

PLANNING BOARD REPORT & RECOMMENDATION

To: Malden City Council
From: Malden Planning Board
Date: December 11, 2024
Subject: **36 Charles Street** (Parcel ID 062 239 910)
Permit Application # CMID-040598-2021/Petition to Amend Special Permit (Granted in Case #202-22, Extended by Case #233-23)/Marijuana Establishment: Marijuana Retailer
Title 12.12.190, Code of City of Malden (MCC) (*All section references herein*)

PROCEDURAL: The Planning Board may submit an advisory report and recommendation re: this petition to the special permit granting authority, the City Council (§12.32.030.B.2).

- The proposal was approved by the City's Cannabis Licensing and Enforcement Commission (CLEC) to proceed to the zoning process.
- On March 9, 2022, the Planning Board made an advisory recommendation to the City Council that the petition be denied; the Board also recommended conditions to any special permit that might be granted.
- On April 26, 2022, the City Council granted a special permit to allow use of the property for a marijuana retailer, subject to 20 conditions (Case #202-22)
- On August 9, 2022, the City and petitioner executed a Host Community Agreement.
- Petitioner requested a 9-month extension of the expiration date of the special permit in Case #202-22.
- On April 12, 2023, the Planning Board made an advisory recommendation to the City Council that the request for extension be granted for 12 months, subject to 20 conditions.
- On June 6, 2023, the City Council granted a 12-month extension of the special permit in Case #202-22, subject to 20 conditions (attached decision Case #233-23).
- On May 8, 2024, the City issued a building permit for the approved project (see *Note 1*).
- Petitioner applied for a license from the state Cannabis Control Commission (CCC).
- After CCC issues a license, CLEC may issue a local license.

PETITION: Petitioner is the same petitioner as for the special permit petitions approved in Cases #202-22 and #233-23, who is the proposed tenant, doing business as Trinity Naturals.

The petition seeks to amend the special permit granted in Case #233-23 and specifically, to revise the approved floor plan to increase the size of the premises by approximately 1,627 SF on the first floor of the building by:

1. expansion into 2,393 SF area (eastern portion of the building).
2. elimination of approximately 766 SF area (northwestern corner of building).

Layout of approved project and revised proposal (all areas located on first floor of the existing building):

<i>Approved Use</i>	<i>Approved area (SF)</i>	<i>Proposed new use</i>	<i>Proposed area (SF)</i>
Vault Office Security room/office Entry/exit control room Common areas-hallway, elevator, foyer	42 SF 124 125 108 367	No longer part of project premises (labeled, "Adjacent office space")	766 SF
Vacant space	2,393	Vault Five (5) offices IT Room Common areas	1,013 SF 723 (196,144,192,86,105) 79 404 <i>(Total 2,219)</i>
Retail space	1,794	Retail space Security room Entrance area	1,676 57 123

The petition requires modification of this condition of the special permit (Condition 2, SP #233-23):

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.

***Note 1:** The special permits granted in Cases #202-22 and #233-23 are subject to the condition that all development shall be as per plans (Condition 7); however, petitioner began to build-out the property using a floor plan layout that expands and differs from the approved plan.*

The following plans and information were submitted in support of the petition:

1. Set of plans, "Paul Ferazzi (New Dispensary) 36 Charles Street, Malden, MA 02148, Revised Plans 7/17/2024," dated October 24, 2024, stamped by Marcos A. Devers, P.E., labeled "Drawings Provided by: Rod Rivera, C/S & Designers (781 389-2901)," Rod's Home Improvement and Design, that include:
 - a) Architectural Site Plan (Sheet A-3)
 - b) Elevations (Sheet A-4)
 - c) Existing As Built Plans and Calculation (Sheet A-5)
 - d) Evacuation Plan (Sheet A-6)
2. Email dated December 10, 2024 from Roberto DiMarco, petitioner's attorney, to City of Malden (Romero, Miller) with info. re: floor plan changes, increased vault size, number of employees, additional parking.

ZONING: The petition does not affect the proposal's compliance with use regulations.

DIMENSIONAL CONTROLS: The petition does not change existing violations of dimensional controls.

PARKING & LOADING REQUIREMENTS:

The approved use of 4,006 SF of the building for marijuana retailer requires sixteen (16) spaces (§12.20.010) and one loading space (§12.20.030). Eight parking spaces are provided on-site in the exterior parking area; two to four parking spaces, in the garage interior of the building, may be used when area not in use for loading and deliveries; and the special permit requires five parking spaces be provided offsite (condition 19, SP#233-23).

The proposed expansion (approximately 1,627 SF) requires seven (7) parking spaces, and the proposal exacerbates the existing parking violation from a 50% deficiency (8 spaces) to a 65% deficiency (15 spaces).

***Note 2:** Approved plans depict four spaces inside the building; revised plans depict only two spaces.*

***Note 3:** Use of the entire building (13,204 SF gross floor area) for marijuana retailer requires 52 on-site parking spaces (§12.20.010). In addition to parking required for use of portions of the building for marijuana retailer, use of the vacant portion(s) of the building for any use will require on-site parking (§12.20.010).*

For the Council to allow increased violations of parking requirements, it must find that the increase will not be more detrimental to the neighborhood (§12.12.190.B).

FINDINGS REQUIRED to GRANT SPECIAL PERMIT (§12.12.190.G): the City Council must find:

- 1) The proposal will not be more detrimental to the neighborhood.
- 2) The proposal is not in conflict with surrounding land uses.
- 3) The proposal is in the interest of the common good.
- 4) 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.
- 5) 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.
- 6) The proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.

PLANNING BOARD RECOMMENDATION: The Planning Board recommends to the City Council approval of the petition to amend the special permit granted in Case #233-23, only provided 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 5,524 SF of the first floor, as per plans, and specifically: 1,676 SF for retail space, 1,455 SF for loading, delivery area and indoor trash storage, and the remainder, approximately 2,393 SF, for vault, accessory offices and common areas. All other areas of the building 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 and Malden Cannabis Licensing and Enforcement Commission.
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 final 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 Cannabis Licensing and Enforcement Commission; 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 twelve (12) off-site parking spaces.
20. The hours of retail operation shall be 9:00 A.M. to 9:00 P.M.

Note 4: Conditions 9 and 16 contain existing requirements of the current ordinance (§12.12.190, as amended after the special permit was granted in Case #202-22); these revised conditions were previously recommended by the Planning Board, however, inadvertently not included in the special permit granted in Case #233-23.