



CITY of MALDEN CITY COUNCIL
NOTICE of DECISION

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CITY CLERK'S OFFICE
MALDEN, MASS.

CASE NUMBER 77-25

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 February 11, 2025

DATE of DECISION February 11, 2025

DATE of FILING DECISION with CITY CLERK February 25, 2025

DATE of NOTIFICATION to BUILDING INSPECTOR February 25, 2025

FINAL DATE for FILING APPEAL of DECISION with SUPERIOR COURT March 17, 2025

[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 77-25):

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 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, extended in Case 233-23, under Title 12.12.190 of the Code of the City of Malden (MCC), which allows Marijuana Establishment use of property in the Industrial II zoning district, specifically, a Marijuana Retailer, and the proposal is to expand and change the approved floor plan.
6. A Special Permit for the project was granted in Case 202-22 on April 26, 2022, subject to 20 conditions.
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. On June 6, 2023, in Case 233-23 the City Council granted a 12-month extension of the special permit in Case 202-22, subject to 20 conditions.
9. The public hearing complied with the statutory notice requirements of Massachusetts General Laws, Chapter 40A, §11 and Title 12.32.020K of the MCC.
10. The following plans and information were submitted in support of the petition:
 - a. Set of plans, "Paul Ferazzi (New Dispensary) 36 Charles Street, Malden, MA 02148, Revised Plans 7/17/20424," 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 Architectural Site Plan (Sheet A-3), Elevations (Sheet A-4), Existing As Built Plans and Calculation (Sheet A-5), Evacuation Plan (Sheet A-6);
 - b. Email dated December 10, 2024 from Roberto DiMarco, petitioner's attorney, to City of Malden (Romero, Miller) with information regarding floor plan changes, increased vault size, number of employees, additional parking.

FINDINGS of FACT (Case 77-25):

The Malden City Council finds the following facts:

1. All facts found in the Special Permit granted in Case 202-22 and Case 233-23, except as modified herein.
2. 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 square feet on the first floor of the building by:
 - a. expansion into 2,393 square foot area (eastern portion of the building);

- b. elimination of approximately 766 square foot area (northwestern corner of building)
3. 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).
4. On May 8, 2024, the City issued a building permit for the approved project.
5. Petitioner began to build-out the property using a floor plan layout that expands and differs from the approved plan.
6. As reason for the requested amendment, petitioner states that an error was made by the petitioners' contractor, which now requires correction.
7. According to petitioner, the state Cannabis Control Commission recommends a larger vault size and the amended proposal will provide more secure space for product measurements and quality check.
8. The petition does not affect the proposal's compliance with use regulations.
9. The petition does not change existing violations of dimensional controls.
10. The proposed expansion requested in the petition, approximately 1,627 square feet, requires seven parking spaces, and the proposal exacerbates the existing parking violation from a 50% deficiency, or eight spaces, to a 65% deficiency, or fifteen spaces.
11. The Ward One City Councilor is in favor of the amendment of the Special Permit.
12. 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 twenty (20) conditions as outlined in the Planning Board Report and Recommendation dated December 11, 2024.
13. There were two letters of public comment received:
 - a. One business abutter expressed concern regarding the increased parking shortfall created by the amended proposal;
 - b. And one residential member of the public is in favor of tabling the decision and in opposition to the amended proposal until more information is provided.
14. A representative member of the Malden Cannabis Licensing and Enforcement Commission provided information regarding licensing as it relates to ownership interests.
15. On August 9, 2022, the City and petitioner executed a Host Community Agreement.
16. Petitioner intends to continue its ongoing work with the City to connect the Spot Pond Greenway Project to the Northern Strand Community Trail/Bike to the Sea Path.
17. As modified by the proposed conditions of the Special Permit, the amendment of the Special Permit is not more detrimental to the neighborhood.
18. As modified by the proposed conditions of the Special Permit, the increased parking violations will not be more detrimental to the neighborhood.
19. The amended proposal is not in conflict with surrounding land uses.
20. As modified by the proposed conditions of the Special Permit, the traffic and traffic patterns generated by the amended proposal will not adversely impact any of the surrounding streets or create a traffic or safety hazard.
21. As modified by the proposed conditions of the Special Permit, the amended 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.
22. As modified by the proposed conditions of the Special Permit, the amended proposal is not detrimental to the health, safety or welfare of the neighborhood or the city.
23. As modified by the proposed conditions of the Special Permit, the amended proposal is in the interest of the common good.
24. Petitioner consents to all proposed conditions of the Special Permit.

DECISION (Case 77-25):

On February 11, 2025, pursuant to the foregoing Findings of Fact, the Malden City Council amended the Special Permit granted in Cases 202-22, extended by Case 233-23, and granted a new 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 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.

RECORD of VOTES (Case 77-25):

A motion was made by Councillor Crowe, seconded by Councillor Simonelli, that the Petition for an amendment to the Special Permit granted in Case 202-22, extended by Case 233-23 be granted, with the inclusion of the twenty (20) Planning Board recommendations.

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

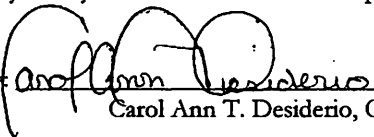
The motion carried by the following vote:

Yea: Colón-Hayes, Condon, Crowe, Linehan, McDonald, O'Malley, Simonelli, Spadafora, Taylor, Winslow

Nay: None

Absent: Sica

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