



# City of Waltham

COMMONWEALTH OF MASSACHUSETTS

## ZONING BOARD OF APPEALS

### LEGAL NOTICE

DATE FILED: November 24, 2020

THE ZONING BOARD OF APPEALS OF THE CITY OF WALTHAM WILL HOLD A PUBLIC HEARING IN THE GOVERNMENT CENTER, 119 SCHOOL STREET, WALTHAM, MA ON JANUARY 26, 2021 AT 7:00 P.M. ON THE FOLLOWING:

**Case #:** 2020-38. **Petitioner:** Waltham Cannabis, Inc. **Owner:** Full House Realty Trust, Michael Polacco, Trustee. **Nature of Application/ Petition:** Special Permit – Alter non-conforming Structure and Appeal of Determination of Inspector of Buildings. **Subject Matter:** The locus consists of a single parcel of land with an existing commercial building thereon. The Petitioner intends to demolish the back wall of the structure to reduce the size of the building and therefore increase the parking area on the locus. On September 25, 2020, the Inspector of Buildings made certain determination about access to the building and §3.89 of the Zoning Ordinance. The Petitioners appeal that determination. Alternatively, the Petitioner is seeking a variance for a secondary means of access through the residential zone. **Location and Zoning District:** 1254-1256 Main Street; Commercial Zoning District. **Provisions of Zoning Ordinance Involved:** Article III, §3.7222, §3.72241, §3.72251, §3.89, Article VII, §7.31. **Specific Relief Sought:**

- (1) §3.72251 states that existing nonconforming commercial structures may be altered or rehabilitated as a matter of right if said alteration does not exceed the floor area ratio (FAR) of the existing structure. The Petitioners are proposing to demolish a back wall of an existing nonconforming structure and to decrease the floor area of the building. The Petitioner shall then reconstruct, use and maintain a renovated interior of the existing structure. The removing and replacing of the existing exterior wall will decrease the floor area of the structure and also decrease the FAR of the building.
- (2) §3.7222 allows a pre-existing nonconforming structure to be altered in that use to an extent not exceeding 10 % of the ground floor area of the building when a special permit is issued for such alteration. The Petitioners are proposing to remove the rear exterior wall and to reconstruct, use and maintain a renovated interior of the existing structure. The removing and replacing of the existing exterior wall will decrease the floor area of the structure.
- (3) §3.7222 and General Laws, Chapter 40A § 6 allow a pre-existing nonconforming use or structure to be altered when a special permit is issued for such alteration. The Petitioners are proposing to reconstruct, use and maintain a renovated interior of the existing structure and further the removal and replacement of the back wall of the existing building and reducing the floor area of the building. The removing and replacing of the existing exterior wall with a new wall will decrease the floor area of the structure.

- (4) By letter dated September 25, 2020 the Inspector of Buildings has determined that the Petitioners use an existing access to and from the locus lot at 1254-1256 Main Street violates §3.89 of the Zoning Ordinance. It states in pertinent part that where a commercial activity has a clear and legal means of access through a nonresidential zoning district, such use shall not be allowed secondary access through residential zoning districts. The Petitioners appeal the determination of the Inspector of Building as the use is protected under Massachusetts General Laws, Chapter 40A §§ 6 and 7, and further the access is the only direct access the locus has to the street and is therefore a primary access and not secondary.
- (5) Alternatively, to the request at #4, the Petitioner is seeking a variance for a secondary means of access to the locus. By letter dated September 25, 2020 the Inspector of Buildings has determined that the Petitioners use an existing access to and from the locus lot at 1254-1256 Main Street violates §3.89 of the Zoning Ordinance. It states in pertinent part that where a commercial activity has a clear and legal means of access through a nonresidential zoning district, such use shall not be allowed secondary access through residential zoning districts. The locus parcel is situated in two zoning districts, a commercial zone and a residential zone. Here, the Petitioner is seeking a variance to allow for a second means of access and egress for the locus and its commercial activity thereon through a residential zoning district. The Petitioner is proposing the second access to the property through the existing curb cut on Cutting Lane. The Petitioners only other means of access is through a right of way through an adjacent property which is one way only. The proposed secondary means of access on Cutting Lane is pre-existing and has served the existing commercial activity for years.

For further information and plans concerning this case please contact the Zoning Board of Appeals' Office, 119 School Street, Waltham, Massachusetts 02451; Hours: Monday - Friday 8:30-4:30.

NOTE: if a Stay-at-home order is in effect at time of hearing the Board may meet remotely through Zoom. Please check city website for updates <https://www.city.waltham.ma.us/>.