



CITY of MALDEN CITY COUNCIL
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 233-23

LOCATION of SUBJECT PROPERTY 36 Charles Street Malden, MA

NAME of PETITIONER DMS Trinity, LLC

NAME of OWNER Charles Street Realty Trust 2020

DATE of PUBLIC HEARING June 6, 2023

DATE of DECISION June 6, 2023

DATE of FILING DECISION with CITY CLERK June 20, 2023

DATE of NOTIFICATION to BUILDING INSPECTOR June 20, 2023

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT July 10, 2023

[Any appeal must be made pursuant to M.G.L. c. 40A, §17 and filed within 20 days after date this Notice is filed with City Clerk.]

PROCEDURAL HISTORY (Case 233-23):

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 02180, Denis Pinhone Dos Santos, 144 Marble Street, Stoneham MA 02180, and Timothy Halpin, 39 Off Cemetery Road, Provincetown MA 02657.
5. The petition filed in Permit Application # CMID-040598-2021 seeks to amend the special permit granted in Case 202-22 under Title 12.12.190 of the Code of the City of Malden (MCC) to allow Marijuana Establishment use of property in the Industrial II zoning district, specifically, a Marijuana Retailer.
6. A Special Permit for the project was granted in Case 202-22 on April 26, 2022.
7. The Special Permit granted in Case 202-22 authorizes marijuana retailer use of only 4,006 square feet (SF) of the first floor, as per plans, and specifically: 1,794 square feet for retail space, 1,446 square feet for delivery area and indoor trash storage, and the remainder for accessory offices and common areas.
8. The public hearing complied with the statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11 and Title 12.32.020K of the MCC.
9. No new plans have been filed with the petition for extension of expiration date and there are no changes proposed to the plans approved with Special Permit granted in Case 202-22.

FINDINGS of FACT (Case 233-23):

The Malden City Council finds the following facts:

1. All facts found in the Special Permit granted in Case 202-22, except as modified herein.
2. The proposal is to extend the expiration date of the special permit granted in Case 202-22.
3. The rights authorized under a Special Permit will lapse one year from the date of granting, if substantial construction or substantial use has not sooner commenced, per 12.32.030B7 of the MCC, or unless a later expiration date is specified by Special Permit.
4. The Special Permit granted with Case 202-22 did not specify a later expiration date.
5. The current petition to extend the Special Permit was filed prior to the expiration date of the Special Permit granted to Case 202-22, and according to the Building Commissioner, City protocol is to consider the Special Permit as still valid during the application processing stage.
6. The petitioner seeks a nine-month extension to the expiration date of the Special Permit granted in Case 202-22.
7. The Planning Board recommends to the City Council approval of a twelve-month extension of the Special Permit granted in Case 202-22 only provided subject to the twenty (20) conditions as outlined in the original Notice of Decision of Case 202-22, except Conditions 9 and 16, which reflect recently amended requirements of the current ordinance.

8. To date, no application for a building permit has been filed pursuant to the Special Permit granted in Case 202-22.
9. The petition proposes no changes to the project or plans approved with the special permit granted in Case 202-22.
10. The petition does not affect the proposed zoning, dimensional controls, parking requirements or traffic impact of the project, as approved by the Special Permit granted in Case 202-22.
11. As reason for the requested extension, petitioner states that changes in the retail and construction industry and increased costs and delays in the supply chain have caused significant delays to this project.
12. The Ward One City Councilor is in favor of the extension of the Special Permit.
13. There is no public opposition to the extension of the Special Permit.
14. As modified by the proposed conditions of the Special Permit, the extension of the Special Permit is not more detrimental to the neighborhood.
15. The petition is not in conflict with surrounding land uses.
16. 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.
17. As modified by the proposed conditions of the Special Permit, 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, a danger to public health, or impair public comfort and convenience.
18. As modified by the proposed conditions of the Special Permit, the proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.
19. As modified by the proposed conditions of the Special Permit, the extension of the Special Permit is in the interest of the common good.

DECISION (Case 233-23):

On June 6, 2023, pursuant to the foregoing Findings of Fact, the Malden City Council granted a twelve-month extension to the Special Permit granted in Case 202-22 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.

RECORD of VOTES (Case 233-23):

A motion was made by Councillor Crowe, seconded by Councillor Sica, that the Special Permit be extended for a twelve-month period per the Planning Board recommendation instead of the nine months requested by the Petitioner.

Ten were in favor, none opposed, and the motion passed.

The motion carried by the following vote:

Yea: Murphy, McDonald, Simonelli, Sica, Colon-Hayes, Spadafora, Crowe, Linehan, Condon and Winslow

Nay: None

Absent: O'Malley

A motion was made by Councillor Crowe, seconded by Councillor Sica, that the Petition for a twelve-month extension to the Special Permit granted in Case 202-22 be granted.

Ten were in favor, none opposed, and the motion passed.

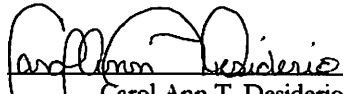
The motion carried by the following vote:

Yea: Murphy, McDonald, Simonelli, Sica, Colon-Hayes, Spadafora, Crowe, Linehan, Condon and Winslow

Nay: None

Absent: O'Malley

I, Carol Ann T. Desiderio, City Clerk for the City of Malden, hereby certify that the above is a true copy of the decision of the Malden City Council.

By: 
Carol Ann T. Desiderio, City Clerk