patient/travel demand estimates were generated by scaling-up transaction data provided by a Colorado RMD. Data was scaled-up in an effort to match area demand and estimated product sales (approx. 4,000 lbs. annually). Mr. Bryant anticipated that peak operation hours would generate approximately 32 customers per hour, with 15 minute visit times. Staggering visits through an appointment process is not proposed at this time but could be considered as a mitigation measure in response to traffic impact if deemed necessary following future traffic studies and/or Board Of Selectmen annual licensing review. Metered street parking is available for additional parking in the immediate area and a parking attendant may be utilized in an effort to discourage overflow onto Boylston Street.

Board Member Hussey requested detail regarding how the proposed parking layout had been modified from previous iterations. Mr. Stearns stated that two compact parking spaces were included in the northwest corner of the lot to improve maneuverability and parking. A second handicapped parking space was included at the front of the lot and separate vehicular entry and egress points will be more clearly defined. [At the supplemental public hearing on October 8, 2015 the modified Site Plan that was presented and approved by this Board reflected no utilization of either parking stalls or entry and egress points on the adjacent parcel of land in front of the Eversource substation.] In any case, Mr. Stearns pointed out that the use special permit is not for the lawful pre-existing parking lot. Any changes to the parking lot are being offered voluntarily to try to improve its functionality but are not legally required as a matter of zoning or under the Architectural Access Board requirements.

Public Comment in Support (April 23, 2015 hearing)

Board Chairman Geller called for public comment in support of the Petitioner's proposal.

Deborah Costolloe (25 Stanton Road) stated she is in favor of the proposal and specifically noted ongoing revitalization of the Brookline Village area and Boylston Street. Ms. Costolloe stated that often primary issues discussed, parking capacity in this instance, do not reflect the true issue at hand, which is the nature of the proposed business, in Ms. Costolloe's opinion. Ms. Costolloe noted that the parking lot at Trader Joe's (1309 Beacon Street) handles significantly more business and generates far more neighborhood impact than this proposal but with very little resident opposition. Ms. Costelloe also agreed that any potential traffic issues may be solved in real time through more accurate traffic review, which is proposed. Ms. Costolloe encouraged Brookline residents to support NETA's proposal and its ability to address public need and concern.

James Segel (former Brookline resident) described Brookline as a national leader in activism and neighborhood conservation. Mr. Segel also commended the Petitioner for continually collaborating with a variety of Town Boards, Departments and Commissions, including, the Health Commission, public safety officials, and Town Meeting Members. This proposal will preserve an important historic structure and NETA is also a leader in medical marijuana best practices. The Petitioner has received backing from associates of Brigham and Women's Hospital as well as the Dana Farber Institute. For these reasons, Mr. Segel supported the Petitioner's proposal.

Norton Arbelaez (Healthcare Attorney) stated that the Petitioner has worked diligently to maintain public safety. All patients must be qualified and NETA has been transparent with the community regarding its intent to serve residents in need of medical support. Mr. Arbelaez reiterated the fact that 25 states have legalized medical marijuana use and 4 states allow regulated recreational use of marijuana. Mr. Arbelaez stated that he has worked with medical marijuana facilities throughout the country and believes that NETA provides some of the best facilities he has seen in the nation.

Public Comment in Opposition (April 23, 2015 hearing)

Board Chairman Geller called for public comment in opposition to the Petitioner's proposal.

Art Kreiger, of Anderson and Kreiger LLP (One Canal Park, Cambridge, MA) stated that he represents several business owners in the Brookline Village area. Mr. Kreiger noted primary standards for Board consideration of the Petitioner's request for special permit relief including, appropriateness of location, adverse neighborhood impact, and nuisance or hazard to vehicles

and pedestrians. Mr. Kreiger suggested that these clear standards are not met by the Petitioner's proposal for the following reasons:

1. The 160 Washington Street location is within 500 feet of locations in which children congregate, i.e. locations that have scheduled youth activities. Mr. Kreiger noted that this language is included in Massachusetts Department of Public Health regulations that is to serve as default local regulation if none exists. Mr. Kreiger stated that Zoning By-Law Section 4.12 does not include buffer language for youth congregation points, and argued that therefore the state standard on that issue should be observed.
2. The Petitioner has utilized unreliable traffic data. Data points were gathered from one source (Steamboat Springs, CO) that maintains different demand, product sales, and location type than NETA's Brookline proposal. No standard Institute for Traffic Engineers (ITE) data was utilized for the Petitioner's traffic projections. Mr. Kreiger concluded that provided data, and subsequent traffic generation estimates, are not definitive.
3. The proposed parking layout is poorly designed and limits maneuverability. The physical space is similar to the previous bank but use patterns vary greatly and are intensified. Mr. Kreiger believed that traffic and parking congestion will generate nuisance and hazard for both area pedestrians and vehicles.
4. The RMD use will adversely impact the neighborhood and is not appropriate for the use. School children frequently pass the subject property and security measures against dispersion of marijuana are not adequately addressed outside of the facility itself.

For these reasons, Mr. Kreiger recommended denial of the Petitioner's special permit request and, at the very least, suggested a call for more complete traffic estimates. Mr. Kreiger suggested that Board approval would be "faith-based permitting" without this improved data.

Dr. Paula Friedman (Hyslop Road and Precinct 14 Town Meeting Member) stated that she sat on the Zoning By-Law Review Committee that evaluated Section 4.12 prior to Town adoption. Ms. Friedman suggested denial of the special permit application because it is "the wrong model, location, and time." Ms. Friedman suggested that, if approved, the RMD will be the first in the area and will therefore draw from a wider segment of the population. The area already has traffic congestion and the Petitioner has understated the viability of alternate locations to site an RMD.

Merrill Diamond (231 West Canton Street, Boston, MA) stated that the Brookline Bank structure serves as a Gateway into and out of Brookline, and would be better used as a mixed-use residential/commercial structure. The RMD use will have a negative impact on perception because it is such a key location. Mr. Diamond stated that he is not opposed to medical marijuana but the RMD use is not appropriate for perhaps the "most important building in Brookline." Mr. Diamond also stated that other proposals for the structure have been presented noting that he previously offered to purchase the property for development. For these reasons, Mr. Diamond suggested denial of the special permit application.

Anna Otero (12 White Place) stated that she lives in close proximity to the proposed RMD location with her child. Ms. Otero voted in favor of medical marijuana use and the local zoning amendment but agreed that the location will have adverse traffic and safety impact on the surrounding neighborhood.

Juliet Eastland (58 Davis Avenue) stated that she voted in favor of medical marijuana but felt misled because she believed that an RDM would be located in an existing medical office structure rather than an immediately noticeable free standing structure. Brookline Bank was specifically referenced as an inappropriate location in provided literature, and federal regulations suggest a 1,000 foot buffer between RDMs and school facilities. Ms. Easton felt that the proposal before the Board represents a shift in vision that occurred without community input and would be bad practice if approved for special permit relief.

Rebecca Moor (24 Davis Avenue) stated that she lives in close proximity to the 160 Washington Street location. Ms. Moor supports medical marijuana but felt that this particular location is "grossly inappropriate." The facility itself is inadequate for the proposed use and will cause harm to children who utilize public areas in close proximity.

Allen Price (12 White Place) agreed that parking and traffic related data appear to be inadequate. Peak parking demand of 8 spaces appears to be "dubious" according to Mr. Price. Mr. Price also added that the burden of proof for compliance with standards for special permit relief is placed on the Petitioner, and NETA has not sufficiently established the fact that no adverse impact on the community or neighborhood will occur if the RMD is approved.

Angela Hyatt (87 Walnut Street and Precinct 5 Town Meeting Member) believed that the parking configuration is unsafe and has not been properly addressed during previous zoning related evaluation. Ms. Hyatt also believed that the submitted site plan is inaccurate and misleading because it does not include grade changes and existing utility gates. Ms. Hyatt was also concerned that the existing access point is approximately 10 feet wide, the actively used utility service area would likely block proposed handicapped parking locations, the slope of the

parking area exceeds what is allowable, and the Petitioner has not provided proof of legal control of parking spaces on the abutting Boston Edison utility property.

Clair Stampfer (50 Sargent Crossway) agreed with prior comments in opposition to the Petitioner's proposal, specifically the appropriateness of the free standing location. Ms. Stampfer was concerned that traffic estimates are derived from a much lower density area and demands further evaluation. Ms. Stampfer also stated that the old Lincoln School, which is located further down Boylston Street, is frequently used by middle-school aged children and the RMD intends to operate 7 days a week, including nights and holidays. This operating schedule varies greatly from the previous bank use, in Ms. Stampfer's opinion.

Mary Straub (17 High Street) stated that public discussion has focused on patient compassion and neighborhood impact but Ms. Straub believed that the model itself is inappropriate due to adverse impact on area business operation and resident safety/security.

Virginia LaPlante (58 Welland Road and Precinct 6 Town Meeting Member) stated that it is unrealistic to expect adequate parking capacity and 15 minute patient visit times as the Petitioner has suggested. Ms. Lapland also reiterated that the visible freestanding location was not the intent of Town Meeting discussions regarding RMD locations. Ms. Lapland suggested that a more contained location like the adjacent Brookline Place is more appropriate for an RMD use.

Andrea Loew (9 Linden Street) suggest that a slower and more managed "roll out" of RMD operations is more appropriate given challenges associated with medical marijuana use that have occurred elsewhere in the country.

Dr. Will Harvey (11 Waverly Street) stated that he is an arthritis specialist who has the ability to prescribe medical marijuana. Mr. Harvey suggested that demand volume is

underestimated because patients are waiting for access and distribution of medical marijuana. This high demand will certainly increase traffic related community impact. Mr. Harvey did not believe that this is the fault of NETA but rather with the administration of state law. Mr. Harvey agreed that more traffic estimate related data is required.

Pam Dipiro (Thayer Street) agreed that Colorado based data is a poor comparison and the threat of dispersion is a valid public concerns, citing Long Beach, CA crime. This potential for crime has adverse impact on area businesses and residents.

Betsy Shure Gross (25 Edgehill Road and Precinct 5 Town Meeting Member) referenced the fact that creative investment in Brookline Village has generated revitalization of a previously neglected area. Ms. Gross supports medical marijuana but agreed that this highly visible location will have adverse impact on the surrounding community. Ms. Gross suggested denial of the special permit application and commented that Town Meeting Members had been assured that the location of the RMD would not be in a prominent building.

Elizabeth Childs (157 Walnut Street) provided an opposition letter to the Board on behalf of 40 residents that referenced adverse community impact. Ms. Childs stated that state regulations for medical marijuana are poorly written and NETA intends to provide large quantities of marijuana and money on a daily basis. Ms. Childs agreed that proposed hours of operation are not appropriate for a "family neighborhood." She noted that a daycare is also proposed for an adjacent property. Ms. Childs anticipates that westbound access to the property will also result in frequent vehicle turnaround in adjacent neighborhoods. Ms. Childs suggested denial of the special permit application as a measure to protect long-standing neighborhoods.

Gordon Bennett (55 Davis Avenue) stated that he has been very much involved in this issue. Mr. Bennett focused his comments on hazard to vehicles and pedestrians. NETA patient

estimates are derived from Department of Public Health estimates that approximately 2% of the population will apply for and received medical cards allowing them to access medical marijuana. Mr. Bennett believed that 2% of Massachusetts' population was then divided by 35 RMDs that may be permitted throughout Massachusetts. The estimate is misleading because currently no other RMDs are operational in the state. Mr. Bennett expected that generated visits will be higher than estimated and NETA should implement a delivery and/or appointment system similar to the one proposed in Newton, Massachusetts. Mr. Bennett also noted that Gateway East roadway infrastructure improvements in the area around 160 Washington Street still maintain an unknown construction date. For these reasons, Mr. Bennett agreed that unclear understanding of traffic impact remains and the special permit application should be denied.

George Vien (60 Davis Avenue) commented that the threat of creating a secondary drug market across the street from a public housing project has not been considered at length, and the Board should err on the side of protecting "at risk" populations, specifically teenagers, who live in the area around 160 Washington Street.

Sara Gewurz (72 Walnut Street) expressed concern about her children's safety crossing Boylston Street when walking to school. There is currently one crossing guard that may have difficulty handling additional traffic generated by the RMD. Ms. Gewurz also stated that safety is a concern at night when she walks to businesses in close proximity to the proposed RMD. 160 Washington Street is an inappropriate location, in Ms. Gewurz's opinion.

Joe LiPuma (36 Davis Avenue) stated that the RMD business type does not draw other businesses to cluster around which is critical in the dense Brookline Village. The Board is responsible to protect existing and future businesses, in Mr. LiPuma's opinion.

Simon Singer (31 Davis Avenue) believed that crime and traffic data relating to RMDs are not definitive because it is a relatively new business type. Mr. Singer agreed that the Board should err on the side of neighborhood protection when incomplete data regarding neighborhood impacts are provided.

Julia Vien (60 Davis Avenue) agreed with stated comments in opposition to the RMD proposal. Ms. Vien reiterated that both traditional and edible marijuana will be distributed by NETA. Ms. Vein cautioned that edible products may be more potent, harmful, and attractive to children as evident by crimes in states that permit medical and recreational marijuana sales. This use will be harmful to the neighborhood and therefore is an inappropriate use of the 160 Washington Street property.

Stewart Silvestri (Thayer Street) is the Director of Brookline Youth Baseball and the President of the Brookline High School PTO. Mr. Silvestri stated that he has dedicated years of his life to the improvement of youth activity and safety in Brookline, and expressed concern that the threat of diversion of marijuana to the schools is genuine. California based RMDs have been closed due to diversion into local high schools. Distribution of this scale has not worked in other areas, according to Mr. Silvestri, therefore more strict regulations must be enacted prior to the establishment of any RMD in Brookline.

Stacey Irwin-Downey (61 White Place) requested denial of the special permit application by citing a high level of student activity in the immediate area during the day. Daycares frequently walk in the area and high school students walk to area restaurants from school. This reality presents serious hazard to residents as a result of diversion, traffic, and parking.

Planning Board Report (April 23, 2015 hearing)

Board Chairman Geller requested that Polly Selkoe, Assistant Director for Regulatory Planning, review Planning Board findings.

FINDINGS

Section 4.07, Table of Use Regulations, Use #20B – Registered Marijuana Dispensary (RMD): Registered marijuana dispensaries are allowed by special permit in a G District, and all of the requirements under Section 4.12 must be met to be eligible. *Special permit required.*

Section 4.12 – Registered Marijuana Dispensary (RMD): To be eligible for a special permit under Section 4.12 to establish a RMD, the application must meet the general restrictions listed under Section 4.12, paragraph 2. The restrictions, as applicable to this proposal, are as follows:

a. Have a valid license or permit as may be required by law and the Town By-law, and comply with all state provisions.
The applicant is working with the Massachusetts Department of Public Health and the Brookline Board of Selectmen to obtain the necessary licenses and permits to operate a RMD.

b. Be located more than 500 feet from an elementary or secondary school, public or private.
The subject property is located at least 500 feet from an elementary or secondary school.

c. Not be located in a building that contains a day care center.
There will be no day care center on site.

d. Not have direct access from a public way to the portion of the RMD where marijuana or related products or supplies are dispensed.
The proposed floor plan indicates patrons will enter a secure vestibule area prior to entering the main waiting/queuing and sales areas.

e. Have signage that conforms to the state regulations, is not internally illuminated, and is approved by the Brookline Planning Board.
The applicant has not finalized signage plans, and any signage will need to be approved by the Planning Board prior to installation.

f. If an RMD cultivates marijuana in Brookline, it shall be in an entirely enclosed building.
The proposal does not involve cultivating marijuana at the subject property.

g. Submit a detailed description of security measures for the RMD, such as lighting, fencing, gates, and alarms, that comply with the requirements of 105 CMR 725.
The applicant has submitted an overview of security measures to be implemented on site, and has indicated an intention to seek the approval of all security measures by the Brookline Police Department.

Ms. Selkoe stated that the Planning Board recommended approval of this special permit request. The proposal retains a historically significant structure that is not permanently protected. Approved Transportation Demand Management plans adequately address current and potential parking and traffic issues. Additionally, submitted security plans have been approved by pertinent town officials. Ms. Selkoe reiterated the fact that annual license review and approval by the Board of Selectmen is intended to reassess community impact on a regular basis.

Ms. Selkoe also clarified that the pre-existing parking non-compliance, including total spaces, dimensions, and slope do not require special permit or variance relief for this proposed use conversion. Final Planning Board approval for parking design is also required prior to the issuance of a building permit.

Therefore, the Planning Board recommended approval of the site plan by Joe Casali Engineering, dated 4/16/15, and the floor plans and interior elevations prepared by Vision 3 Architects, dated 08/01/14, subject to the following conditions:

1. Prior to issuance of a building permit, a final site plan, prepared by a registered engineer or land surveyor, and indicating all parking spaces, bicycle spaces, fencing, landscaping, trash and recycling, and utilities, shall be submitted to the Planning Board for review and approval.
2. Prior to issuance of a building permit, if exterior building modifications are proposed, final elevations, prepared by a registered architect, shall be submitted to the Planning Board for review and approval.
3. Prior to issuance of a building permit, plans for any alterations to the building's interior or exterior features shall be submitted to Preservation Commission staff for determination of applicability under the Town's Demolition Delay By-law.

4. Prior to issuance of a certificate of occupancy, the applicant shall submit a Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation/Engineering and the Assistant Director for Regulatory Planning. The effectiveness of the TDM plan will be reviewed during the annual RMD licensing process by the Board of Selectmen.
5. All signage for the RMD shall be approved by the Planning Board prior to installation and shall be removed in the event the RMD ceases operations.
6. Prior to issuance of a certificate of occupancy, evidence of a valid license from the Board of Selectmen for a Registered Marijuana Dispensary shall be provided to the Building Commissioner.
7. The special permit is conditional upon the applicant maintaining a valid and current license from the Board of Selectmen and a Certificate of Registration from the Massachusetts Department of Public Health.
8. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final floor plans and building elevations, stamped and signed by a registered architect, if there are any exterior changes; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Board Member Hussey questioned if the Planning Board reviewed the most updated site plan that is dated 4/16/2015. Ms. Selkoe stated that Planning Board approval of the final site plan will be required if the standards for the special permit are met and the recommended special permit conditions are approved by the Board. Ms. Selkoe also noted that the Transportation

Department suggested additional signage in the parking lot indicating compact car parking spaces.

Board Chairman Geller questioned if the Planning Board discussed the inclusion of traffic estimate peer review as a condition of this special permit, if granted. Ms. Selkoe stated that peer review is not established as a permit condition at this time but the Board of Selectmen still maintains the authority to establish peer review as a condition for the operating license application.

Board Chairman Geller also inquired about the accuracy of public testimony regarding zoning language proposed at Town Meeting to prohibit free standing RMD locations. Ms. Selkoe confirmed that the appropriateness of free standing structures was discussed during the 2013 Zoning By-Law amendment vetting process but ultimately language to that effect was not included in the final By-Law Section 4.12 language that was approved by Town Meeting. Instead, the Town Meeting adopted the requirement that an RMD have a secure, separate entrance.

Building Department Report (April 23, 2015 hearing)

Board Chairman Geller requested that Michael Yanovitch, Interim Chief Building Inspector, deliver the opinion of the Building Department. Mr. Yanovitch stated that the proposed use is understandably difficult and has generated a long public evaluation. For factual information, the State Ballot referendum that legalized the use of medical marijuana passed on November 6, 2012, the Town of Brookline approved local Zoning By-Law Section 4.12, as written, on November 19, 2013, and the Massachusetts Attorney General approved this By-Law regulation on April 4, 2014.

Mr. Yanovitch further stated that there is no increased parking requirement for this proposed use conversion because both the former bank and RMD are evaluated as retail uses. Demand for and use of the parking area may increase, but from a Zoning By-Law standpoint, no additional parking is required. Parking lot dimensions are also "grandfathered" as a lawful pre-existing non-conformity. Concerns specifically related to safety will continue to be evaluated by the Board of Selectmen and peer review of the traffic projections submitted by NETA is a possibility at that time. The structure itself is uniquely appropriate to support the RMD use due to existing security features and minimal reconfiguration of the interior layout.

If the Board does find that the standards for special permit relief have been met, the Building Department will continue to work with the Petitioner and other Town Departments to ensure compliance with all imposed conditions and building codes.

Petitioner Rebuttal (April 23, 2015 hearing)

Mr. Stearns requested a brief continuance before addressing public concerns. The Board unanimously granted this request and the hearing reconvened at 9:17 p.m.

Mr. Stearns recognized that various public comments and concerns have been raised. NETA is aware of these issues, and has worked with the Town to address them. NETA actively welcomes annual traffic, parking, and safety evaluation as a way to improve the overall operation of the facility while minimizing any community impact. Mr. Stearns noted that many commercial/retail uses in the Brookline Village area provide no off-street parking. The 160 Washington Street site provides somewhat inflexible parking conditions and NETA is working with a variety of stakeholders to try to voluntarily improve and restripe it as effectively as possible.

Mr. Stearns reiterated the fact that various Town Boards and Commissions are charged with specific evaluation of project topics and the ZBA should be exclusively focused on the clear criteria for the grant of special permit relief in the Zoning By-Law.

Board Deliberation (April 23, 2015 hearing)

The Board deliberated on the merits of special permit relief as requested. Board Member Hussey agreed that the parking configuration currently before the Board represents an improvement from the prior configuration and previous proposals by NETA, specifically the separate entry and egress curb cuts. Mr. Hussey also noted that similar traffic impact would arise with almost any retail use proposed for this site.

Board Member Liss appreciated public comment and reiterated the fact that the Board is restricted to the confines of Zoning By-Law Sections 4.12 and 9.05. Adequate traffic and parking oversight is provided and will be audited moving forward, if approved. Mr. Liss continued that the recommended special permit conditions are appropriate and the Petitioner has displayed a willingness to work with the Town and abutting residents to alleviate potential traffic and safety impacts. For these reasons, Mr. Liss stated favor for the Petitioner's request for zoning relief.

Mr. Hussey concurred with these comments and supported annual operating review by the Board of Selectmen.

Board Chairman Geller specifically noted comments from Town Meeting Members regarding By-Law Section 4.12 expectations for appropriate RMD locations. Mr. Geller recognized that this By-Law language is clear and was approved through Town Meeting process. There was an opportunity to draft language explicitly restricting the use of "stand-alone" structures for RMD use but this language was ultimately omitted. Mr. Geller also noted that the

lengthy evaluation process for this proposal, as well as RMD uses in general, included input from various constituencies and safety officials. Public comments related to general safety impacts and sale quantities consequent to this specific retail trade are Town-wide issues rather than a localized Brookline Village neighborhood issue. Town Meeting passed judgment on these safety risks at the time the By-Law amendment was adopted.

Board Chairman Geller was satisfied that the Brookline Police Chief has provided adequate input throughout the NETA permitting and licensing process, and believed that Massachusetts Department of Public Health regulations serve as an additional tier of RMD operations review. Mr. Geller stated support for future peer review of submitted traffic projections but was currently satisfied that the Transportation Demand Management plan and annual Board of Selectmen license review are adequate measures to minimize adverse neighborhood impact related to traffic and parking. Mr. Geller agreed that the RMD use is perhaps not the highest and best use of the 160 Washington Street property but that this specific issue is not an evaluation standard under the Zoning By-Law.

Board Members Hussey and Liss concurred with these comments. The Board voted unanimously that the requirements have been met for the issuance of a special permit under **Sections 4.12** and **9.05** of the Zoning By-Law, granting relief in accordance with the provisions of **Sections 4.07, Use #20B** of the Zoning By-Law. The Board made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- The 160 Washington Street site is appropriate for the proposed use because the facility is built for security and control. The lot is also slightly isolated because it is surrounded on all sides by major thoroughfares, walls, train lines, and fencing.

- The use as developed will not adversely affect the neighborhood. The Board did not perceive the RMD do be a "crime magnet" and relief is not required for any parking related elements. Crime related impact is tempered by strict security measures at the site and via town and state safety requirements.

- There will be no nuisance or serious hazard to vehicles or pedestrians. The Petitioner has attempted to reduce traffic related impact through a TDM plan and agreement to annual license evaluation.

- Adequate and appropriate facilities will be provided for the proper operation of the proposed use. The front entryway facing Washington Street will be decommissioned and clear security provisions have been approved by the Police Chief. Again the site and structure are well designed to maintain safe operations.

Accordingly, the Board voted unanimously to grant the requested relief, subject to the following conditions:

1. Prior to issuance of a building permit, a final site plan, prepared by a registered engineer or land surveyor, and indicating all parking spaces, bicycle spaces, fencing, landscaping, trash and recycling, and utilities, shall be submitted to the Planning Board for review and approval.

2. Prior to issuance of a building permit, if exterior building modifications are proposed, final elevations, prepared by a registered architect, shall be submitted to the Planning Board for review and approval.

3. Prior to issuance of a building permit, plans for any alterations to the building's interior or exterior features shall be submitted to Preservation Commission staff for determination of applicability under the Town's Demolition Delay By-law.

4. Prior to issuance of a certificate of occupancy, the applicant shall submit a Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation/Engineering and the Assistant Director for Regulatory Planning. The effectiveness of the TDM plan will be reviewed during the annual RMD licensing process by the Board of Selectmen.

5. All signage for the RMD shall be approved by the Planning Board prior to installation and shall be removed in the event the RMD ceases operations.

6. Prior to issuance of a certificate of occupancy, evidence of a valid license from the Board of Selectmen for a Registered Marijuana Dispensary shall be provided to the Building Commissioner.

7. The special permit is conditional upon the applicant maintaining a valid and current license from the Board of Selectmen and a Certificate of Registration from the Massachusetts Department of Public Health.

8. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final floor plans

and building elevations, stamped and signed by a registered architect, if there are any exterior changes; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Presentation (October 8, 2015 Public Hearing)

Mr. Stearns informed the Board that the Petitioner requested the Board to re-open the public hearing on the RMD in order to present a final Site Plan, which includes changes from the Site Plan previously submitted and approved by the Zoning Board of Appeals at the original April 23, 2015 hearing. Since the April 23, 2015 hearing, the Petitioner decided to revise the Site Plan without use of the abutting Eversource property; efforts by the Petitioner to get Eversource approval have been rebuffed. The Site Plan before the Board unlike the prior approved plan uses only the single driveway and the parking stalls on the former Bank property. Further, because the Board had encouraged the Petitioner to obtain input from the Planning Board, the Petitioner appeared before the Planning Board on September 17, 2015 with the single driveway/Bank-only property Site Plan. That Site Plan then showed a driveway entrance width of 14' 5". The Planning Board recommended a wider driveway entrance(from 14' 5" to 16' 2"), which Petitioner achieved by removing an existing curb and bermed area adjacent to the bollards outside the former ATM vestibule being converted into the patient entry vestibule for the RMD. This driveway width increase does no require any alteration to the existing Boylston Street curb cut.

Mr. Stearns stated that the additional driveway entrance width allows a vehicle entering from Boylston Street to pull over in front of the entry vestibule to allow adequate passing space for vehicles to exit the single driveway . This driveway width change responds to a condition that is not projected to occur frequently but if it does occur there will be no resulting adverse impact on Boylston Street traffic.

Mr. Stearns further explained that the Petitioner has agreed to expand its commitment to traffic monitoring and management with a police detail for the first 15 month period following RMD occupancy as provided for in the Town approved TDM Plan, subject to ongoing review by Town transportation and police officials and thereafter implementation of further remedial action to ameliorate any negative impacts.

A memorandum dated August 26, 2015 from the Town's Director of Transportation was entered into the record.

Mr. Rick Bryant of Stantec Consulting Services, Inc. described the existing condition of the site driveway, the methodology of his traffic report and his evaluation of the site access driveway. Mr. Bryant described his traffic projections as conservative as validated by the use of a synchro model of the number of vehicle trips expected into and out of the Site driveway at peak hours and throughout the operating times of the RMD. He showed a number of other functioning roadways and driveways in the vicinity that maintain driveway widths of less than the 16' 2" of the Site driveway. Mr. Bryant presented his conclusion that the majority of the time there is not expected to be a conflict between a vehicle attempting to enter the site driveway and a vehicle attempting to exit the site driveway. His projection is that there will be very limited times (not more than 10% of usage) when there might be conflict at the driveway entrance that could cause a delay in through traffic traveling westbound in the right travel lane on Boylston Street . Finally, he described the TDM plan as one of the strongest he has seen in his lengthy career as a traffic engineer, including the enhanced police detail commitment made by the Petitioner.

Mr. Stearns then demonstrated how the RMD under the revised Site Plan met the criteria for a special permit under the Zoning By-Law including Sections 4.12 and 9.05. Specifically

with respect to the revised Site Plan, he noted that the traffic study assumptions and conclusions remained equally valid under the new Site Plan as they were under the earlier site plan. He opined that the TDM Plan was one of the most detailed plans the Town has ever been presented for a project and noted that the enhanced police detail commitment is directly responsive to concerns raised at the Planning Board regarding potential hazard to vehicles and pedestrians. He noted that the proposal includes multiple adequate and appropriate facilities for the proper operation of the use including active parking lot management; physical changes to the driveway entrance; coordinated traffic monitoring with the Town; a strengthened police detail commitment; and strict annual oversight by the Town under the TDM plan and the Board of Selectmen license. He informed the Board that the Petitioner has had, since the April public hearing, the ability to implement many of its best practice procedures in opening its RMD in Northampton Massachusetts and was able to apply these best practices to achieve a smooth operation in Brookline.

A letter from the Mayor of Northampton dated October 7, 2015 was entered into the record.

Public Comments in Support (October 8, 2015 Public Hearing)

Leslie Laurie of Northampton MA reiterated the strong support that NETA has received in opening its RMD in Northampton and wanted the Board to know of the strong support by the City of Northampton and its mayor for NETA's RMD in that city.

Public Comments in Opposition (October 8, 2015 Public Hearing)

Attorney Art Krieger of Anderson & Krieger representing child oriented businesses and residents asserted that the entire special permit decision is open for discussion and deliberation by the Board. He asserted that the Zoning By-Law requires the Planning Board to issue a

recommendation to the Board which he alleges has not been done. He restated an argument he made at the April 23, 2015 public hearing that the petition is subject to a buffer zone requirement as to places where children congregate as provided under state DPH regulations in the absence of the Town's adoption of a specific buffer zone requirement for proximity to places where children congregate. He then stated that the change in the Site Plan arises out of Eversource is not allowing NETA to use its property. He presented into the record a letter report from Kenneth Cram of Bayside Engineering dated October 8, 2015. Mr. Krieger raised concerns that the revised driveway is unsafe for pedestrians both on the sidewalk and within the site. He also noted safety concerns due to pinch points arising from the configuration of the parking area and the driveway, and in particular, questioned how a handicapped vehicle would turn to get out of the designated HC space in the parking lot. He asserted that the area being created by the widening of the entrance driveway to act as a holding area for a car will help but won't resolve the problem. He stated concern for the safety of users of the day care center two doors downand restated his criticism (initially made at the April 23, 2015 hearing) of the Traffic Study's improper reliance on data from Colorado.

Ms. Juliet Eastland of Davis Avenue raised concerns over the reconfigured driveway and questioned what the Town's plan is if the traffic does not work.

Ms. Kristin Jillette of Walnut Street stated her concern that the crosswalk of the driveway is a pedestrian hazard since cars are known to run the red light at Washington Street.

Mr. Andrew Olin of 242 Walnut Street complimented NETA for impressive mitigation attempts but noteded how difficult it is to use the parking lot. He described the neighborhood as being in a period of change.

Mr. Dan Saltzman of White Place asserted that Federal Law requires a buffer of 1,000 feet from any children. He also commented that safety was the real issue and presented slides asserting that the site plan is unsafe. He raised concern over the visibility of the driveway and asserted that the Town zoning parking design criteria applicable to parking lots must be applied to this petition and should influence the Board's determinations under Section 9.05 of the By-law.

Mr. Gordon Bennett testified that he attended the Planning Board meeting on September 17, 2015 and he disputed the characterization of that meeting by Ms. Selkoe. He stated that the Planning Board was prepared to reject the revised Site Plan and Planning Board minutes show that instead there was not a vote taken to support the RMD with the current site plan. He stated that the Planning Board treated the RMD as a different use than a Bank. He recited "profound" concerns with the Site and the fact tht the driveway is less than 20' feet wide.

Ms. Angela Hyatt described the Site Plan as full of problems. She focused on the slope of the parking lot making the handicapped parking space unsafe and not a legitimate handicapped parking space since it lacks safe passage to the building entrance. She asserted that the handicapped space could give rise to a civil rights claim. She recommended that the curb cut align with the driveway.

Mr. Brendon Downey of White Place questioned the accuracy of traffic estimates generated from a Colorado based RMD and also felt that area residential driveways of similar width are inappropriate for comparison.

Ms. Elizabeth Childs of Walnut Street testified against the petition.

Ms. Julia Vien of Davis Avenue testified against the petition.

Planning Board Report (October 8, 2015 Public Hearing)

Board Chairman Geller requested that Polly Selkoe, Assistant Director of Regulatory Planning, review the updated Planning Board recommendations.

Ms. Selkoe stated that the Planning Board was concerned about safety due to the narrow width of the revised site entrance driveway. She stated that the majority of the Planning Board felt strongly that mitigation could work to address these concerns. She explained that the Planning Board encouraged NETA to assess what improvements could be made to the site driveway entrance condition. She said that four ideas were presented in the Planning Board discussion as reflected in the Planning Board memorandum dated October 2, 2015 and that NETA was not obligated to implement all the ideas but was asked to consider them. She stated that the Planning Board would support approval of the RMD if appropriate mitigation measures regarding the site access driveway could be implemented. She stated that the Planning Board wanted to maintain the condition that was included as a recommended condition at the time of the April 23, 2015 hearing that the final parking lot site plan be subject to the site plan review and approval by the Planning Board.

Building Department Report (October 8, 2015 Public Hearing)

Ms. Selkoe read a memo from Michael Yanovitch from the Building Department in which he wrote that the Building Department does not have an issue with the revised proposal. Mr. Yanovitch's memo described his visit to the Petitioner's RMD facility in Northampton.

Director of Transportation's Report (October 8, 2015 Public Hearing)

On inquiry from Mr. Hussey, Mr. Peter Ditto, Director of Engineering and Transportation for the Town, stated that the site access driveway is likely within the state highway layout and thus physical changes to the public right of way would require consultation and consent by the State. He confirmed that none of the changes in the Site Plan before the Board involved the

public right of way. He stated that he thinks maintaining the existing on street parking in Boylston Street in front of the building is helpful to promote safety regarding use of this site access driveway. He is comfortable that the plan meets applicable regulations and codes and will work. He said that he thinks the volume of traffic to the site will be less for an RMD than for a typical retail use, which should reduce people's concerns about adverse traffic and safety considerations. He confirmed that a multi-point turn for a user of the proposed handicapped parking space is feasible within the parking lot and that handicapped drop off by the door is also a feasible option.

Zoning Board Questions (October 8, 2015 Public Hearing)

Board Member Hussey asked if on street parking exists in front of the building and whether that is helpful or not related to access into the site driveway. Mr. Bryant of Stantec responded that it is advantageous to maintain that parking lane.

Board Member Hussey asked if NETA could add a second door to the patient entry vestibule for patients walking from their cars in the parking lot to the entrance. Mr. Stearns responded that the location of the entrance door facing the sidewalk is important to NETA because many patients will be pedestrians arriving from Brookline Village and public transit. Further, NETA has security concerns about a second access point into the patient entry vestibule.

Board Member Hussey asked if the concerns regarding traffic and access are the same for an RMD as for some other form of retail establishment. Mr. Ditto responded that the RMD is in his view likely to produce less traffic volume than a more conventional retail use.

Petitioner's Response to Comments and Questions (October 8, 2015 Public Hearing)

Mr. Stearns emphasized in response to comments from the public that neither NETA's nor Stantec's analysis concludes that there is a nuisance or hazardous condition associated with

access to or use of the parking lot under the revised Site Plan. He clarified that the analysis shows that there may be limited times when there is a conflict between an entering and exiting vehicle, which is not unusual in a dense urban area, but is manageable by implementation of NETA's active parking lot management.

Board Deliberation (October 8, 2015 Public Hearing)

The Board deliberated on the merits of the special permit relief as requested focusing on the modified Site Plan.

Board Member Liss said he was not concerned that the revised Site Plan might render the Site unsafe. He stated that this is an existing commercial property with an existing driveway and it should be used as such. He stated that the police detail and the widened width of the driveway are important improvements that contribute to a finding that the Site is appropriate and that there is no adverse affect on the neighborhood or nuisance or hazard to vehicles or pedestrians because the baseline is a pre-existing commercial and historical use as a bank and the change to an RMD does not create any new such nuisance or hazard. He applauded the Petitioner for offering to re-open the hearing to consider the revised Site Plan. He noted that the current Site Plan may be more safe than the former 2-driveway plan for pedestrians because it creates a narrower width of passage for a pedestrian walking through a driveway on the sidewalk. He encouraged NETA and the Town to consider adding pedestrian safety signage along the sidewalk.

Board Member Hussey reiterated his inquiry about whether a second door into the patient entry vestibule would be an improvement to the Plan. He recommended that NETA be asked to study that and address it with the Planning Board. He otherwise concurred with Mr. Liss.

Board Chairman Geller made the following findings under Section 9.05 of the Zoning By-Law: (a) The site is appropriate under Section 9.05 1. a. for the use even with the change in

the Site Plan because the site has for many years been a retail use with a single driveway used as a 2-way driveway; (b) there is no adverse impact on the neighborhood under Section 9.05 1. b. because the change from a bank to an RMD does not make the parking lot driveway condition any more adverse, as supported by the testimony of the Town's Director of Engineering and Transportation , and given that the Board and the Petitioner are adopting the recommendations of the Planning Board with respect to the expanded duration of the police detail and the fact that the approved TDM plan is an enforceable plan that gives the Town real authority to require additional mitigation if the results of periodic audits of traffic and access from the RMD evidence conclusions materially adverse to what is projected (noting, in particular, the idea of pre-scheduling patient visits as one such form of mitigation available to the Town as part of the ongoing review of the traffic)and finally that nothing about the change in use from a Bank to an RMD exacerbates or makes worse the access into the Site; (c) under Section 9.05 1. c. there is no nuisance or hazard to vehicles or pedestrians because sight lines do exist to adjacent uses and buildings including a nearby day care center; and (d) He finds under Section 9.05 1. d. there are adequate facilities for the proper operation of the use.

The Board voted unanimously to approve modification of the Site Plan as submitted by the Petitioner noting that the requirements continue to have been met for the issuance of a Special Permit under **Section 9.05** of the Zoning By-Law, granting relief from the provisions of **Sections 4.07** and **4.12** of the Zoning By-Law.

Accordingly, the Board voted unanimously to grant the requested relief, subject to the following conditions:

1. Prior to issuance of a building permit, a final site plan, prepared by a registered engineer or land surveyor, and indicating all parking spaces, bicycle spaces, fencing, landscaping, trash and recycling, and utilities, shall be submitted to the Planning Board for review and approval.

2. Prior to issuance of a building permit, if exterior building modifications are proposed, final elevations, prepared by a registered architect, shall be submitted to the Planning Board for review and approval.

3. Prior to issuance of a building permit, plans for any alterations to the building's interior or exterior features shall be submitted to Preservation Commission staff for determination of applicability under the Town's Demolition Delay By-law.

4. Prior to issuance of a certificate of occupancy, the applicant shall submit a Transportation Demand Management Plan, subject to the review and approval of the Director of Transportation/Engineering and the Assistant Director for Regulatory Planning. The effectiveness of the TDM plan will be reviewed during the annual RMD licensing process by the Board of Selectmen.

5. All signage for the RMD shall be approved by the Planning Board prior to installation and shall be removed in the event the RMD ceases operations.

6. Prior to issuance of a certificate of occupancy, evidence of a valid license from the Board of Selectmen for a Registered Marijuana Dispensary shall be provided to the Building Commissioner.

7. The special permit is conditional upon the applicant maintaining a valid and current license from the Board of Selectmen and a Certificate of Registration from the Massachusetts Department of Public Health.

8. Prior to issuance of a building permit, the applicant shall submit to the Building Commissioner to ensure conformance to the Board of Appeals decision: 1) a final site plan, stamped and signed by a registered land surveyor or engineer; 2) final floor plans and building elevations, stamped and signed by a registered architect, if there are any exterior changes; and 3) evidence the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous decision of the

Board of Appeals

Jesse Geller

Jesse Geller, Chairman

Filing Date: 11/13/15

A True Copy
ATTEST:

Patrick J. Ward
Clerk, Board of Appeals

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