

Erik Gath

Owner/Operator, Misty Mountain Shop — 323 Commercial Street, Malden, MA

To: The Malden City Council

Re: Petition to Amend the Special Permit at 36 Charles Street (DMS Trinity, LLC / Beach House Cannabis, LLC) — Public Hearing, June 23, 2026

Dear Council,

My name is Erik Gath, and I own and operate Misty Mountain Shop at 323 Commercial Street, one of Malden's licensed cannabis retailers.

My attorney, Blake Mensing, has submitted a detailed legal memorandum setting out why this petition must be denied as a matter of law, and I will not repeat those arguments here. This statement is my firsthand account — of the process I went through, the record I have reviewed, and what I believe this petition is actually asking you to undo.

The process vets people, not just locations.

When I applied for my license, the CLEC did not simply approve a site. It vetted me. My application ran over 600 pages — a business plan, standard operating procedures, the resumes of my operations team, and financials proving I could actually build and operate this business in a reasonable timeline and in compliance with state law. The CLEC weighs an applicant's experience, financial strength, management, investor backgrounds, community ties, and geographic diversity, against a hard cap on the number of licenses. That competitive vetting of specific applicants is the entire foundation of how a cannabis license is earned in Malden.

What the City approved is not what stands before you Tuesday night.

DMS Trinity went through that same vetting, and they earned their place on the strength of who they were. The City was told this was a woman-owned business led by Mary Susan Blout, with minority and LGBTQ members and a survivor of the Boston Marathon bombing. In their filings and at their community meeting they emphasized their local, minority ownership; they committed \$800,000 of their own funds; and they made commitments to hiring, scholarships, and supporting addiction services. That is the applicant the City advanced and approved.

That is not what is before you Tuesday night. The Cannabis Control Commission provisional license issued in December 2025 lists Denis Pinhone Dos Santos as 90.5% owner, with no one else named. And the petition now seeks to hand the entire permit over to Beach House Cannabis — a new entity whose managers, per the Secretary of the Commonwealth's records, are Paul Ferazzi and Casey Baker, backed by financial partners who have not been disclosed and whom the CLEC has never vetted. The local ownership, the equity basis, the specific people who earned this — they are gone, and none of it transfers with the assets.

How we arrived here.

The record tells the story:

1. 4/26/2022 — The City Council granted the special permit (Case 202-22), over the Planning Board's unanimous (9–0) recommendation of denial for a severely gross parking deficiency.
2. 8/9/2022 — The original Host Community Agreement was signed. (As Attorney Mensing's memorandum details, this HCA was later replaced by a 2025 HCA between the City and DMS Trinity, and Beach House Cannabis has never executed any HCA with the City.)
3. 3/8/2023 — At a CLEC meeting, it was noted that DMS Trinity had until 4/26/2023 to exercise the permit or return to the Council for a new one, as no building permit had been filed. Mr. DiMarco cited construction-cost delays and "the issue of wanting to change the name to another entity." *The intent to transfer is not new.*
4. 6/6/2023 — The Council granted a one-year extension (Case 233-23).
5. 2/27/2024 — At a CLEC meeting, Mr. Miller and Mr. Hogan discussed limiting extensions and noted DMS Trinity would expire on 6/6/2024.
6. 3/19/2024 — Mr. DiMarco told the CLEC that DMS Trinity had opened in Chelsea and now had "proof of concept," and that they were bringing on a new financier for Malden.
7. 5/8/2024 — A building permit issued. This is a commercial occupancy well over 35,000 cubic feet, so under M.G.L. c. 143, § 54A and 780 CMR 107.6 it required construction control — a registered design professional in responsible charge, sealed construction documents drawn to the commercial building code, and construction control affidavits filed with the Building Department. Instead, the as-built and life-safety/egress plans in the file are drawn to the International Residential Code, which governs one- and two-family dwellings, and were stamped by a civil engineer; I am not aware of any construction control affidavits in the file. As a licensed engineer, I respectfully ask the Building Commissioner to verify whether proper construction control was provided for a building of this size and use.
8. 5/14/2025 — The CLEC noted the buildout was complete.
9. 12/13/2025 — The CCC granted a provisional license to Denis Pinhone Dos Santos as 90.5% owner.
10. 5/8/2026 — DMS Trinity applied to amend the permit to change the name to Beach House Cannabis. The City's own Building Commissioner and Zoning Enforcement Officer, Nelson Miller, denied that application — because the special permit is non-transferable. The City has already answered the question now before you.
11. Having been denied, the petitioner then filed the petition before you Tuesday night: an application to amend the permit to delete the non-transferable condition itself, so the transfer can proceed.

The City has already said no — and is being asked to reverse itself by deleting its own rule.

That last sequence is the heart of it. DMS Trinity asked to transfer the permit to Beach House; the Building Commissioner denied it because the permit is non-transferable. So the petitioner

has come back asking you to delete the very condition that blocked the transfer — to remove the one rule that stands in the way, so that the thing the rule prevents can happen. And that condition is not discretionary: the ordinance provides that, *“in all cases, any special permit granted hereunder shall be subject to”* the condition that it is non-transferable and non-assignable. It is mandatory, and it is not the Council’s to waive.

This is not a Benevolent loophole.

I expect the petitioner will point to the Benevolent Botanicals decision as having opened a door. It did not. The Land Court struck the zoning section, 12.12.190, in its entirety — but the reason was its buffer zones being too restrictive, not anything about who may hold a license. The court did not touch 6.08.070, the licensing ordinance that creates the CLEC and governs who qualifies; that framework remains fully in effect. As Attorney Mensing’s memorandum explains, the CLEC’s competitive applicant-vetting authority is a separate municipal licensing function the decision did not disturb. The right response to a struck zoning section is for this Council to revise it properly, as the Rules and Ordinance Committee is already doing — not to rush an unvetted transfer through an amendment while the new rules are still being written. The CLEC itself does not take this matter up until the morning after this hearing.

There may be nothing here to transfer.

Finally, as Attorney Mensing’s memorandum sets out in detail, under G.L. c. 40A, § 11 and the Council’s own special-permit rules, a special permit — and any extension, modification, or renewal — does not take effect until the certified decision is recorded at the Registry of Deeds. A search of the Middlesex South Registry of Deeds, under the owner of record (Charles Street Realty Trust 2020 / Roseanne J. Spinney) and parcel ID 062-239-910, reflects that none of the three decisions for 36 Charles Street — Case 202-22, Case 233-23, or Case 77-25 — was ever recorded. None ever took effect. There is, on this record, no operative special permit before you to amend, reissue, or transfer.

The fair answer.

If Beach House Cannabis wants to operate a dispensary in Malden, they should do exactly what DMS Trinity and the rest of us did: file an application with the CLEC, complete the competitive interview process, earn a special permit under their own name, and execute their own Host Community Agreement with the City. That process applied to every one of us. It should apply to them.

For these reasons, and for the reasons set out in Attorney Mensing’s memorandum, I respectfully ask the Council to deny this petition.

Thank you for your time and consideration.

Respectfully,

Erik Gath

Owner/Operator, Misty Mountain Shop
323 Commercial Street, Malden, MA