



Town of Brookline Massachusetts

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Patrick J. Ward, Clerk

BOARD OF APPEALS
Jesse Geller, Chairman
Mark G. Zuroff
Christopher Hussey

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2018 OCT 29 P 130 8102

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2018-0073
NEW ENGLAND TREATMENT ACCESS, LLC
160 WASHINGTON STREET, BROOKLINE, MA

Petitioner, New England Treatment Access, LLC, applied to the Building Commissioner for permission to add recreational marijuana retail facility use to the existing medical marijuana retail facility. 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 October 25, 2018 at 7:10 PM., in the Selectmen's Hearing Room as the date, time and place of a hearing for the appeal. Notice of the hearing was mailed to the Petitioners, 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 October 11, 2018 and October 18, 2018 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 STREET, BROOKLINE, MA 02445 - ADD RETAIL MARIJUANA USE in a(n) G-2.0 GENERAL BUSINESS on October 25, 2018 at 7:00 pm in the 6th Floor Select Board's Hearing Room (Petitioner/Owner: New England Treatment Access Inc.) *Precinct*

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 #20B

Any additional relief the Board may find necessary.

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 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 the Assistive Listening Device, please contact Caitlin Haynes at 617-730-2345 or at chaynes@brooklinema.gov.

*Jesse Geller, Chair
Christopher Hussey
Mark G. Zuroff*

Publish: 10/11/18 & 10/18/18

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing were Chairman Mark G. Zuroff and Board Members Johanna Schneider and Lark Palermo. Also present at the hearing were the Assistant Director of Regulatory Planning, Polly Selkoe and Deputy Building Commissioner, Michael Yanovitch.

The case was presented by Robert L. Allen, Jr., Law Office of Robert L. Allen Jr., LLP, 300 Washington Street, Second Floor, Brookline, Massachusetts. Also, in attendance were the NETA Director of Operational Compliance, Amanda Rositano, Stantec Representative, Rick Bryant, and other members of the NETA staff.

Chairman Zuroff called the hearing to order at 7:10 p.m. Attorney Allen waived the reading of the public notice.

Mr. Allen then described the proposal stating that the Petitioner seeks relief to add recreational marijuana retail use to the already existing medical marijuana dispensary use. He noted that the Board conducted a site visit on October 17, 2018 and stated that the NETA team was present to answer any additional questions the Board may have about the operations. Attorney Allen stated that the Petitioner requires a special permit for use 29A of Section 4.07 – Table of Use Regulations, pursuant to Section 4.13, Marijuana Establishments and to Section 9.05 of the Zoning By-Law. Furthermore, Attorney Allen noted that interior changes include adding more checkout stations to the first-floor lobby area and establishing a breakroom in an existing room in the basement.

Attorney Allen described the standards under Section 9.05 of the Zoning By-Law stating: the location is appropriate for the proposed additional use because the subject property has been operating as a medical marijuana establishment with little to no complaint for approximately three years and the site is located in a general business zoning district with excellent access to rapid transit; the use will not adversely affect the neighborhood because there will be no exterior alterations to the building, and the Petitioner has met extensively with municipal representation including Police, Health, Fire, and Transportation to ensure that all impacts (if any) from adding a Recreational Marijuana Use can be addressed quickly; there will be no nuisance or serious hazard to vehicles or pedestrians because the property's on-site circulation will remain largely the same, and the Petitioner has worked with a traffic consultant to develop a TDM plan that meets the Town's requirements; adequate and appropriate facilities will be provided for the proper operation of a Recreational Marijuana Retailer; and there will be no effect on the supply on housing available for low and moderate income people. Attorney Allen then described how the Applicant and Operator of the facility has met the standards set forth under

Section 4.13 of the Zoning By-Law stating as follows: 1) issuance of the special permit would not contravene the cap on the number of special permits that may be granted or violate any applicable density restrictions, because this proposal is the first permit for a Recreational Marijuana Retailer in the Town of Brookline; 2) issuance of a special permit would comply with all applicable State and local laws; and 3) the location is compliant with Section 4.13 in its entirety and although there is a gross floor area limitation of 5,000 s.f. for Storefront Marijuana Retailers, this site falls under the exception to this limitation because it is a Medical Marijuana Treatment Center that was licensed to operate prior to July 1, 2017; and 4) the Operator has met extensively with various Town Departments and received reports that it has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable. Attorney Allen again noted that the project was vetted by many Town Departments including Planning, Building, Police, Fire, Transportation, and Health.

Chairman Zuroff asked clarifying questions regarding Section 4.13. Deputy Building Commissioner, Michael Yanovitch, noted that the department heads and Town Counsel had a meeting regarding the application. Mr. Yanovitch also noted that the use in the use table of the Zoning By-Law is what ties in Section 4.13 and stated that he believes that the Petitioner has met all of the criteria.

Chairman Zuroff then asked whether anyone was present to speak in favor of the proposal. No one spoke in favor of the proposal.

Chairman Zuroff then asked whether anyone was present to speak in opposition to the proposal. Sloan Furniss, 10 White Place, Brookline, Massachusetts, spoke in opposition to the proposal. Ms. Furniss stated that she was concerned about loitering and the queuing of cars and customers. Ashley Matskevich, 9 White Place, Brookline, Massachusetts, also spoke in opposition to the proposal. Ms. Matskevich stated that she was concerned about safety.

Attorney Allen spoke in response to the opposition, and Lieutenant Michael Raskin, Brookline

Police Department, spoke to his work with NETA and the proposal. Lieutenant Raskin suggested that concerned citizens call the Police Department if issues arise. He noted that there is always a police officer present at NETA.

Chairman Zuroff then called upon Polly Selkoe, Assistant Director of Regulatory Planning, to deliver the findings of the Planning Board. Mrs. Selkoe noted the following:

FINDINGS

Section 4.07, Table of Use Regulations, Use #20B – Marijuana Retailers in addition to a Medical Marijuana Treatment Center: Marijuana Retailers are allowed by special permit in a G District, and all of the requirements under Section 4.13 must be met to be eligible. *Special permit required.*

**Modification, As Necessary, Of Boa Case #2015-0002
Any Other Relief the Board May Find Necessary**

PLANNING BOARD COMMENT

The Planning Board supports this proposal to co-locate adult marijuana use in the same building as the existing medical marijuana use. As part of the required preliminary site plan review process, reports were submitted to the Planning and Building Departments from the Departments of Engineering and Transportation, Police, Fire, Health addressing traffic, parking, security, and safety issues, and included recommendations for conditions to mitigate any impacts. The Planning Board noted Brookline residents' strong support for allowing recreational marijuana in the Town and NETA's good track record in its operation of the medical marijuana facility over the last three years.

The biggest concern for the Planning Board was related to the six-month period surrounding NETA's initial commencement of selling adult use marijuana because of the crowds it may draw during its opening period and the possible queueing on the sidewalk that may result. One Planning Board member felt strongly that the queueing should be contained in the parking lot. Lieutenant Raskin of the Brookline Police Department was present at the Planning Board meeting and said this idea had been discussed previously, and it was considered a safety issue to mix cars and pedestrians. The Planning Board was pleased that NETA has agreed to the presence of a second police officer to help control crowds. At least four feet of the sidewalk will be required to be unobstructed at all times. If queueing becomes a safety or nuisance issue, NETA will be asked to find alternative solutions. NETA has already said that they intend to issue discounted vouchers to nearby coffee shops or other retailers so that customers could return at a later time when the line has diminished. Traffic will continue to be controlled by a police officer and several NETA staff, and NETA has secured 15 parking spaces at the nearby Hilton Homewood Suites garage for customer parking. Additionally, traffic impacts will be evaluated and addressed at three and fifteen months after opening, and then annually by the Select Board during the required licensing renewal process. Mitigation measures will be required to address any problems that arise.

Therefore, the Planning Board recommends approval of the site plan by Joe Casali Engineering and dated 10/29/15, and the proposed floor plans and interior elevations prepared by Dennis Colwell Architects and dated 08/16/2018, 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 Assistant Director for Regulatory Planning 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 Assistant Director for Regulatory Planning 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 after a three month and 15-month period and during the annual licensing process by the Select Board. It shall also include a stipulation that at least a four-foot width of sidewalk shall be unobstructed at all times.
5. If during the initial opening period of the facility, but no longer than six months, the Town determines that queueing on the public sidewalk has become a safety hazard or nuisance, the applicant shall meet with the relevant Town officials to identify and implement methods to eliminate any queueing on the sidewalk. Costs of same shall be borne by the applicant.
6. The facility shall not open earlier than 9 am, Mondays through Fridays, and 8 am Saturdays and Sundays. Any change to operational hours shall be subject to the Select Board, after input from the Director of Engineering and Transportation and Police Department.
7. 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.
8. 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.
9. 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.
10. 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.

Chairman Zuroff then called upon Michael Yanovitch, Deputy Building Commissioner, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department has no objection to this request and noted that the building and location were appropriate for the use. He noted that the Building Department has not had any complaints about NETA since they opened. He concluded that should relief be granted; the Building Department will work with the Petitioner to ensure compliance with the Building Code and the provisions of the relief.

During deliberation, Board Member Schneider noted the legality of recreational marijuana in Massachusetts and stated that she was pleased with the site visit to NETA. Board Member Palermo agreed with Board Member Schneider's statements however wanted to use the word "operator" rather than applicant to ensure that any future operator had to meet the same strict standards as those imposed on NETA. All members agreed to this recommended change.

Accordingly, in reliance on the above referenced plans, the Board then determined, by unanimous vote that the requirements for a special permit for use 29A of Section 4.07 – Table of Use Regulations, pursuant to Section 4.13, Marijuana Establishments and to Section 9.05 of the Zoning By-Law, respectively, were met, finding specifically under said Section 9.05:

- a. The specific site is an appropriate location for such a use, structure, or condition because the subject property has been operating as a medical marijuana establishment with little to no complaint for nearly three years and the site is located in a general business zoning district;
- b. The use as developed will not adversely affect the neighborhood because there will be no exterior alterations to the building, and the Petitioner has met extensively with municipal representation to ensure that all impacts (if any) from adding recreational marijuana use can be addressed quickly;

- c. There will be no nuisance or serious hazard to vehicles or pedestrians because on-site circulation will remain largely the same, and the Petitioner has worked with a traffic consultant to develop a TDM plan that meets the Town's requirements;
- d. Adequate and appropriate facilities will be provided for the proper operation of a recreational marijuana retailer;
- e. Development will have no effect on the supply of housing available for low- and moderate-income people;

and finding specifically under Section 4.13 that in its judgment the Operator meets all of the following conditions:

1. Issuance of the special permit will not contravene the cap on the number of special permits that may be granted for Storefront Marijuana Retailers because this is the first such permit to issue and the 5000 s.f. density limitation is not applicable as this facility falls under the exception, because it is a pre-existing medical marijuana dispensary and the issuance of the special permit will comply with all applicable State and local laws.
2. The location is compliant with Section 4.13 in its entirety as evidenced by the various Departmental reports which are incorporated herein by reference.
3. The Board of Appeals is satisfied that the Marijuana Establishment has the ability to comply with the General Requirements for Marijuana Establishments set forth in Section 4.13, and 4.12 if applicable based on the information gathered in the Departmental reports and recommendations, the report of the Planning Board and Deputy Building Commissioner and the history of operations as a Registered Medical Marijuana Dispensary.

Accordingly, the Board voted unanimously to grant the requested special permit 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 Assistant Director for Regulatory Planning 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 Assistant Director for Regulatory Planning 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 operator 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 after a three month and 15-month period and during the annual licensing process by the Select Board. It shall also include a stipulation that at least a four-foot width of sidewalk shall be unobstructed at all times.

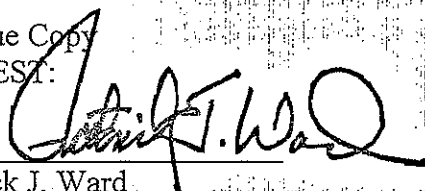
5. If during the initial opening period of the facility, but no longer than six months, the Town determines that queueing on the public sidewalk has become a safety hazard or nuisance, the operator shall meet with the relevant Town officials to identify and implement methods to eliminate any queueing on the sidewalk. Costs of same shall be borne by the operator.
6. The facility shall not open earlier than 9 am, Mondays through Fridays, and 8 am Saturdays and Sundays. Any change to operational hours shall be subject to the Select Board, after input from the Director of Engineering and Transportation and Police Department.
7. 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.
8. 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.
9. The special permit is conditional upon the operator 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.
10. Prior to issuance of a building permit, the operator 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

Filing Date: 10/29/18


Mark G. Zuroff, Chairman

A True Copy
ATTEST:


Patrick J. Ward
Clerk, Board of Appeals