



BOARD OF APPEALS
Jesse Geller, Chairman

Town of Brookline Massachusetts

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TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. **2020-000062**
MISSION MA, INC.
1024 COMMONWEALTH AVE, BROOKLINE, MA

The Petitioner, Mission MA, Inc., applied to the Building Commissioner for permission for a change the use from a salon to storefront adult-use marijuana retailer at 1024 Commonwealth Avenue. 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 certified by the Board of Assessors of the Town of Brookline and fixed a virtual hearing to be held at January 21, 2021 at 7:00 p.m., as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioner, to their attorney (if any) 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 January 7, 2021 and January 14, 2021 in the Brookline Tab, a newspaper published in Brookline, Massachusetts. 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 **virtual** public hearing on **January 21, 2021 at 7:00PM**

Register for this hearing:

<http://bit.ly/3pvH8cg>

After registering you will receive a confirmation email containing information about joining the hearing.

Our Virtual Meeting Guide for Applicants and the Public can be found here:

<https://bit.ly/30wRoY3>

1024 COMMONWEALTH AVENUE, MA 02446 – CHANGE OF USE FROM SALON TO STOREFRONT ADULT-USE MARIJUANA ESTABLISHMENT. This property is in a G-2 GENERAL BUSINESS ZONE. This case is to be heard virtually on 1/21/2021 at 7pm (Petitioner: Mission MA, Inc.) Precinct 8

The Board of Appeals will consider variances and/or special permits from the following sections of the Zoning By-Law, and any additional zoning relief the Board deems necessary:

§4.07 – TABLE OF USE REGULATIONS, USE #29A

§4.13 - MARIJUANA ESTABLISHMENTS

Any other relief the Board finds necessary

PUBLIC COMMENT FILES, PDFs OR PRESENTATIONS:

Advance submissions of files and presentations are strongly encouraged. In an effort to ensure the Board has adequate time to review materials we ask that any additional documents such as written comment letters, photos, files, or presentations be sent before the hearing to Monique Baldwin (mbaldwin@brooklinema.gov) and Joe Braga (jbraga@brooklinema.gov). Public testimony will be taken during the hearing as normal.

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 mbaldwin@brooklinema.gov, or by checking the Town meeting calendar at: www.brooklinema.gov.

The Town of Brookline does not discriminate in its programs or activities on the basis of disability or handicap or any other characteristic protected under applicable federal, state or local law. Individuals who are in need of auxiliary aids for effective communication in Town programs or activities may make their needs known by contacting the Town's ADA Compliance Officer. Assistive Listening Devices are available at the Public Safety Building for public use at Town of Brookline meetings and events. Those who need effective communication services should dial 711 and ask the operator to dial the Town's ADA Compliance Officer.

If you have any questions regarding this Notice or the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Mark Zuroff
Johanna Schneider*

Publish: 1/7/2021 & 1/14/2021

At the time and place specified in the notice, the Zoning Board of Appeals held a public hearing. Present at the hearing was Chair Mark Zuroff and Board Members Lark Palermo and Kate Poverman.

The case was presented by Michael Ross, Esq., Prince Lobel Tye LLC, Boston, Massachusetts. Also in attendance were the principals of the Petitioner, Mission MA, Inc., Derek Stewart, Vice President of Retail, Mission Inc; and Andrew Borges, project manager.

Zoning Board of Appeals Chair Mark Zuroff called the hearing to order at 7:00 p.m. Attorney Ross stated that the Petitioner proposes a change in use on the first floor of the property at 1024 Commonwealth Avenue from a salon to “Storefront Marijuana Retailer” pursuant to **Section 4.07 Use 29A** of the Zoning Bylaws.

Attorney Ross described the background of the Petitioner and the application, stating the following: Mission MA, Inc. has marijuana retail locations in Georgetown, Massachusetts, and Worcester, Massachusetts. In addition, the company grows cannabis at these two locations, which supplies their retail stores.

Attorney Ross presented the floor plans and operations overview to the Board. Because the Brookline location has a floor area of just 1100 square feet, the sales model would be based on order ahead and appointment only through the Dutchie platform. One staff person would ensure that only customers who have made an appointment may enter the retail spaces. This employee would also ensure that no queueing occurs on the sidewalk and that customers do not double park on Commonwealth Avenue. The Town of Brookline moved the Uber/Lyft pin to Winslow Road to further preclude double parking due to ride-share drop offs. Another staff person would check

customer identification. The store would have four points of sale and three tablets for customers to use to learn more about the products. An ATM would be located within the store.

Board chair Mark Zuroff asked how many employees would be in the store at one time. Attorney Ross responded between 10 and 15 employees. Board member Kate Poverman asked if customers using the tablets to browse the product catalog would require an appointment. Attorney Ross stated that they would require an appointment. Board member Lark Palermo has asked how no queueing on the sidewalk would be enforced if the City of Boston, not the Town of Brookline, owns the sidewalk. Attorney Ross responded that the first employee who greets customers, to ensure they have an appointment, would enforce the no-queueing requirement. Board member Kate Poverman asked if the Petitioner had alerted other businesses on the block, like Dunkin Donuts and T. Anthony's, about the influx of customers waiting for their appointment. Mr. Stewart and Attorney Ross confirmed that they would continue their initial outreach and would encourage customers to frequent other businesses while waiting for their appointment to deter loitering.

Attorney Ross stated the site has two parking spaces at the rear for delivery of product to the store. Twelve bike racks for employees would be available within the store. Board Chair Mark Zuroff asked if delivery would be every day and, because he felt this is cash-heavy business, if police detail would be present. Attorney Ross responded that he expected deliveries two to three times per week. Attorney Ross acknowledged that the retailer would work with the Brookline police as necessary.

Attorney reviewed the security measures, especially those required by the Cannabis Control Commission.

Attorney Ross also described the COVID-19 protocols and confirmed that to meet State requirements for reduced capacity during the pandemic, only approximately 11 customers would

be allowed on the sales floor in the store at one time, as may be amended based on revised State requirements, in contrast to the normal capacity of approximately 25 customers on the sales floor.

Board Chair Mark Zuroff asked if the Petitioner envisioned delivery-only in the future. Mr. Stewart responded that he did not foresee that use. Board member Kate Poverman asked how diversion would be prevented. Attorney Ross and Mr. Stewart explained the strict procedures in place, which were reviewed by the Police Department during site plan review.

Attorney Ross detailed the Petitioner's compliance with **Section 4.13** and **Section 9.05** of the Zoning Bylaws, which authorize the Zoning Board of Appeals pursuant to a Special Permit, which requires: (a) the specific site is an appropriate location for such a use, structure, or condition; (b) the use as developed will not adversely affect the neighborhood; (c) there will be no nuisance or serious hazard to vehicles or pedestrians; (d) adequate and appropriate facilities will be provided for the proper operation of the proposed use; and (e) the development as proposed will not have a significant adverse effect on the supply of housing available for low and moderate income people.

Attorney Ross stated that the general business district is well suited for this use. The retailer would be the sole tenant in the building. No walk-ins would be allowed.

Attorney Ross further stated that the Petitioner meets the standards set forth under **Section 4.13** of the Zoning Bylaw, as the issuance of a Special Permit would not contravene the cap on the number of Special Permits and Storefront Retailers previously authorized by the Town of Brookline; the operator is in compliance with all applicable state and local laws; the location and applicant is compliant with **Section 4.13** of the Zoning Bylaws in its entirety; the Petitioner met extensively with various Town Departments and received sign-offs from police, fire, health, and transportation as part of its site plan review process; and the application comes before the Board of Appeals with the unanimous support of the Planning Board.

Board Chair Zuroff asked if there was anyone present who wished to speak in opposition to this application. Scott Ravelson, a longtime Brookline business owner, was very supportive of the Petitioner. No one spoke in opposition.

Maria Morelli, Senior Planner for the Town of Brookline, delivered the Planning Board report:

FINDINGS

§4.07 – TABLE OF USE REGULATIONS, USE #29A: Storefront Marijuana Retailers, stores of less than 5,000 square feet of gross floor area per establishment * Permitted by special permit pursuant to Section 4.13, Marijuana Establishments

§4.13 - MARIJUANA ESTABLISHMENTS

PLANNING DEPARTMENT COMMENTS

Ms. Morelli stated that the Planning Department is supportive of this proposal. The Applicant complied with an extensive and rigorous review by six Town Departments to ensure that the site and the floor plan layout could support identification checkpoints, restricted access areas, customer demand, and social distancing requirements both due to COVID-19 and non-COVID-19 max occupancy levels. Aside from social distancing, staff has stipulated that no walk-ins are permitted because there is not sufficient space to queue customers for IDs checks or to manage unexpected volumes. Reserve and order ahead are the only options for this site at this time. Because of the surrounding multifamily neighborhood to rear, staff does not allow customer queueing on the abutting parking lots. Because marijuana establishments are likely to be destination retail, Staff encourages the applicant to obtain satellite parking for customers; however, because this site in the Parking Transit Overlay District, no parking spaces are required for storefront retail use on site.

PLANNING BOARD COMMENTS

The Planning Board considers the location appropriate for this use. No exterior alterations are proposed. The applicant would need to come before the Planning Board for review and approval of any signage.

Therefore, the Planning Board recommends approval of the site plan by Richard J. Hood dated October 14, 2020 and architectural plans by Miika Ebbrell dated November 30, 2020, subject to the following conditions:

- 1 - The Business Plan, dated October 27, 2020, and reviewed to the satisfaction of the Police Chief, the Health Commissioner, the Fire Chief, and the Director Engineering and Transportation, shall include but not be limited to the Security and Diversion Prevention Plan, the Transportation Demand Management plan, Customer Demand Plan, Diversity Plan, Trash/Recycling Plan, Pest Control Plan, and site plan and floor plans.
- 2 – The Applicant shall have police detail on site when product is delivered to the site. Queueing of customers in the public way is prohibited.
- 3 – Queueing of customers outside the building footprint is prohibited.
- 4 - Deliveries to the front entrance on Commonwealth Avenue are prohibited.
- 5 - The facility shall not open earlier than 10 am, Mondays through Saturdays, and 12 pm on Sundays. Any change to operational hours shall be subject to the Select Board, after input from the Director of Engineering and Transportation and the Chief of Police.
- 6 - All signage for the facility shall be approved by the Planning Board prior to installation and shall be removed in the event the entity ceases operations.
- 7 - The special permit is conditional upon the applicant maintaining a valid and current license or Certificate of Registration, as may be required, from the Select Board, the Massachusetts Department of Public Health, and the Massachusetts Cannabis Control Commission.
- 8 - Retail product shall be stored a minimum of six inches above the ground.
- 9 - No product shall be weighed and packed at the retail location. All product shall be pre-weighed on a certified scale at the production location.
- 10 - The retail establishment's Director of Security shall ensure: a. all entrances are secured to prevent unauthorized access b. all locks and security equipment will be maintained in good working order c. all safes, vaults, and any other equipment or areas used for the production, cultivation, harvesting, processing or storage of marijuana products are securely locked and protected from entry, except for the actual time required to remove or replace marijuana.

11 - The Applicant shall maintain an incident log that lists unusual activity, along with documents stipulated in the Host Community Agreement for recording in a binder, for administrative inspections.

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

13 - Prior to the issuance of a Building Permit, the applicant shall electronically submit final floor plans, roof plan and elevations, location and number of bike racks, loading zone, and parking spaces stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director or designee for Regulatory Planning for review and approval.

15 - Prior to the issuance of a Building Permit, the Applicant shall submit floor plans that show all storage shelving, hand sinks, toilets, mop sinks, and the trash storage room for the review and approval of the Chief of Environmental Health.

16 - Prior to the issuance of a Building Permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, roof plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning or designee; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

17 - Prior to the issuance of a Certificate of Occupancy, the Applicant shall notify Brookline Department of Public Health and Human Services when renovations and have been completed so it can arrange for a pre-operational inspection 14 days prior to the scheduled opening date.

18 - Prior to issuance of a Certificate of Occupancy, evidence of a valid license from the Select Board for a marijuana retailer shall be provided to the Building Commissioner.

Upon further consultation with Associate Town Counsel Patricia Correa, Ms. Morelli told the Board that following conditions, which pertain to operations not land use, should be conditions not on the special permit but on the license, which more appropriately governs operational issues. In addition, to be consistent with license conditions for other marijuana retailers, police detail would be encouraged but not required when product is delivered to the site.

Conditions that will be moved to the license conditions:

1 - The Business Plan, dated October 27, 2020, and reviewed to the satisfaction of the Police Chief, the Health Commissioner, the Fire Chief, and the Director Engineering and Transportation, shall include but not be limited to the Security and Diversion Prevention Plan,

the Transportation Demand Management plan, Customer Demand Plan, Diversity Plan, Trash/Recycling Plan, Pest Control Plan, and site plan and floor plans.

2 – Queueing of customers in the public way is prohibited.

3 – Queueing of customers outside the building footprint is prohibited.

4 - Deliveries to the front entrance on Commonwealth Avenue are prohibited.

8 - Retail product shall be stored a minimum of six inches above the ground.

10 - No product shall be weighed and packed at the retail location. All product shall be pre-weighed on a certified scale at the production location.

11 - The retail establishment's Director of Security shall ensure: a) all entrances are secured to prevent unauthorized access; b) all locks and security equipment will be maintained in good working order; c) all safes, vaults, and any other equipment or areas used for the production, cultivation, harvesting, processing or storage of marijuana products are securely locked and protected from entry, except for the actual time required to remove or replace marijuana.

12 - The Applicant shall maintain an incident log that lists unusual, along with documents stipulated in the Host Community Agreement for recording in a binder, for administrative inspections.

Zoning Board of Appeals Chairman Geller then called upon Joseph Braga, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Braga stated who stated that the Building Department had no objections to the proposal.

BOARD DISCUSSION AND VOTE

In deliberation, Board Chair Mark Zuroff considered that the parking spaces at the rear should be used solely for purposes related to business operations. He considered the application to be thoroughly vetted and was in favor of granting a special permit. Board member Lark Palermo expressed the need for a condition that would ensure that parking spaces are not rented out during off-business hours to reduce impact on the residential neighborhood. Ms. Palermo was very supportive of the reserve-ahead model and was in favor of granting a special permit. Board member Kate Poverman asked the Petitioner if he was concerned about the competition from another

marijuana retailer preparing to open a few doors away. Mr. Stewart responded that he was not concerned about competition. Board Chair Mark Zuroff asked how customers hopping from one retailer to another would be precluded from purchasing more than the legal limit. Mr. Stewart answered that adult-use customers are not tracked the way medical marijuana customers are; however, identification scanners would be programmed to detect repeat customers at his store. Board member Kate Poverman confirmed that she was in favor of granting a special permit.

The Board then determined, by unanimous vote that there was no substantial detriment to the neighborhood, and the requirements for relief by special permit from the application of the provisions of the Zoning By-Law pursuant to Section 4.13 and Section 9.05 of the Zoning By-Law were met. The Board made the following specific findings pursuant to said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- e. Development will not have a significant adverse effect on the supply on housing available for low and moderate income people.

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

1 - The facility shall not open earlier than 10 am, Mondays through Saturdays, and 12 pm on Sundays. Any change to operational hours shall be subject to the Select Board, after input from the Director of Engineering and Transportation and the Chief of Police.

2 - All signage for the facility shall be approved by the Planning Board prior to installation and shall be removed in the event the entity ceases operations.

3 - The special permit is conditional upon the applicant maintaining a valid and current license or Certificate of Registration, as may be required, from the Select Board, the Massachusetts Department of Public Health, and the Massachusetts Cannabis Control Commission.

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

5 - Prior to the issuance of a Building Permit, the applicant shall electronically submit final floor plans, roof plan and elevations, location and number of bike racks, loading zone, and parking spaces stamped and signed by a registered architect or engineer and a final site plan, stamped and signed by a registered engineer or land surveyor, to the Assistant Director or designee for Regulatory Planning for review and approval.

6 - Prior to the issuance of a Building Permit, the Applicant shall submit floor plans that show all storage shelving, hand sinks, toilets, mop sinks, and the trash storage room, a final trash management plan, and pest control plan for the review and approval of the Chief of Environmental Health.

7 - Prior to the issuance of a Building Permit, the applicant shall electronically submit to the Building Commissioner for review and approval a) the site plan, roof plan, floor plans, and elevations displaying the approval stamp of the Assistant Director for Regulatory Planning or designee; and b) evidence that the Board of Appeals decision has been obtained from the Town Clerk's office by the applicant or their representative and recorded at the Registry of Deeds.

8 - Prior to the issuance of a Certificate of Occupancy, the Applicant shall notify Brookline Department of Public Health and Human Services when renovations and have been completed so it can arrange for a pre-operational inspection 14 days prior to the scheduled opening date.

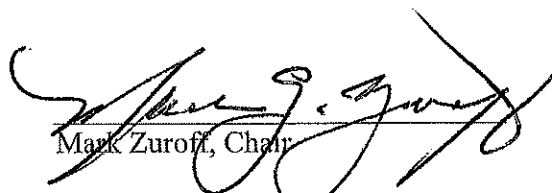
9 - Prior to the issuance of a Certificate of Occupancy, evidence of a valid license from the Select Board for a marijuana retailer shall be provided to the Building Commissioner.

10 - Prior to the issuance of a Certification of Occupancy, the Applicant shall submit a Transportation Demand Management plan, subject to the review and approval of the Director of Transportation and Engineering and the Planning Director, or their designees. The implementation and effectiveness of the TDM plan will be reviewed by aforementioned Town staff on an annual schedule as stipulated in the license conditions.

11 - Off-street parking spaces shall be used solely to meet the parking needs associated with the use on the site.

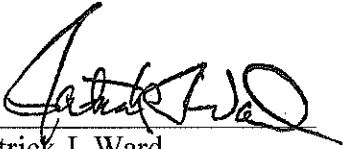
Unanimous Decision of
The Board of Appeals

Filing Date: 3/26/2021


Mark Zuroff, Chair

Last page follows

A True Copy
ATTEST:

A handwritten signature in black ink, appearing to read "Patrick J. Ward". The signature is written in a cursive style with a large initial "P" and a long, sweeping underline.

Patrick J. Ward
Clerk, Board of Appeals