CITY of MALDEN CITY COUNCIL
NOTICE of DECISION

CASE NUMBER 202-22
LOCATION of SUBJECT PROPERTY 36 Charles Street, Malden MA
NAME of PETITIONER DMS TRINITY LLC
NAME of PROPERTY OWNER CHARLES STREET REALTY TRUST 2020
DATE of PUBLIC HEARING April 26, 2022
DATE of DECISION April 26, 2022
DATE of FILING DECISION with CITY CLERK May 10, 2022
DATE of NOTIFICATION to BUILDING INSPECTOR May 10, 2022
FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT May 30, 2022
Any appeal must be made pursuant to M.G.L. c. 40A, §17 and filed within 20 days after this Notice is filed with City Clerk.

PROCEDURAL BACKGROUND (Case #202-22).

1. The subject property is known as and numbered 36 Charles Street, Malden MA and known by City Assessor's parcel 062-239-910.
2. The property owner is Charles Street Realty Trust 2020, Roseanne J Spinney TRS, 40 Spruce Road, North Reading, MA 01867
3. Petitioner is the proposed tenant, DMS Trinity, LLC doing business as Trinity Naturals, 38 Gould Street, Stoneham, MA 02180
4. At the hearing, petitioner was represented by Attorney Roberto DeMarco from Foster, Walker & DeMarco, 350 Main Street, Malden, MA 02148; Petitioner Mary Susan Blount, 38 Gould Street, Stoneham MA; Denis Pinhone Dos Santos, 144 Marble Street, Stoneham, MA; traffic engineer, Rebecca L. Brown, P.E., Greenman-Pedersen, Inc., 181 Ballardvale Street, Wilmington, MA; and property owner was represented by Ed Spinney, 40 Spruce Road, North Reading, MA
5. The petition filed in Permit Application #CMID-040598-2021 seeks a special permit under Title 12.12.190, Code of the City of Malden (the Ordinance) to allow Marijuana Establishment use of property in the Industrial II zoning district, specifically, a Marijuana Retailer.
6. The following plans and information were submitted in support of the petition:
   a) Existing site plan, "Plan of Land No. 36 Charles St. Malden, MA Owned by Rosanne J. Spinney, Trustee the Charles Street Realty Trust 2020," dated June 10, 2021, prepared by John J. Russell, P.L.S., Malden, MA.
   b) Proposed site plan, "Plan of Land No. 36 Charles St. Malden, MA Owned by Rosanne J. Spinney, Trustee the Charles Street Realty Trust 2020," dated June 10, 2021, revised February 7, 2022, prepared by John J. Russell, P.LS., Malden, MA.
   c) Set of plans/architectural drawings, "Project: New Dispensary at 36 Charles Street, Malden, MA 02148 Schematic Design Submission," dated February 18, 2022, prepared by Francesco Garofalo, Reg. Architect, Garofalo Design Associates, Inc., Wakefield, MA that contain a Proposed Architectural Site Plan, Existing First Floor Plan and Proposed First Floor Plan, Existing & Proposed Basement Floor Plan, Existing & Proposed Second Floor Plan, Existing Front Elevation, Existing Right Elevation, Proposed Front Elevation and Proposed Right Elevation.
   d) Color renderings, untitled, undated, prepared by SLS Design, Las Vegas, NV that depict the building façade from Charles Street, northwest and west; parking outside and inside (view from above); "Version #2 36 Charles Street Floor Plan;" partial cross sections (from south, from east); and "Security System Layout."
   e) "Proposal," Estimate No. 91, dated November 18, 2021, prepared by Abreu Landscaping, Melrose, MA.

f) "Service Agreement Non-hazardous Waste and/or Recyclable Material," undated, by JRM, Peabody, MA.
g) "Driveway Agreement," dated September 10, 2021, by and between Roseanne J. Spinney and Edson W. Spinney Jr/owner of 36 Charles Street and Reily Foods Company (FKA, New England Tea and Coffee company LCC)/owner of 100 Charles Street.
h) Memorandum, "Trinity Naturals Marijuana Dispensary #36 Charles Street-Malden, Massachusetts, Traffic Impact Assessment," dated November 15, 2021, prepared by Rebecca L. Brown, P.E., Greenman-Pedersen, Inc., Wilmington, MA (with corrected page 4-revised submitted on February 9, 2022, with same date).
i) Memorandum, "Trinity Naturals Marijuana Dispensary #36 Charles Street-Malden, Massachusetts, Response to Traffic Peer Review Comments," dated February 25, 2022, prepared by Rebecca L. Brown, P.E., Greenman-Pedersen, Inc., Wilmington, MA.

7. The City of Malden Cannabis Licensing and Enforcement Commission approved the petitioner to move forward with this special permit process.
8. The Malden Planning Board provided the City Council with an advisory report and recommendations, dated March 9, 2022, pursuant to §12.32.030.B.2 of the Ordinance.
9. The City's peer review of petitioner's initial traffic impact information is contained in correspondence dated February 9, 2022 from Kenneth Petraglia, P.E.,P.T.O.E., however, does not include a peer review of petitioner's response to peer review comments.
10. The public hearing complied with the notice requirements of §12.32.020(K) of the Ordinance and Massachusetts General Laws, Chapter 40A, 11.

FINDINGS of FACT (Case #202-22).

The Malden City Council finds the following facts:

1. The subject property is a parcel with a lot area of 11,255 square feet and is the site of a two-story building containing approximately 13,024 square feet, comprised of 6,399 square feet on the first floor, 3,318 square feet on the second floor and 3,307 square feet in the basement, as per plans submitted by petitioner.
2. Petitioner is the proposed tenant and is authorized by the property owner to file the petition.
3. At the public hearing, petitioner stated it has modified the petition and original proposal to occupy the entire building for marijuana retailer use; and as shown on the most recent revised version of plans, petitioner states that 9,018 square feet, or 69%, of the building will remain as vacant space that currently has no proposed use; this space is labeled, "storage," on the original plans; this space is located on the 1st, 2nd and basement floors; and this space may be utilized in the future for marijuana micro-grow space to service the dispensary on-site, which use is classified as Marijuana Cultivator, is not part of the current proposal, and for which no license application or special permit petition has been filed.
4. The proposal consists of renovating and reconfiguring the interior of the building on the first floor to a retail space open to the public, that is 1,794 square feet in size; an entry/exit control center, 117 square feet; security room/office, 134 square feet; office, 124 square feet; vault, 42 square feet; common areas with foyer, elevator lobby, corridors and restrooms, 349 square feet; and a combined delivery area/parking area with trash storage that is 1,446 square feet in size.
5. The proposal includes renovating the exterior of the building, with most proposed exterior work on western/right side of building (new entry doors, two in same locations, one in location of existing garage door at loading dock; roof canopies over doors and ramp; concrete access ramp; two concrete stairs, one in existing location of metal stairs, one in new door location; insulated metal panels to cover concrete block façade; new aluminum windows, to replace smaller windows; new garage door in same location, to replace existing door); and also cleaning brick face, selective

repointing mortar, refurbishing window assemblies, on western and northern/front side of the building.

6. The public entrance will be on the western side of the building, accessed through the parking lot, and the employee/staff entrance will be on the northern side of the building, on Charles Street.
7. The property is located in the Industrial II zoning district.
8. The property is currently used for a motor vehicle repair shop, an industrial use allowed by right in this district, per §12.12.030 of the Ordinance.
9. The proposed marijuana retailer use is a business use allowed by special permit in this district, per §12.12.030 of the Ordinance.
10. The proposed marijuana retailer will be the principal use of the property, as required by §12.12.190.E of the Ordinance.
11. The direct abutter to the west is a manufacturing business, New England Coffee & Tea; to the south, a motor vehicle repair shop; to the south, the abandoned railroad right-of-way used as the public multimodal recreational trail, Northern Strand community Trail/Bike to the Sea Path; to the north, on the other side of Charles Street, is an office building under construction and general offices.
12. Surrounding land uses are businesses to the north and west, and residential to the east and to the south, on the other side of the railroad right-of-way.
13. The proposal use is not in conflict with surrounding land uses.
14. The property grossly violates current dimensional controls for lot area, front yard setback, one side yard setback and building coverage, and is considered preexisting nonconforming, per §§12.16.010 and 12.28 010.A of the Ordinance.
15. The proposal eliminates the existing lot area violation, maintains the other existing violations and creates no new violations or nonconformities, per §12.16.010 of the Ordinance.
16. If the entire building is occupied for the proposed marijuana retailer use, fifty-two on-site parking spaces are required, per §12.20.010 of the Ordinance.
17. Petitioner has modified its proposal and intends to occupy only 4,006 square feet of the first floor for marijuana retailer use, as per the plans submitted, and the modified proposal requires sixteen on-site parking spaces, per §12.20.010 of the Ordinance.
18. Under the proposal, eight parking spaces will be provided on-site, in the exterior parking lot on the subject property, configured as head-on spaces, located along the western side of the building.
19. Under the proposal, four parking spaces are proposed inside the building, located in the proposed loading and delivery area, which is not allowed by the Ordinance.
20. Petitioner intends to use the indoor parking spaces for its employees, only during business hours, when deliveries are not occurring.
21. Petitioner proposes offsite parking on the abutting property, 100 Charles Street, as depicted on the site plan: one space, located in part on the abutting property and in part on the subject property; and eleven spaces located entirely on the abutting property, in an area labeled, "Utility Easement;" the subject property owner appears to have rights to use land on 100 Charles Street for "temporary parking along the unused MBTA border area," per a Driveway Agreement, which provides use of this parking may be terminated by 100 Charles Street for no specific reason/cause, and thus renders petitioner's long-term, continued use of this parking unreliable.
22. At the public hearing, petitioner stated it is unable at this time to secure a different agreement for the proposed offsite parking on the abutting property at 100 Charles Street.
23. At the public hearing, petitioner agreed to provide five offsite parking spaces.
24. The required bicycle parking for four is proposed in the loading and delivery area inside the building and would be inaccessible to customers.
25. One loading space/bay is required, per §12.20.030.E of the Ordinance.

26. Under the proposal, there will be one loading bay/space at the southwestern corner of the building, with access via a garage door.
27. Petitioner agrees to use the inside parking only during business hours so as to not impede use of the loading area.
28. As modified by conditions of the special permit, the violations of parking requirements will not be more detrimental to the neighborhood.
29. All vehicular access/egress to the site, parking and loading area is via an existing curb-cut/driveway on Charles Street located on the abutting property, 100 Charles Street, which the subject property owner appears to have the rights to use per the Driveway Agreement.
30. Access to the site from the abutting bike path is not proposed.
31. The proposed marijuana establishment is located in a permanent building, as required by §12.12.190.C of the Ordinance.
32. The proposed marijuana establishment is not located inside a building containing residential units, in accordance with §12.12.190.D of the Ordinance.
33. The proposal complies with all buffer zones required by §12.12.190.F of the Ordinance, as determined by Nelson Miller, Building Commissioner.
34. Petitioner's business will have 40 employees and according to petitioner, 60% will be Malden residents.
35. Petitoner's proposed hours of operation are 9 am to 9 pm.
36. Petitioner intends to have a police detail for the first 30 days after opening for traffic purposes.
37. Petitioner agrees to conduct a traffic study six months after the business opens, and mitigation may be necessary.
38. As modified by the proposed conditions of the special permit, the traffic and traffic patterns generated by the proposal will not adversely impact any of the surrounding streets or create a traffic or safety hazard.
39. The proposal will not generate any noise, odor, fumes, vibration, heat or other conditions that may be noxious or cause a nuisance to the community, danger to public health, or impair public comfort and convenience.
40. Petitioner will enter into a community host agreement with the City of Malden.
41. The City Councillor who represents the ward where the business will operate supports the proposal.
42. Several members of the public are in favor of the proposal.
43. One abutting residence and one abutting business are opposed to the proposal.
44. The Planning Board recommends unanimously (all nine members) that the petition be denied because of the severely gross parking deficiency.
45. The Planning Board also recommends conditions to any special permit that may be granted.
46. All special permits shall be subject to those conditions stated in §12.12.190.H of the Ordinance.
47. As modified by the proposed conditions of the special permit, the proposal will not be more detrimental to the neighborhood.
48. As modified by the proposed conditions of the special permit, the proposal is in the interest of the common good.
49. As modified by the proposed conditions the special permit, the proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.
50. Petitioner agrees to all proposed conditions of the special permit.

<u>DECISION (Case #202-22).</u>

On April 26, 2022, the City Council granted a special permit subject to the following twenty (20) conditions:

1. Peer review petitioner's Response to Traffic Peer Review Comments dated February 25, 2022, and implement any recommended mitigation.
2. This special permit authorizes marijuana retailer use of only 4,006 SF of the first floor, as per plans, and specifically: 1,794 SF for retail space, 1,446 SF for delivery area and indoor trash storage, and the remainder for accessory offices and common areas. All other areas of the building, labeled, "Storage," totaling 9,018 SF, shall remain vacant and shall be used for no purpose whatsoever, including storage by the marijuana retailer, and any use or occupancy shall require an amendment to this special permit.
3. The loading and delivery area may be used for parking during retail hours.
4. Install bicycle parking onsite for four bicycles, accessible to customers and employees.
5. Repair or replace sidewalks, driveways and perform necessary incidental work, adjacent to the property, to the satisfaction of DPW Director.
6. Implement Transportation Demand Measures regarding rideshare and parking attendant.
7. All development shall be as per plans, including landscaping of the northwest portion of the lot, except as modified by these conditions.
8. The special permit is non-transferable and non-assignable.
9. Design and implement a Security Plan approved by the Malden Police Chief, which shall include, without limitation: all security measures for the site and the transportation of Marijuana and Marijuana Products to and from off-site premises to ensure the safety of employees and the public and to protect the premises property from theft or other criminal activity; a detailed explanation of payment method, if applicable, acceptable at such establishment and the protection and security of such payments and, if applicable, cash on site; and the presence of a security guard on site at all hours of operation.
10. Consumption of Marijuana and/or Marijuana Products is prohibited at or within 500 feet.
11. Smoking or burning of Marijuana and/or Marijuana Products is prohibited on the premises.
12. Marijuana in any form, including plants, and Marijuana Products shall not be visible from outside of the building.
13. Any outside storage of any kind is prohibited.
14. Any outside display of any kind is prohibited.
15. Incorporate odor control technology and provisions and ensure that emissions do not violate M.G.L. c.111 § 31C, including but not limited to those specified for odors.
16. Prior to issuance of any building permit or occupancy permit, submit copies of the following licenses and approvals: a) A valid license issued by the Massachusetts Cannabis Control Commission, as defined herein this Ordinance; b) A fully executed Community Host Agreement with the City of Malden, as defined herein this Ordinance; c). Any required license and/or approvals issued by the Malden License Board; and d) Any required license and/or approvals issued by the Malden Board of Health.
17. Mitigation based on preliminary peer review and after the six-month traffic study is conducted.
18. The Petitioner shall work with the City and the abutting property owners to connect the Spot Pond Greenway Project to the bike path.
19. Provide five (5) off-site parking spaces.
20. The hours of retail operation shall be 9:00 A.M. to 9:00 P.M.

<u>RECORD of VOTES (Case #202-22).</u>

Councillor Murphy made a motion to amend condition 3 recommended by the Planning Board so as to allow the loading and delivery area to be used for parking during retail hours, the motion was seconded by Councillor Linehan. The following voice vote was taken: Colon-Hayes (y), Condon (y), Crowe (y),

Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 11-0.

Councillor Winslow made a motion that there be mitigation based on the preliminary peer review and the traffic study to be done after the business is open six months, the motion was seconded by Councillor Simonelli. The following voice vote was taken: Colon-Hayes (y), Condon (n), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 10-1.

Councillor Winslow made a motion that the Petitioner work with the City and the abutting property owners to connect the potential Spot Pond Greenway Project to the bike path, the motion was seconded by Councillor Linehan. The following voice vote: Colon-Hayes (y), Condon (n), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (n), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 9-2.

Councillor Murphy made a motion to require all sixteen conditions recommended by the Planning Board, with #3 amended, Councillor Crowe seconded the motion. The following voice vote was taken: Colon-Hayes (y), Condon (n), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 10-1.

Councillor Crowe made a motion that five parking spaces off site be required, seconded by Councillor Murphy. The following voice vote was taken: Colon-Hayes (y), Condon (y), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 11-0.

Councillor Crowe made a motion that the hours of operation be 9:00 A.M. to 9:00 P.M., the motion was seconded by Councillor Simonelli. The following voice vote was taken: Colon-Hayes (y), Condon (y), Crowe (y), Linehan (y), McDonald (n), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow (y), Spadafora (y). The motion passed 10-1.

Councillor Crowe moved to grant the special permit with those sixteen conditions recommended by the Planning Board, with #3 amended and four additional conditions proposed by the City Council, the motion was seconded by Councillor Simonelli. The following roll call vote was taken: Colon-Hayes (y), Condon (n), Crowe (y), Linehan (y), McDonald (y), Murphy (y), O'Malley (y), Sica (y), Simonelli (y), Winslow m(y), Spadafora (y). The motion passed 10-1.

I, Gregory Lucey, City Clerk of the City of Malden, hereby certify that the above is a true copy of the decision of the Malden City Council.

By: _____
Gregory Lucey, City Clerk