



City of Cambridge

IN CITY COUNCIL

October 31, 2016

ORDINANCE COMMITTEE MEMBERS

Councillor Dennis J. Carlone, Co-Chair

Councillor Leland Cheung, Co-Chair

Councillor Jan Devereux

Councillor Craig Kelley

Councillor David P. Maher

Councillor Nadeem A. Mazon

Vice Mayor Marc C. McGovern

Councillor Timothy J. Toomey, Jr.

Mayor E. Denise Simmons

The Ordinance Committee, comprised of the entire membership of the City Council, held a public hearing on Thursday, September 22, 2016 beginning at 3:11 P.M. in the Sullivan Chamber.

The purpose of the hearing was to discuss the zoning petition filed by Jane W. Heatley, President of the William Noyes Webster Foundation, Inc. to amend Section 20.700, Medical Marijuana Overlay Districts by extending the district (**ATTACHMENT A**).

Present at the hearing were Councillor Carlone and Councillor Cheung, Co-Chairs of the Committee, Councillor Devereux, Councillor Kelley, Vice Mayor McGovern, Jeff Roberts, Land Use and Zoning Project Planner, Community Development Department, Vali Buland, Assistant City Solicitor and City Clerk Donna P. Lopez.

Also present were Attorney Walter Sullivan, 60 State Street, Boston, Jane Heatley, 46 Stonehedge, Barnstable, Fred Green, 66 Calamint Road, Princeton, Elizabeth G. Dost, 100 Solitude Drive, Taunton, McMillan Gailler, 221A Walnut Avenue, John Hawkinson, 84 Massachusetts Avenue and Nicole Snow.

Councillor Cheung convened the hearing and explained the purpose. He stated that the meeting is being audio and video recorded. He asked that any written comments be submitted to the City Clerk for the record. He outlined that format of the hearing.

The committee heard from the petitioners. Walter Sullivan spoke on behalf of petitioners, Jane Heatley and Fred Green, Head of Cultivation. He explained the request for an extension. He stated that for two years the petitioners have been trying to find a location for the facility. The two existing zones were looked at. He stated that no areas were available in East Cambridge because it is all for the NorthPoint development and the extension of the Green line. Areas in the MMDI were looked at from Concord Lane up to the right side of Smith Place over to Alewife Brook station. There was only one property owned by a developer in Cambridge and was ready to sign a deal but bank would not allow a medical marijuana dispensary in the building because it

is a violation of federal law. The lease was not signed. Another location, 29 Smith Place was found. Mr. Sullivan stated that he would later explain the location of 29 Smith Place.

Jane Heatley, President, William Noyes Webster Foundation, stated that the foundation was issued a provisional license by the Department of Public Health in the first round. The license was for a dispensary in Dennis and a growth facility in Plymouth. She gave a PowerPoint presentation (**ATTACHMENT B**). She stated that the facility is under construction in Dennis and Plymouth and hope to open in the spring of 2017. She stated that it is hoped that a third location will be in Cambridge. She described the executive management team of the company. Ms. Heatley stated that Fred Green is the agricultural specialist. Mr. Sullivan stated that if there are any questions about cultivation Mr. Green is here to answer questions.

Mr. Sullivan explained the reason for looking at 29 Smith Place. He stated that the location meets the intent of the medical marijuana ordinance. The site is off a regional road (off of Concord Avenue) and has access to bus routes. The presentation showed the pathway to get to the building. He stated that the location is 1,000 feet from bus stop and the police substation and Professional Ambulance is located in the building. This facility is 500 feet away from the Fayerweather School, 600 feet away from a gymnastic facility on Fawcett Street and 1,000 feet away from William Maher Park on Concord Avenue. This facility also provides parking as well as public transportation. A shuttle service will run from the facility to the Alewife T station. This location meets the original intent of the ordinance, access to public transportation, provides parking but it is not in the zone. It is across the street from the zone. He requested City Council to approve the petition.

Councillor Devereux asked about the arrangement for parking. Mr. Sullivan stated that the parking is located in front of the Davis building. He stated that the parking lot runs from Adley Road to behind Mt. Auburn Hospital. Valet parking will be provided also. An agreement has been made with Professional Ambulance to utilize all the parking spaces. Mr. Sullivan stated that either Adley or the road behind Mt. Auburn Street will be a throughway per a plan by Community Development.

Councillor Cheung asked if this is a dispensary or for cultivation. Mr. Sullivan responded that this is a dispensary; the cultivation facility is located in Plymouth. Councillor Cheung stated that it would good to have a map that showed the old and new proposed boundary lines. Mr. Sullivan stated that looking at the map the yellow area would extend from the orange lines this is where the petitioner is requested to the extend the MMDI zone. Councillor Devereux asked who drew the yellow line. She noted that the orange line is on Smith Place, but not on the side that the petitioner is requesting. Mr. Sullivan responded that under the zoning ordinance a line is split into the middle street. Councillor Devereux noted that this looks like the yellow line does not included the Davis company parking lot. Mr. Sullivan stated that it was easier to look at the current zoning map and incorporate IB2 into the zone. A sub-zone was taken from Alewife and it was included.

Councillor Cheung asked city staff to come forward.

Mr. Roberts stated that a report was provided on zoning for medical marijuana last month. He informed the committee that the Planning Board's hearing on this petition was held on September 6, 2016 and issued a positive recommendation will be coming to the City Council. He stated that there were no recommended modification to the petition. There was a recommendation to adopt based on that the board felt that the district is appropriate. He added that it is appropriate for the

City Council and the Planning Board to look at additional area in the City where medical marijuana may be allowed under the special permit provisions that are already in place.

Public comment began at 3:29 PM.

Elizabeth Dost, Mass. Patients Advocacy and introduced herself as the clinical director. The location and the expansion of the program are good for the patients and she supported. The location is unique and it provides parking for the patients.

Public comment closed at 3:31 PM.

Councillor Cheung asked when the ballot initiative comes up and for the legalization of marijuana. He believes that there was a regulation that any place designated for medical marijuana is allowed for non-recreational marijuana. Mr. Roberts explained that medical marijuana is regulated by the Department of Public Health and recreational marijuana will be regulated by a different set of rules and his is unaware of any language in the ballot initiative that would link recreational to medical marijuana. He stated that he would have to consult with the Law Department on this.

Councillor Devereux stated that looking at the ballot language and suggested the legal department give a legal opinion on this. She spoke about the language in the ballot ties dispensaries to stores that would sell marijuana products which will become marijuana establishments. She stated that there is language in the ballot initiative that states that the local authority shall not prohibit the placing of marijuana establishment in an area where a medical marijuana treatment center engages. To change this a vote of voters is required. This limits the number of any type of marijuana establishments and it cannot be limited to fewer than the number of dispensaries; this ties the medical and recreational facilities together in this respect. She added that the License Commission needs to look at this because it connects the number of marijuana retailers to the number of licenses issued for the sale of alcoholic beverages on the premises. The number of marijuana retailers cannot be fewer than twenty percent of the number of alcohol retailers. She stated that the City Council needs to be better informed when making decisions for dispensaries which could be constrained by this. She noted that there is a draft ordinance that will make this a city-wide use. She stated that she was unclear with the ballot language if the Planning Board would still have the authority to issue a special permit. She suggested a motion that the Law Department advise the City Council about this.

Assistant City Solicitor Buland stated that she has not seen the ballot initiative language and that it will have to be analyzed by the Law Department.

Nicole Snow, Executive Director, Massachusetts Patient Advocacy Alliance, and a drafter of ballot initiative coming up in November. She added that her organization is neutral on the issue, but advocate for patients and medical marijuana only. The focus is 100% on the implementation of medical marijuana, advocating for patients and safe access. She stated that ballot initiative does involved dispensing facilities and will allow them to cross over into recreational aspect. The regulations will be promulgated in 2018 and do not know how this will happen and whether the ballot initiative will pass. The question today is on zoning for medical marijuana facilities. She stated that the facilities considered today will not be forced to dispense recreational marijuana. She added that as long as the applicant, City and community understands that the focus is on patients it is hoped that the businesses will keep to their mission statement of being a non-profit and move forward to dispense medical marijuana.

Councillor Cheung stated that he thought there was an issue siting a specific address for a medical marijuana dispensary which came up previously with the Sage petition. The Law Department issued a legal opinion that an address could not be listed and that the petition needed to be redone without an address. This current petition lists 29 Smith Place. Mr. Roberts stated that the said petition was seeking to rezone a particular address as a medical marijuana overlay district and the petition expired and later a new petition was filed that defined the district that would be covered by the zoning rather than a street location because the district needs boundaries on all sides.

Councillor Cheung spoke about keeping medical marijuana dispensaries removed from residential areas. The proposed location of the business comports to the guidance but the rest of the IB2 district comes close to the residential area and the IB2 is another issue. He asked if the Planning Board discussed this. Mr. Roberts stated that the Planning Board noted that the petition had signers who lived in the neighborhood. He stated that there was communication between the petitioners and the neighborhood group. This was a concern. There are other medical marijuana districts existing or proposed that are adjacent to residential districts and it is difficult to find commercial districts that are not adjacent to residential areas. He noted that when the original districts were created the reason this site was left out was that it was more distant from transportation service areas. This could be mitigated by shuttle service. There is parking in the area and this was noted by the Planning Board and lead to support of the petition.

Councillor Carlone asked how long the lease arrangement is for the space. Mr. Sullivan stated that the lease is not finalized and the property owner, Trinity Properties, tends not to do long term leases. The lease tend to be for five years with obligation to renew.

Councillor Cheung asked what the outreach process was. Mr. Sullivan stated that they went to Fawcett Street, containing thirty units, and spoke to the manager and there seemed to be no issue. The property manager was unaware that there would be a medical marijuana dispensary next door. He stated that they met with the neighbors in the Cambridge Highlands area and discussed the proposal with the residents who are also the signers on the petition. This is the community that would be most impacted by this. There is a buffer from the neighborhood and the only concern is there is a path on Mooney Street that brings you to open space that leads to the neighborhood. There is no way to get into the neighborhood other than Mooney Street.

Councillor Devereux noted that HRI has plans to build 100 units of housing on Concord Avenue. She asked Mr. Sullivan if they talked with HRI. Mr. Sullivan responded in the affirmative. He stated that this is the reason, the condominium complex and a sewer retention system planned, that the petitioner stayed away from Fawcett Street. He stated that the focus for the dispensary was on Moulton and Wilson Streets and on the right side of Smith Place and ended up looking on the other side of Smith Place after finding only one piece of property. Councillor Cheung asked if there was a neighborhood meeting. Mr. Sullivan further stated that he met with Ann Tennis on the Cambridge Highlands Neighborhood Association and will have a community meeting with the residents moving forward with the special permit. He stated that he was informed by Ms. Tennis that it was not worth having a full community meeting until the City Council adopts the zoning.

Councillor Cheung spoke about the letters of non-opposition. Mr. Sullivan stated that a letter of non-opposition has been received from the City Manager when looking to go to Moulton Street, which fell apart because the bank would not allow the medical marijuana dispensary to be

located here. He added that the Police Commissioner conducted background checks on the personnel.

Councillor Cheung stated that he is supportive of medical marijuana facilities but is concerned that this location is larger. There is no analysis for every point in the district. Mr. Sullivan stated that this is left to the Planning Board to determine whether to issue a special permit. The ordinance was written to give authority to the Planning Board to determine if a special permit should be issued. He further stated that the Planning Board has the authority to determine how many dispensaries that they want in an area. He stated that the City Council was ready to extend the zoning three years ago to include the right side of Mooney Street and to move forward. This petitioner was rejected by the Department of Public Health. Councillor Cheung stated that he voted for the ordinance to give the Planning Board discretion in the areas decided by the City Council. He explained that he still retains the decision making ability to the areas to give them the discretion. He noted that he wants to know the proximity to schools before he decides to give the discretion of the zoning. Mr. Sullivan responded that this site is 500 feet away from any protected business. Councillor Cheung stated that previously this was seen from the entire boundaries of the zone. He stated that there was an overlay map that showed the locations of the schools. Mr. Sullivan stated that the overlay map was included with the Healthy Farms petition provided by the Community Development Department. Councillor Cheung stated that with prior petitions there were letters of support from surrounding neighborhood associations, community meetings were held by the petitioners to ensure that the residents know that a medical marijuana dispensary is coming. He wanted to ensure that this outreach is done in the adjacent neighborhoods by the petitioners so all know that a medical marijuana dispensary is coming to their neighborhood.

Vice Mayor McGovern questioned the notification process Mr. Sullivan stated that the Planning Board publishes the notice in the newspaper and the abutters are notified and the same is done for the City Council hearing. Councillor Devereux asked who the abutters were in this case. Mr. Sullivan responded that they are all businesses. Vice Mayor McGovern stated that there is a legal requirement versus a moral requirement. He wanted the petitioners to commit to do more. Mr. Sullivan stated that he was advised by Ms. Tennis to wait to do this at the special permit process. This process is required by the Planning Board prior to filing the special permit. Vice Mayor McGovern commented that there are other medical marijuana dispensaries outside of the approved zones and favorable action was taken by the City Council and now this is within the zones and meets the requirements established by the City Council. He stated that this would fit in the proposed city-wide zoning filed recently, the current zone and the current requirements. He did not know why this is not moved forward.

Councillor Cheung stated that this zone goes up to the backyards of residential homes. The way that the lines were drawn is his concern. Mr. Sullivan commented that the original Sage application was considered spot zoning. The petition was rewritten and picked a zone that abuts residential properties and residential properties are located in the zone. He stated that this is a sub-zone within the Alewife Brook Overlay District and is included in the medical marijuana district. The ordinance established covers the issue of being near residential areas. He stated that comparing this to MMD3 this is further away from residential areas and residential areas are located in the MMD3. Councillor Cheung commented that his concern is that other petitioners contacted adjacent neighborhoods affected where this petitioner contacted residents impacted within the zone. Mr. Sullivan stated that he met with residents in apartments on Fawcett Street, and walked the area of Griswold and Loomis Street. The petitioner will go further and will work

with the residents. He spoke about the professional security persons to ensure that the location is safe.

Councillor Carlone stated that there is a rationale to include the whole of IB2. Mr. Sullivan responded in the affirmative and it does not include the Fayerweather School. He stated that the buffer issue can be addressed. He stated that his concern is that the city is in the process of an Envision Plan and this area may be rezoned and may have implications down the road. He asked if the non-profit status would the facility be allowed to sell legal marijuana. Mr. Sullivan stated that anyone who applied for a license prior to October 2015 for a medical marijuana dispensary and has received a provisional license become first in line to receive a retail license. A retail license can be for profit. A dispensary for medical marijuana has to stay a non-profit. Councillor Carlone stated that a recreational marijuana takes on a different character. The input from the Law Department will be important. This location will change in 20 years. Mr. Sullivan in locating a facility in MMD1 the whole plan was looked at for the whole area. This is why Moulton and Wilson Streets was looked at and most likely will stay the same as it is today. Councillor Carlone stated that location wise this does meet the spirit of what the City Council set up previously. He further stated that if the previous proposal was looked at favorably, this should too with the buffer along the residential edge.

Councillor Devereux made the following motion:

ORDERED: That the City Clerk be and hereby is requested to contact the City Manager, in writing, to request that the City Solicitor prepare a legal opinion on Ballot Question # 4 and report back to the City Council on the legality of the marijuana ballot question on its potential impact on how medical marijuana dispensaries are zoned, as it relates to there being shared medical and recreational facilities and whether there is a relationship to the number of dispensaries, recreational stores and liquor stores allowed and how this may impact the number of liquor stores licensed by the City.

The motion carried on a voice vote of five members.

Councillor Kelley suggested pausing on all this until after election.

Councillor Cheung asked about the boundary lines. He wanted petition modified away from the residential area. He did not want to be accused of doing something that the residents did not know about. He wanted more outreach done. He wanted this scaled back and the footprint reduced. He needed to feel more comfortable about this that outreach is being done. He wanted the zoned tightened around the proposed facility.

Councillor Cheung moved that this matter be kept in committee.

The motion carried on a voice vote of four members. Vice Mayor McGovern recorded in the negative on keeping the matter in committee because the petition meets the requirement of the ordinance.

Councillor Cheung thanked all those present for their attendance.

The hearing adjourned at 4:19 PM on motion of Councillor Cheung

For the Committee,

Councillor Dennis J. Carlone, Co-Chair
Councillor Leland Cheung, Co-Chair
Ordinance Committee