



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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Case #: ZBA 2017-02
Date: February 10, 2017
Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 245-249 Elm Street

Applicant Name: Garden Remedies, Inc.
Applicant Address: 697 Washington Street, Newton, MA 02458
Owner Name: Dana Family Realty Trust and RMD, Sr. Realty Trust
Owner Address: 1340 Centre Street, Suite 101, Newton, MA 02459
Agent Name: Dennis A Quilty, Esq.
Agent Address: 28 State Street, Suite 802, Boston, MA 02109
Alderman: Lance Davis

Legal Notice: Applicant, Garden Remedies, Inc., and Owners, Dana Family Realty Trust and RMD, Sr. Realty Trust, seek a Special Permit under SZO §7.15 to establish a Medical Marijuana Facility in the ground level and basement of the building. CBD Zone and Medical Marijuana Overlay District. Ward 6.

Dates of Public Hearing: Zoning Board of Appeals – February 1, 2017

I. PROJECT DESCRIPTION

1. Subject Property: The locus consists of an approximately 17,507 square foot parcel that contains a mixed use structure of approximately 10,957 square feet of gross floor area. The structure is two stories along Elm Street and one story in the rear. Current tenants include a bar and restaurant, a vacant storefront (formerly Family Dollar), and a yoga studio on second floor.



2. Proposal:

Background: In 2012, Massachusetts voters approved a statewide medical marijuana initiative petition. This ballot question received overwhelming support by voters in Somerville. Shortly after the adoption, the City of Somerville placed a moratorium on medical marijuana dispensaries while it developed guidelines for appropriate siting of dispensaries and a rigorous procedure for review and license. The process was designed to serve the community and reflect proposed new citywide zoning regulations. However, the zoning overhaul was delayed and the moratorium expired.

Therefore, the Planning Division recommended that the City establish a medical marijuana dispensary ordinance to permit dispensaries in appropriate locations in the City. Planning Division staff further proposed that a special permit would be required for final approval. This action would allow dispensaries to move forward in Somerville. The medical marijuana dispensary ordinance was adopted by the Board of Aldermen on February 25, 2016.

The ordinance incorporates an overlay district and map, indicating specific lots where a medical marijuana facility can locate. Based upon extensive research and feedback with the community and the Board of Aldermen, the staff undertook a strategy to: 1) permit dispensaries in vibrant business and mixed-use districts, with convenient access by public transportation; 2) treat dispensaries as a pharmaceutical operation; and 3) encourage dispensaries to locate in retail spaces that will complement the neighborhood and the City's neighborhood planning and development goals. While many other communities have encouraged dispensaries to be far from urban activity, the Somerville community embraced this approach as being consistent with the vision and character of the SomerVision plan.

Garden Remedies: This proposal is to establish a registered medical marijuana dispensary (RMD) of 4,816 on the ground floor and basement to be operated by Garden Remedies in the space formerly occupied by Family Dollar. The proposal is limited for the dispensing of medical marijuana to patients

that are certified by a qualified health care provider and registered with the Commonwealth of Massachusetts Department of Public Health (DPH). The product will be manufactured and pre-packaged at the Garden Remedies cultivation facility in Fitchburg, Massachusetts and there will be no consumption of the product on site. The hours of operation will be restricted to Monday through Saturday 9am to 9pm and Sunday from 9am to 6pm.

During times of operation, the dispensary shall only allow entrance to patients who are physically in possession of a valid DPH issued medical marijuana card and the state required ID needed to acquire the medical marijuana card. Anyone without proper certification or identification will not be allowed into the dispensary. Once inside, patients will have to have their credentials checked a second time before entering the waiting area. Credentials will be checked a third time at the time of purchase and directed toward the exit of the dispensary.

3. Green Building Practices: The Application does not include any green building practices; however, the Application includes considerations for sustainable design by conducting an internal full-day charrette to brainstorm goals, strategies, and opportunities to incorporate sustainable best practices into their medical marijuana facility.

4. Comments:

Ward Alderman: The applicant has held two neighborhood meetings with Alderman Davis and Alderman Connolly attending both meetings. A lot of the concerns from stakeholders were focused on the operations of the dispensary (i.e. security, deliveries, payments, and methods of consumption).

II. FINDINGS FOR SPECIAL PERMIT (SZO §7.15):

In order to grant a special permit, the SPGA must make certain findings and determinations as outlined in §5.1.4 of the SZO. This section of the report goes through §5.1.4 in detail.

1. Information Supplied:

The Staff finds that the information provided by the Applicant conforms to the requirements of §5.1.2 of the SZO and allows for a comprehensive analysis of the project with respect to the required Special Permits.

2. Compliance with Standards: *The Applicant must comply "with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit."*

Pursuant to Section 7.15 of the SZO, Medical Marijuana Facilities shall only be permitted under the following circumstances:

a. *A Medical Marijuana Facility shall be permitted by special permit in the Medical Marijuana Overlay Districts.*

The proposed location is within one of the Medical Marijuana Overlay Districts.

b. *Medical Marijuana Facilities shall comply with the siting requirements in the overlay districts set forth in the City of Somerville Zoning Map with respect to distance from schools, daycare centers, and facilities in which children commonly congregate. These siting requirements have been developed to incorporate adequate separation, in a manner that is appropriate for Somerville's urban*

context, from schools, daycares and places where children congregate. For this reason, the overlay districts shall serve as a local requirement to supersede the provisions of 105 CMR 725.110(A)(14).

The proposed location complies with the siting requirements of the Medical Marijuana Overlay Districts set forth in the City of Somerville Zoning Map.

- c. Medical Marijuana Facilities must be properly registered with the Massachusetts Department of Public Health pursuant to 105 CMR 725.100 and must comply with all applicable state and local public health regulations and all other applicable state and local laws, rules, and regulations.*

The proposed Medical Marijuana Facility is currently in the process of obtaining a Final Certificate of Registration (FCR) with the Commonwealth of Massachusetts's Department of Public Health. Successful municipal permitting is required to obtain a FCR. A condition of approval will be that Garden Remedies obtains an FCR prior to the issuance of a Certificate of Occupancy from the City of Somerville Inspectional Services Department (ISD).

- d. The special permit granting authority shall be the same board that issues special permits for the underlying zoning district.*

The Zoning Board of Appeals is the Special Permit Granting Authority in the Central Business District.

- e. A special permit shall only be approved if the special permit granting authority determines that the use meets the findings of Section 5.1.4 of the Somerville Zoning Ordinance.*

Staff finds that the proposed use meets the findings of Section 5.1.4 of the Somerville Zoning Ordinance.

- f. A Medical Marijuana Facility shall be limited to ten thousand (10,000) square feet in net floor area.*

The proposed Medical Marijuana Facility contains 4,816 square feet in net floor area.

- g. A Medical Marijuana Facility shall be subject to the minimum parking requirements under Article 9 of the ordinance. The number of required parking spaces shall be set based upon the requirement for a Retail Sales/Rental or Retail and Service uses of this ordinance.*

The former tenant of the proposed space, Family Dollar, was retail and the number of required spaces for RMDs shall be that of Retail Sales/Rental or Retail and Service uses; therefore, under Article 9 no additional parking spaces are required as there is no change in the required number of parking spaces and the net floor area is not increased.

- h. The applicant shall be required to submit a traffic and parking study to determine any traffic mitigation or additional parking needs.*

The Applicant has submitted a Parking Study and Trip Generation memorandum. Refer to Section II.6 of this report for Staff findings.

- i. Signage for the facility must:*
a. Meet the regulations of the underlying zoning district.

An internally illuminated box sign currently exists on the façade of the building. The whole faced is proposed to be reconstructed with an approximately 8 foot storefront for Garden Remedies with a sign above the door in the sign band, which conform to SZO Section 12.4.

b. Incorporate no internal illumination.

The proposed sing is not internally illuminated.

c. Be subject to review and approval of the SPGA as a part of the special permit application.

Staff finds that the proposed sign fits in with the character of the neighborhood and is designed in such a way where no medical symbols, images of marijuana, related paraphernalia, and colloquial references to cannabis and marijuana are not used.

3. Consistency with Purposes: *The Applicant has to ensure that the project "is consistent with (1) the general purposes of this Ordinance as set forth in Article 1, and (2) the purposes, provisions, and specific objectives applicable to the requested special permit which may be set forth elsewhere in this Ordinance, such as, but not limited to, those purposes at the beginning of the various Articles."*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to lessen congestion in the streets; to protect health; to secure safety from fire, panic and other dangers; to prevent the overcrowding of land; to conserve the value of land and buildings; to encourage the most appropriate use of land throughout the City; and to preserve and increase the amenities of the municipality.

The proposal is consistent with the purpose of the CBD district, which is, "to preserve and enhance central business areas for retail, business services, housing, and office uses and to promote a strong pedestrian character and scale in those areas. A primary goal for the districts is to provide environments that are safe for and conducive to a high volume of pedestrian traffic, with a strong connection to retail and pedestrian accessible street level uses." The proposal is also consistent with the purpose of the Medical Marijuana Overlay District, which is, "to establish area where Medical Marijuana Facilities may be permitted subject to Section 7.15."

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the characteristics of the built and unbuilt surrounding area, including land uses."*

Surrounding Neighborhood: The site is located in the heart of Davis Square surrounded by numerous storefronts of made up of commercial, restaurants, and retail uses ranging from one to three stories.

Impacts of Proposal (Design and Compatibility): The entire storefront of the former Family Dollar is proposed to be renovated with dark material and large storefront windows.

5. Adverse environmental impacts: *The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.*

Impacts of Proposal (Environmental): There will be no adverse environmental impacts on the surrounding area as a result of the proposed use. There will be no onsite consumption of the marijuana

products nor is public consumption of medical marijuana products allowed in the Commonwealth of Massachusetts.

6. **Vehicular and pedestrian circulation:** *The circulation patterns for motor vehicles and pedestrians which would result from the use or structure will not result in conditions that create traffic congestion or the potential for traffic accidents on the site or in the surrounding area.*

Impacts of Proposal (Circulation): A transportation analysis has been conducted and submitted as part of the application. There is no off-street parking provided on the site; however, there is space for loading in the rear in the surface parking lot. The locus is well served by public transportation and bicycle accommodations. The analysis found a vacancy rate of on-street parking spaces of 12% on a weekday evening and 20% on a Saturday evening. The vacancy rate of off-street public parking lot spaces was 25% on a weekday evening and 13% on a weekend evening. Based on the analysis, there is more than ample parking supply available to adequately serve the parking needs of the RMD.

Garden Remedies is committed to providing transportation demand management (TDM) measure aimed at reducing vehicle trips to the site by:

- **Short-term Bicycle Parking** – the Applicant is exploring the feasibility of providing a bicycle rack (accommodating 5 – 8 bicycles) in the parking area behind the building.
- **Secure Covered Bicycle Parking** – secure covered storage (for 5 to 10 bikes) will be made available for employees within the basement level of the facility.
- **Project Web Site** – the RMD’s website will provide information detailing travel options to the site, including MBTA service options, Hubway, secure covered bicycle parking at Davis Station, and home delivery service.
- **Home Delivery Service** – the Project will offer home delivery service primarily for homebound patients, which will limit the need for patients to travel to the site. These deliveries will be operated out of another facility in Fitchburg, minimizing overall traffic and parking needs for the Somerville RMD.

7. **Housing Impact:** *Will not create adverse impacts on the stock of existing affordable housing.*

There will be no adverse impacts on the stock of existing affordable housing.

8. **SomerVision Plan:** *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups; and, make Somerville a regional employment center with a mix of diverse and high-quality jobs. The areas in the SomerVision map that are designated as enhance and transform should most significantly contribute towards the SomerVision goals that are outlined in the table below. The areas marked as conserve are not expected to greatly increase the figures in the table since these areas are not intended for large scale change.*

Davis Square is marked as a Urban Mixed Use area on the Future Land Context Map and as an area to Enhance in the SomerVision Map. The proposal will maintain the buildings appearance and add to the range of services provided in the Square.

<u><i>SomerVision Summary</i></u>	<i>Existing</i>	<i>Proposed</i>

<i>Estimated Employment:</i>	unknown	15-20
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III. RECOMMENDATION

Special Permit under §7.15

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes						
1	Approval is for the establishment of a Medical Marijuana Facility. This approval is based upon the following application materials and the plans submitted by the Applicant:	BP/CO	ISD/Plng.							
	<table><tr><th>Date (Stamp Date)</th><th>Submission</th></tr><tr><td>December 27, 2016</td><td>Initial application submitted to the City Clerk’s Office</td></tr><tr><td>December 27, 2016</td><td>Plans submitted to OSPCD (Existing Conditions Plot Plan, Conceptual Street Elevations, Elm Street Façade Rendering, Frontage and Signage, Conceptual Elevations, Material Board, Ground Floor Plan, Basement Plan, Roof Plan, and Interior Renderings)</td></tr></table>				Date (Stamp Date)	Submission	December 27, 2016	Initial application submitted to the City Clerk’s Office	December 27, 2016	Plans submitted to OSPCD (Existing Conditions Plot Plan, Conceptual Street Elevations, Elm Street Façade Rendering, Frontage and Signage, Conceptual Elevations, Material Board, Ground Floor Plan, Basement Plan, Roof Plan, and Interior Renderings)
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Any changes to the approved plan, signs, or use that are not <i>de minimis</i> must receive SPGA approval.										
Pre-Construction										
2	The Applicant must contact the Engineering Department to coordinate the timeline for cutting or opening the street and/or sidewalk for utility connections or other construction, if necessary. There is a moratorium on opening streets from November 1st to April 1st and there is a list of streets that have additional opening restrictions.	BP	Eng							

3	New sanitary connection flows over 2,000 GPD require a removal of infiltration and/or inflow by the Applicant. This will be achieved by submitting a mitigation payment, established by the City Engineers Office, to the City based on the cost per gallon of I/I to be removed from the sewer system and a removal ratio of 4:1. If a different ratio of removal or mitigation payment amount is adopted by the Board of Aldermen prior to the Applicant receiving a Certificate of Occupancy, payment will be adjusted to the BOA rate. The Applicant shall work with Engineering and meet this condition before a certificate of occupancy is issued.	BP	Eng.	
Construction Impacts				
4	The Applicant shall at their expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
5	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Traffic & Parking				
6	The Applicant shall make best efforts to locate bike parking inside of the building for employees.	CO	Plng.	
7	Delivery trucks shall travel to the site via Highland Avenue and Grove Street and exit out of the area via Grove Street to Elm Street or back to Highland Avenue via Cutter Street.	Ongoing	Plng.	
8	The Applicant shall provide the following for their staff: public transportation subsidies for MBTA passes, provide information on different transportation options for all new hires, promote the use of HubWay or other bike sharing services, and provide lockers on-site.	Ongoing	Plng.	
9	The Applicant shall promote public transportation accessibility for patients on their website and other advertising mediums.	Ongoing	Plng.	
Miscellaneous				
10	The hours of operations shall be limited to 9 a.m. to 9 p.m. Monday through Saturday and 9 a.m. to 6 p.m. on Sunday.	Ongoing	ISD / Plng.	
11	The Applicant will abide by all provisions of the covenant with the City of Somerville that is signed prior to the ZBA approval ..	Ongoing	Plng.	
12	Applicant must remain in compliance with all state regulations for medical marijuana and shall maintain the operational and security program as provided in the ZBA application and the submittal to the Medical Marijuana Advisory Committee	Ongoing	Plng.	
Signage				

13	Signage will be limited to the size and location as shown on the Conceptual Elevations, Conceptual Façade, and Conceptual Frontage and Signage plans, and subject to review and approval by Planning Staff.	CO/Cont.	Plng.	
Public Safety				
14	The Applicant shall meet the requirements of the Fire Prevention Bureau.	CO/Cont.	Plng.	
Final Sign-Off				
15	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	

