

BZA APPLICATION FORM

GENERAL INFORMATION

The undersigned hereby petitions the Board of Zoning Appeal for the following:

Special Permit: _____ Variance: _____ Appeal: ☒

PETITIONER: Sira Naturals, Inc.

PETITIONER'S ADDRESS: 300 Trade Center, Suite 7000, Woburn MA

LOCATION OF PROPERTY: 1001 Massachusetts Avenue, Cambridge MA

TYPE OF OCCUPANCY: RMD ZONING DISTRICT: Business B-2/Medical

REASON FOR PETITION: Marijuana Overlay District 3

<input type="checkbox"/> Additions	<input type="checkbox"/> New Structure
<input type="checkbox"/> Change in Use/Occupancy	<input type="checkbox"/> Parking
<input type="checkbox"/> Conversion to Add'l Dwelling Unit's	<input type="checkbox"/> Sign
<input type="checkbox"/> Dormer	<input type="checkbox"/> Subdivision
<input checked="" type="checkbox"/> Other: <u>Appeal</u>	

DESCRIPTION OF PETITIONER'S PROPOSAL:

Appeal of Commissioner's September 17, 2019
Cease and Desist Order.

Please see letter filed on October 15, 2019 for full statement.
(Attached here)

SECTIONS OF ZONING ORDINANCE CITED:

Article 10 Section 21

Article 11 Section 802.3

Article _____ Section _____

Applicants for a Variance must complete Pages 1-5

Applicants for a Special Permit must complete Pages 1-4 and 6

Applicants for an Appeal to the BZA of a Zoning determination by the Inspectional Services Department must attach a statement concerning the reasons for the appeal

Original Signature(s): [Signature]
(Petitioner(s)/Owner)

MICHAEL DUNDAS
(Print Name)

Address: 1001 MASS AVE

CAMBRIDGE, MA 02138

Tel. No.: 617-833-2077

E-Mail Address: mdundas@siranaturals.org

Date: 10/16/2019

**SAUL EWING
ARNSTEIN
& LEHR^{LLP}**

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OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

Joseph D. Lipchitz
Phone: (617) 912-0916
Fax: (857) 400-3776
joseph.lipchitz@saul.com
www.saul.com

October 15, 2019

VIA HAND DELIVERY

Cambridge Board of Zoning Appeal
c/o City Clerk's Office – City of Cambridge
795 Massachusetts Ave
Cambridge, MA 02139

Re: Sira Naturals, Inc. – Appeal of ISD Commissioner's September 17, 2019 Cease
and Desist Order

Dear Sir/Madam:

The undersigned is counsel to Sira Naturals, Inc. ("Sira"). Sira is a Registered Medical Dispensary or "RMD" as defined by the relevant Massachusetts cannabis regulations. Pursuant to G.L. c. 40A, § 8, and Section 10.21 of the Zoning Ordinance of the City of Cambridge, Sira hereby appeals the Commissioner's September 17, 2019 Cease and Desist Order.

On August 17, 2016, Sira was granted a Special Permit by the Planning Board of the City of Cambridge (the "Planning Board") to establish and operate an RMD at 1001 Massachusetts Avenue, Cambridge, Massachusetts. (See August 17, 2016 Planning Board Decision attached hereto at Tab A). Sira has lawfully operated its RMD in accordance with the terms and conditions of its Special Permit until it closed pursuant to the Cease and Desist Order from the Commissioner of the Inspectional Services Department ("ISD") on September 18, 2019. (See September 17, 2019 Cease and Desist Order attached hereto at Tab B).

The Commissioner's September 17 order was issued erroneously and should be declared void and unenforceable. The Commissioner alleged that Sira was (1) in violation of Section 11.802.3 of the Cambridge Zoning Ordinance because its "registration has been transferred to another controlling entity[.]" and (2) in violation of condition 1 of its Special Permit because it "is no longer operating in substantial conformance with the documentation and information it submitted to the Planning Board" as a result of "the change in controlling entity."

Sira is not in violation of its Special Permit or Zoning Ordinance Section 11.802.3. Contrary to the Commissioner's allegations, Sira never transferred its RMD registration to

CITY OF CAMBRIDGE
INSPECTIONAL SERVICES
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131 Dartmouth Street, Suite 501 • Boston, MA 02116 • Phone: (617) 723-3300 • Fax: (617) 723-4151

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A DELAWARE LIMITED LIABILITY PARTNERSHIP

October 15, 2019

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another entity nor is it operating in a manner that is not in substantial conformance with the information it provided to the Planning Board during the application process.

In or about May 2019, Sira underwent a recapitalization that affected its equity structure, but not its operations or operational structure. Prior to the recapitalization, its shareholders were two Massachusetts limited liability companies, Green Partners Investors, LLC and Green Partners Sponsors, LLC. As a result of the recapitalization, Green Partners Investors and Green Partners Sponsors sold their shares to C-SAC Acquisitions, LLC, a Nevada limited liability company. C-SAC is not an RMD. The entity holding the Special Permit and RMD registration continues to be Sira. Under Massachusetts law, even the sale of all of an entity's stock does not constitute a transfer of control of a license or permit. See Seagram Distillers Co. v. Alcoholic Beverages Control Commission, 401 Mass. 713, 719-720 (1988) ("Seagram's argument assumes that a sale of stock in a corporate liquor wholesaler constitutes a transfer of that corporation's license to sell liquor. The short answer to this assumption is that a sale of stock does not effect such a transfer. . . . It is basic tenant that a corporation is a legal entity distinct from its shareholders") (emphasis added).

As required by law, Sira promptly informed the Cannabis Control Commission ("CCC") of its new shareholders and, on May 23, 2019, the CCC approved the new shareholder structure. Sira voluntarily disclosed information concerning the shareholder transaction to the ISD. Sira explained the shareholder change to the ISD by letter dated May 23, 2019. (See May 23, 2019 Letter, attached hereto at Tab C). The City of Cambridge did not respond in any fashion—either by letter, inspection, or otherwise—to Sira's May 23 letter until the ISD's September 17 Cease and Desist Order.

The recapitalization described above is the only change to Sira's business that has occurred since Sira received its Special Permit. Sira remains in the same facility as when the Special Permit was issued. Sira continues to conduct exclusively retail dispensing activities out of the facility. Sira's Executive Management Team remains the same. Sira's Board of Directors also remains the same, with the exception that another individual, Jonathan Sandelman, was added to the Board. Sira has continually operated its RMD at 1001 Massachusetts Avenue in substantial conformance with the Application Documents it submitted to the Planning Board in 2017.

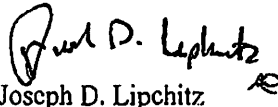
Ultimately, Sira has never transferred or attempted to transfer its Special Permit or RMD registration to another entity. The entity that received the Special Permit and RMD registration, i.e., Sira, is the same entity that has been legally operating under the Special Permit and RMD registration since they were obtained.

Moreover, even assuming *arguendo* that Sira's recapitalization somehow constituted a transfer of the Special Permit to another controlling entity, Section 11.802.3 of the Zoning Ordinance only requires a new special permit where such a transfer occurs "prior to issuance of a Certificate of Occupancy." Here, Sira obtained its Certificate of Occupancy approximately two years prior to the recapitalization transaction.

October 15, 2019
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Accordingly, Sira is not in violation of its Special Permit or Zoning Ordinance Section 11.802.3, and therefore the Cease and Desist Order was issued in error. Based on the foregoing, Sira requests a hearing before the Cambridge Board of Zoning Appeal as soon as practicable and that the Board compel the ISD Commissioner to overturn the Cease and Desist Order because it is void and unenforceable.

Very truly yours,


Joseph D. Lipchitz

Encl.

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CITY OF CAMBRIDGE, MASSACHUSETTS

PLANNING BOARD

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CITY HALL ANNEX, 344 BROADWAY, CAMBRIDGE, MA 02139
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

NOTICE OF DECISION

Case Number:	312
Address:	1001 Massachusetts Avenue
Zoning:	Business B-2 / Medical Marijuana Overlay District 3
Applicant:	Sage Cannabis, Inc. 1001 Massachusetts Avenue, Cambridge, MA
Owner:	Mass Ave 997 Nominee Trust c/o Eastport Real Estate 318 Bear Hill Rd Waltham, MA 02451
Application Date:	June 6, 2016
Date of Planning Board Public Hearing:	July 12, 2016
Date of Planning Board Decision:	July 12, 2016
Date of Filing Planning Board Decision:	August 17, 2016
Application:	For Sage Cannabis, Inc., a Massachusetts Registered Marijuana Dispensary (RMD), to operate a retail medical marijuana dispensing establishment occupying approximately 5,815 square feet at 1001 Massachusetts Avenue.
Decision:	GRANTED, with Conditions.

Appeals, if any, shall be made pursuant to Section 17 of Massachusetts General Laws, Chapter 40A, and shall be filed within twenty (20) days after filing of the above referenced decision with the City Clerk. Copies of the complete decision and final plans, if applicable, are on file with the Community Development Department and the City Clerk.

Authorized Representative of the Planning Board: Jeffrey C Roberts JCR

For further information concerning this decision, please contact Liza Paden at 617-349-4647, or lpaden@cambridgema.gov.

DOCUMENTS SUBMITTED

Application Documents and Supporting Material

1. Special Permit Application received June 6, 2016 by Sage Cannabis, Inc., including Application Forms, Project Narrative, Description of Activities, Service Area, Transportation Assessment, Context Map, Site Plan, Building Elevations, First Floor Plan, copies of Phase 1 and 2 filings to the Massachusetts Department of Public Health, Outreach Narrative, and Dimensional Form.
2. Supplemental Application Documents received July 1, 2016, including Supplemental Narrative, Revised Context Map and Table of Uses within 500 feet of the site, Revised First Floor Plan, Revised Building Elevations, Photo of Rear Entrance, Image of Proposed Additional Lighting, and Revised Dimensional Form.
3. Slides presented to the Planning Board on July 12, 2016.

Other Documents

4. Memorandum from Jeff Roberts, Land Use and Zoning Planner, Community Development Department, dated July 1, 2016.
5. Memorandum from Joseph F. Barr, Director of Traffic, Parking and Transportation, dated July 6, 2016.

APPLICATION SUMMARY

The Applicant, Sage Cannabis, Inc., is a registered marijuana dispensary (RMD) with a state-registered cultivating facility located in Milford, Massachusetts. The Applicant proposes to establish an RMD location at 1001 Massachusetts Avenue in Cambridge, located in a leased basement-level retail space of approximately 5,815 square feet within the existing building, which is currently occupied by several other retail establishments. The 1001 Massachusetts Avenue facility will only dispense products that are cultivated and processed at the Applicant's Milford facility. The proposed facility will be designed and operated in accordance with state and local regulations for RMDs and will be subject to oversight by the Massachusetts Department of Public Health. No on-site parking, bicycle parking or loading bays are proposed. Loading and deliveries, which will take place using a van-sized vehicle, are proposed to occur either on-site, by way of a rear driveway that is adjacent to a rear entrance to the facility, or within a public retail loading zone located on Massachusetts Avenue.

FINDINGS

After review of the Application Documents and other documents submitted to the Planning Board, testimony given at the public hearing, and review and consideration of the applicable requirements and criteria set forth in the Zoning Ordinance with regard to the relief being sought, the Planning Board makes the following Findings:

1. Approval of a Registered Marijuana Dispensary (RMD)

The proposed site is located within Medical Marijuana Overlay District 3 (MMD-3), which was created through a zoning amendment adopted by the City Council in 2016. The Planning Board may grant a special permit approving an RMD within a Medical Marijuana Overlay District upon finding that the proposal meets the criteria set forth in Section 20.705. The Board finds that these criteria are met, for the reasons set forth below.

20.705 Special Permit Criteria. In granting a special permit for a Registered Marijuana Dispensary, in addition to the general criteria for issuance of a special permit as set forth in Section 10.43 of this Ordinance, the Planning Board shall find that the following criteria are met:

(a) The Registered Marijuana Dispensary is located to serve an area that currently does not have reasonable access to medical marijuana, or if it is proposed to serve an area that is already served by other Registered Marijuana Dispensaries, it has been established by the Massachusetts Department of Public Health that supplemental service is needed.

There are no RMDs operating in Cambridge, and none in surrounding communities that would serve the same area as the proposed 1001 Massachusetts Avenue location.

(b) The site is located at least five hundred feet distant from a school, daycare center, preschool or afterschool facility or any facility in which children commonly congregate, or if not located at such a distance, it is determined by the Planning Board to be sufficiently buffered from such facilities such that its users will not be adversely impacted by the operation of the Registered Marijuana Dispensary.

The supplemental materials in the Application Documents provide ample evidence, based on a visual survey of the area and search of available online databases, that there are no facilities within 500 feet of the proposed RMD location in which children commonly congregate, such as children's schools, playgrounds, recreation centers, child care facilities or other facilities that offer programming distinctively oriented toward children.

(c) The site is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site using all modes of transportation, including drivers, pedestrians, bicyclists and public transportation users.

The facility will have a pedestrian entry and a separate pedestrian exit for clients, as well as a handicap-accessible route of travel by way of an existing elevator within the building, both located off of Massachusetts Avenue where they will have convenient access to sidewalks, bus service, bicycle facilities and public parking. A staff entry and exit is located at the rear. A public handicap-accessible parking space is available near the building entrance on Massachusetts Avenue. All entrances and exits will be monitored for security purposes as required by state regulations.

(d) Traffic generated by client trips, employee trips, and deliveries to and from the Registered Marijuana Dispensary shall not create a substantial adverse impact on nearby residential uses.

A transportation analysis has been provided with the Application, and has been reviewed by the Traffic, Parking and Transportation Department (TP&T). While little is known thus far about the expected traffic generated by an RMD, the expectation as presented in the traffic analysis is that the activity will not be significantly greater than a typical retail establishment of that size, given the expected client base and experience with RMDs elsewhere in Massachusetts. The Applicant has committed to implementing transportation demand management (TDM) measures and a monitoring program to mitigate any unexpected transportation impacts.

(e) Loading, refuse and service areas are designed to be secure and shielded from abutting uses.

Loading and delivery operations specific to the RMD will occur using small delivery vehicles that will either use the rear driveway access to the building or the retail loading zone on Massachusetts Avenue. The Applicant has committed to developing a loading operations plan in coordination with TP&T. Trash collection and other services will be accommodated in a manner similar to other retail uses in the building.

(f) The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.

No exterior changes to the building are proposed, except for the installation of additional signage and security lighting, which will be in conformance with local requirements for signage and lighting as well as state regulations specific to RMDs. The location of the facility below-grade will avoid impacting the visual character of the streetscape.

20.701.1 Additional Special Permit Criteria for MMD-3: In granting a special permit for a Registered Marijuana Dispensary in the MMD-3 the Planning Board shall find that the criteria in 20.705 are met as well as the criteria in 20.705.1.

The Board finds that the proposal conforms to the additional criteria specific to the MMD-3 District, as set forth in detail below.

- (a) Use Limitations: the RMD facility shall be retail only with no cultivation activities on site.*

Only retail dispensing activities are proposed.

- (b) Siting: The RMD facility must be located either below grade or above the street level at the second story or above and be appropriately shielded from public view.*

The proposed RMD location is at the lower level of the existing retail building, where it will be shielded from public view as required by state regulations, but will not cause an interruption in the retail fabric of the streetscape. Nevertheless, the RMD will provide safe and convenient pedestrian access and egress, as set forth above.

- (c) Size: The RMD facility size shall be less than 10,000 square feet and at least 70% of the square footage shall be used for patient services and the remainder shall be devoted to administrative support, storage and security.*

The proposed size of the facility is approximately 5,815 square feet, and according to preliminary designs, at least 70% of the space is dedicated to patient services including sales area and waiting rooms.

- (d) Access to Public Transit: Areas with access to pedestrian and public transportation would be preferred.*

The site is within a pedestrian-oriented setting on Massachusetts Avenue, convenient to the MBTA #1 bus route and is about a 10-minute walk to either Harvard Square or Central Square MBTA Red Line stations.

2. Approval of Parking, Bicycle Parking and Loading Requirements for an RMD

In approving an RMD, the Planning Board is responsible for determining the required amount of parking, bicycle parking, and loading in accordance with Section 20.703.6 of the Zoning Ordinance, as set forth below.

20.703.6 Parking and Loading. Notwithstanding anything to the contrary in Article 6.000 of this Ordinance, the required number of parking and bicycle parking (both long-term and short-term) spaces and the required number of loading bays for a Registered Marijuana Dispensary shall be determined by the Planning Board based on the transportation analysis and other information related to operational and security plans provided by the applicant. Except as set forth above, all parking, bicycle parking and loading facilities shall conform to the requirements set forth in Article 6.000.

The Application does not propose parking or bicycle parking on-site, and indicates that necessary loading activities will occur using a van-sized vehicle that will be able to use an existing driveway and/or on-street loading area, without needing a loading bay. Clients and staff will be expected to walk, bicycle or use public transportation, or to use available on-street public parking or other public parking facilities near Harvard Square or Central Square.

The aforementioned transportation analysis provided by the Applicant and comments provided by TP&T indicate that the proposed use will likely have modest parking demand compared to a retail use of a similar scale, and that the loading needs of the facility can be reasonably accommodated through existing off-street and on-street areas. Therefore, the Board finds that it is appropriate not to require additional off-street parking and loading for the RMD, subject to the additional transportation demand management (TDM) and monitoring measures recommended by TP&T and agreed to by the Applicant.

For bicycle parking, the Board accepts the recommendation of TP&T that one long-term space and four short-term spaces are appropriate, as would be required for a retail establishment of the proposed size, with the understanding that the requirements may be fulfilled through a contribution to the City's Bicycle Parking Fund for installation and maintenance of public bicycle parking rather than providing the spaces on-site.

Requirements pertaining to the Board's determination of parking, bicycle parking and loading requirements are set forth in the Conditions of this Special Permit Decision.

3. General Criteria for Issuance of a Special Permit (10.43)

The Planning Board finds that the proposal meets the General Criteria for Issuance of a Special Permit, as set forth below.

10.43 Criteria. Special permits will normally be granted where specific provisions of this Ordinance are met, except when particulars of the location or use, not generally true of the district or of the uses permitted in it, would cause granting of such permit to be to the detriment of the public interest because:

(a) It appears that requirements of this Ordinance cannot or will not be met, or ...

With the requested special permit, the requirements of the Ordinance will be met.

(b) traffic generated or patterns of access or egress would cause congestion, hazard, or substantial change in established neighborhood character, or ...

As set forth above in these findings, the proposed use is not expected to adversely impact traffic patterns.

- (c) the continued operation of or the development of adjacent uses as permitted in the Zoning Ordinance would be adversely affected by the nature of the proposed use, or ...*

The proposed RMD will be operated in accordance with applicable state and local regulations, and in such a way that it will not adversely impact adjacent uses.

- (d) nuisance or hazard would be created to the detriment of the health, safety and/or welfare of the occupant of the proposed use or the citizens of the City, or ...*

The proposed RMD will be operated in accordance with applicable health and safety regulations, as well as state and local regulations particular to RMDs, which are specifically intended to prevent nuisance or hazard.

- (e) for other reasons, the proposed use would impair the integrity of the district or adjoining district, or otherwise derogate from the intent and purpose of this Ordinance, and ...*

The site is located within a Medical Marijuana Overlay District, which was created expressly to allow RMDs.

- (f) the new use or building construction is inconsistent with the Urban Design Objectives set forth in Section 19.30.*

The proposed new use will minimally impact the design of the building, and all exterior alterations will be conducted in accordance with applicable zoning and other regulations for RMDs. In addition, exterior alterations will be subject to ongoing review by Community Development Department (CDD) staff to certify compliance with applicable urban design objectives.

DECISION

Based on a review of the Application Documents, testimony given at the public hearings, and the above Findings, the Planning Board hereby GRANTS the requested Special Permit, subject to the following conditions and limitations.

1. This special permit shall authorize Sage Cannabis, Inc. to establish and operate a Registered Marijuana Dispensary (RMD) at 1001 Massachusetts Avenue, Cambridge, in substantial conformance with the Application Documents dated June 6, 2016, and supplemental documents and information submitted by the Applicant to the Planning Board as referenced above.
2. This special permit is not transferrable to any other RMD seeking to operate at 1001 Massachusetts Avenue, and shall not apply to any RMD operated by Sage Cannabis, Inc. at any other location within the City of Cambridge
3. This special permit is conditioned upon ongoing registration of the approved RMD with the Massachusetts Department of Public Health, and shall terminate if such registration is terminated or fails to be renewed.
4. The approved RMD shall be operated in accordance with all applicable state and local regulations, including but not limited to regulations set forth by the Massachusetts Department of Public Health as well as any additional regulations promulgated by local agencies.
5. Any exterior alterations to the building undertaken in association with the establishment or operation of the approved RMD, including but not limited to the installation of exterior signage and light fixtures, shall be subject to design review by the Community Development Department (CDD) to ensure conformance with applicable city ordinances and urban design objectives. Prior to issuance of any Building Permit for such exterior alterations or installations, CDD shall certify to the Superintendent of Buildings that this condition has been met. CDD may present any design changes made subsequent to this Decision to the Planning Board for review and comment.
6. No off-street parking shall be required for the approved RMD; however, the RMD shall be required to implement a transportation demand management (TDM) and transportation monitoring program including the following measures, at a minimum, which shall be certified by the Traffic, Parking and Transportation Department (TP&T) and CDD prior to issuance of a Certificate of Occupancy for the approved RMD:
 - a. Provide 65% MBTA T-Pass subsidies, up to the federal fringe benefit, to all employees (May pro-rate incentive for part-time employees).
 - b. Offer all employees Gold Level Hubway membership.

- c. Provide lockers in the break room for employees that walk or bike to work.
- d. Have available an air pump and bicycle repair tools for employee and customers to use when needed.
- e. Designate an employee of the facility as a Transportation Coordinator (TC) to manage the implementation of the TDM measures and a transportation monitoring program. The TC shall:
 - i. Post in a central and visible location (i.e. lobby for customers, break room for employees) information on available non-automobile services in the area, including, but not limited to:
 - 1. Available pedestrian and bicycle facilities in the vicinity of the Project site.
 - 2. MBTA maps, schedules and fares.
 - 3. "Getting Around in Cambridge" map (available from CDD).
 - 4. Locations of bicycle parking.
 - 5. Carsharing/ridematching programs.
 - 6. Hubway regional bikesharing system.
 - 7. Carpooling/vanpooling programs.
 - 8. Other pertinent transportation information.
 - Instead or in addition to posting paper MBTA schedules, provide a real-time transit and Hubway display screen or tablet in a central location to help people decide which mode to choose for each trip.
 - ii. Compile and provide to all employees up-to date transportation information explaining all commuter options. This information should also be distributed to all new employees as part of their orientation.
 - iii. Provide or describe to customers information on transportation options to access the site.
 - iv. Provide and maintain information on the projects website, newsletters, social media, etc. on how to access the site by all modes, with emphasis on non-automobile modes.
 - v. Participate in any TC training offered by the City of Cambridge or a local Transportation Management Association.
 - vi. Implement an annual transportation monitoring program which will involve surveying employees and customers on their travel modes and where they customarily park (cars and bicycles). The annual monitoring program shall continue for 10 years following the issuance of a Certificate of Occupancy for the RMD, at which time TP&T will work with the applicant to determine if it would be beneficial to continue the monitoring program.

1. All surveys shall be designed and conducted in a manner approved by TP&T and CDD.
 2. The form of any survey instrument or monitoring method shall be approved before issuance of the Certificate of Occupancy.
 3. Surveying shall begin one year from the date of the first Certificate of Occupancy. If the Certificate of Occupancy is issued between September 1 and February 29, the monitoring should take place during the months of September or October and be reported to the City no later than November 30. If the Certificate of Occupancy is issued between March 1 and August 31, monitoring should take place during the months of April or May and be reported to the City no later than June 30.
7. Minimum bicycle parking requirements for the approved RMD shall be one (1) long-term space and four (4) short-term bicycle parking spaces, which may be provided by making a contribution to the City's Public Bicycle Parking Fund pursuant to Section 6.104.2 of the Zoning Ordinance. Long-term bicycle parking is preferably provided on-site if feasible.
8. No loading bays shall be required; however, a loading and service delivery management plan that includes all delivery activity to the facility shall be submitted to and approved by TP&T prior to the issuance of a Building Permit for any improvements associated with the approved RMD.
9. Prior to issuance of a Certificate of Occupancy for the approved RMD, CDD shall certify to the Superintendent of Buildings that all Conditions of this Special Permit Decision are met.

Voting in the affirmative to GRANT the Special Permits were Planning Board Members Louis Bacci, H Theodore Cohen, Steve Cohen, Mary Flynn, Hugh Russell, Tom Sieniewicz, and Associate Member Ahmed Nur, appointed by the Chair to act on the case, constituting at least two thirds of the members of the Board, necessary to grant a special permit.

For the Planning Board,



H Theodore Cohen, Chair.

A copy of this decision PB #312 shall be filed with the Office of the City Clerk. Appeals, if any, shall be made pursuant to Section 17, Chapter 40A, Massachusetts General Laws, and shall be filed within twenty (20) days after the date of such filing in the Office of the City Clerk.

City of Cambridge, MA • Planning Board Decision
PB # 312 – Sage Cannabis, 1001 Massachusetts Avenue

ATTEST: A true and correct copy of the above decision filed with the Office of the City Clerk on August 17, 2016, by Jeffrey C Roberts, authorized representative of the Cambridge Planning Board. All plans referred to in the decision have been filed with the City Clerk on said date.

Twenty (20) days have elapsed since the filing of the decision. No appeal has been filed.

DATE:

City Clerk of Cambridge

B



CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT 831 MASS. AVE.
CAMBRIDGE, MASSACHUSETTS 02139 (617) 349-6100

Ranjit Singanayagam
Commissioner

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
AND BY FIRST CLASS MAIL

September 17, 2019

Mr. Michael Dundas
President
Sira Naturals Inc.
300 Trade Center, Suite 700
Woburn, MA 01807

*Re: Cease and Desist Order – Registered Marijuana Dispensary
at 1001 Massachusetts Avenue*

Dear Mr. Dundas,

Please be advised that the City of Cambridge Inspectional Services Department ("ISD") is in receipt of information that the ownership of Sira Naturals, Inc. ("Sira Naturals") has been transferred to another controlling entity, and that this change in ownership and control has received approval from the Cannabis Control Commission (the "Commission"). Accordingly, Sira Naturals, Inc. is operating a Registered Marijuana Dispensary ("RMD") at 1001 Massachusetts Avenue, Cambridge, MA (the "Property"), in violation of Cambridge Zoning Ordinance Section (the "Zoning Ordinance") 11.802.3 and Sira Natural's August 17, 2016 Special Permit.

Sira Naturals operates an RMD at the Property pursuant to both a Certificate of Registration issued by the Commission,¹ and a Special Permit issued by the Cambridge Planning Board. The Medical Use of Marijuana Regulations, 935 CMR 501.000, *et seq.* (the "Regulations"), require that an applicant for a Certificate of Registration from the Commission submit "[a] list of all persons or entities having direct or indirect authority over the management or policies of the RMD, including the members of the entity, if any, and a list of all persons or entities contributing 5% or more of the initial capital to operate an RMD, including capital that in the form of land or buildings," 935 CMR 501.100(2)(c). The Regulations further provide that "[t]he RMD shall keep current all information required by 935 CMR 501.000 or otherwise required by the commission. The RMD shall report any changes in or additions to the content of the information contained in any document to the Commission within five business days after such change or addition."

¹ The Massachusetts Department of Public Health previously issued Certificates of Registration for RMDs, but its authority was transferred to the Commission pursuant to Chapter 55 of the Acts of 2017.

Accordingly, pursuant to the Regulations, Sira Naturals notified the Commission of a change in ownership, and on May 23, 2019, the Commission voted to approve the change in ownership. The change was a 100% transfer of ownership to CSAC Acquisition, Inc. As set forth in the Commission's Executive Summary of the change in ownership and control, the entities that own and control Sira Naturals are as follows:

- CSAC Acquisition, Inc. is now the owner of Sira Naturals, Inc.
- CSAC Holdings, Inc. holds 100% of the voting control and majority ownership in CSAC Acquisition, Inc.
- Cannabis Strategies Acquisition Corp. (CSAC) holds 100% of control and equity in CSAC Holdings, Inc.
- Mercer Park CB, L.P. holds 10% of CSAC ownership and 63% of CSAC voting interest
- Mercer Park CB GP, LLC is the sole general partner of Mercer Park CB, L.P.

Zoning Ordinance Section 11.802.3 states that "[a] special permit authorizing the establishment of a Cannabis Retail Store or Cannabis Production Facility shall be valid only for the licensed or registered entity to which the special permit was issued If the license or registration for a Cannabis Use has not been renewed or has been revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to issuance of a Certificate of Occupancy." (emphasis added)

Sira Naturals was granted a Special Permit to operate an RMD at the Property on August 17, 2016. The Special Permit was granted to Sage Cannabis, Inc., which has undergone a name change to Sira Naturals. When applying for the Special Permit, Sage Cannabis, Inc. submitted its Application of Intent for certification as a RMD, which it had filed with the Massachusetts Department of Public Health,² to the Planning Board. The Application of Intent contained the required information concerning all officers and members of the corporation, along with all "persons and entities known to date that are committed to contributing 5% or more of initial capital to operate the proposed RMD." The persons or entities identified as capital contributors were Louis Karger, David Rosenberg and Robert Edelstein. The officers and members of the corporation identified were Michael Dundas – Chief Executive Officer, Stephen Jaffe – Chief Operation Officer, Eric James Wardrop – Chief Financial Officer, Mark Vlachos – Lead Cultivator, Netwatch USA – Security Provider, David Rosenberg – Board Member, Louis Karger – Board Member and Capital Contributor, Robert Edelstein – Board Chair, Robert A. Goldstein – Board Member, Gerald Goldberg – Board Member, and Jean Casale – Board Member. The persons and entities identified in the Application of Intent did not include CSAC Acquisition, Inc., CSAC Holdings, Inc., Cannabis Strategies Acquisition Corp., Mercer Park CB, L.P. or Mercer Park CB GP, LLC. Accordingly, Sira Natural's registration has been transferred to another controlling entity, and Sira Naturals has not obtained a new special permit.

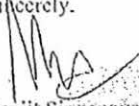
Additionally, the Special Permit contains the following condition: "1. This special permit shall authorize Sage Cannabis, Inc. to establish and operate a Registered Marijuana Dispensary.

² See Footnote 1.

(RMD) at 1001 Massachusetts Avenue, Cambridge, in substantial conformance with the Application Documents dated June 6, 2016, and supplemental documents and information submitted by the Applicant to the Planning Board as referenced above." Due to the change in controlling entity, Sira Naturals is no longer operating in substantial conformance with the documentation and information it submitted to the Planning Board for the Planning Board's consideration in granting the Special Permit.

For the reasons set forth above, Sira Naturals is in violation of Zoning Ordinance Section 11.802.3 and its Special Permit. Accordingly, Sira Naturals is ordered to immediately Cease and Desist operating at the Property until it has applied for and received a new special permit. Failure to comply with this Order, Zoning Ordinance Section 11.802.3 and the Special Permit will result in further enforcement action, which may include litigation to compel compliance, and may also include the imposition of daily fines pursuant to Zoning Ordinance Article 9, Sections 9.16(1) or 9.16(2).

Sincerely,


Ranjit Singanayagam
Commissioner
Inspectional Services Department

cc: Sira Naturals, Inc.
1001 Massachusetts Avenue
Cambridge, MA 02138

Corporate Creations Network, Inc.
225 Cedar Hill Street, #200
Marlborough, MA 01752

C

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May 23, 2019

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Commissioner Ranjit Singanayagam
City of Cambridge
Inspectional Services Department
831 Massachusetts Avenue
Cambridge, MA 02139
ranjits@cambridgema.gov

Re: 1001 Massachusetts Avenue Cambridge, MA (the "Locus")

Dear Commissioner:

This correspondence is directed to the Special Permit issued by the Planning Board for the City of Cambridge, Massachusetts to Sage Cannabis, Inc.¹, on August 17, 2016 for the operation of a Registered Marijuana Dispensary ("RMD") at the above Locus; a copy of which is attached hereto (the "1001 Special Permit").

Inquiries have evidently been made by City agents recently as to whether certain investment and ownership interests in Sira Naturals, Inc. have been changed. Accordingly, this raises concerns that the internal economic structure of Sira Naturals, Inc. is being superficially viewed in an attempt to extrapolate such internal investments as constituting an unpermitted "transfer" of the "registration" of the medical marijuana license to another "entity". To be clear: there is no contemplated "transfer of the "registration" to another "entity". The plain language and limitations in the Cambridge Zoning Ordinances, and a proper characterization of the investment structure in Sira Naturals, Inc., is discussed herein.

¹ "Sage Cannabis, Inc." has undergone a series of name changes, and that specific entity now operates under the name "Sira Naturals, Inc. as of November 27, 2017, and evidenced by the records at the Office of the Secretary of the Commonwealth of Massachusetts. There is no question it is the same "entity" as received the 1001 Special Permit.

We have reviewed the Zoning Ordinances for the City of Cambridge, Massachusetts (the "Cambridge Zoning Ordinances") and the 1001 Special Permit itself and offer the following observations.

Specifically, relative to certain additional financial investments being contemplated in Sira Naturals, Inc.², the holder of the 1001 Special Permit, the question has arisen as to the existence of any financial or capital structure requirements under the Cambridge Zoning Ordinances, and the 1001 Special Permit itself.

First, nowhere in the Cambridge Zoning Ordinances governing Special Permits (Article 10.000), or deliberations of the Planning Board³ (See Rules of the Cambridge Planning Board / Applications for Special Permits) are there any provisions relative to the economic structure, capital, financing, or other investment criteria as to the entity to which a special permit for a Registered Marijuana Dispensary is or may be issued. The Cambridge Zoning Ordinances are remarkably reticent on this point.

Extensive governing criteria that are site specific, and operationally specific, appear in Article 10 and Article 11 of the Cambridge Zoning Ordinance. There are numerous stated requirements including considerations as to traffic, parking, school buffer zones, building dimensional requirements; signage; etc.; but significantly, there is no mention of either the nature of the entity seeking a special permit, or the financial structure of said applicant.⁴

Perhaps most illustrative are the "Applications Requirements" for a special permit for Medical Marijuana Dispensaries, found in Section 11.803 of the Cambridge Zoning Ordinance, the headings for which are: (a) Description of Activities; (b) Service Area; (c) Transportation Analysis; (d) Context Map; (e) Site Plan; (f) Building Elevations and Signage; (g) Registration Materials.⁵ Notably absent from the list are any entity specific, or financial/capital requirements.

² See footnote 1 above.

³ Which is expressly deemed by Section 10.41 of the Cambridge Zoning Ordinance to be a "special permit granting authority" under G.L. c. 40A.

⁴ Note: this is in marked contrast to the financial inquiries and requirements found in the Regulations of the Massachusetts Cannabis Control Commission 935 CMR 7500 et seq., which go to great lengths concerning disclosure of financial interests and attendant control over entities receiving licenses from that agency. It is presumed that Cambridge, along with numerous other municipalities, have deliberately elected not to encroach upon that state agency's exercise of oversight in this regard. In other words, they have left it to the CCC to evaluate those criteria, and have not incorporated them into the local processes. For Cambridge, see as recently as December, 2018, where the passage of the Adult Use (Non-Medical) Ordinance by the Cambridge City Council did not contain any financial reporting criteria or requirements.

⁵ As to Registration Materials, they refer to the materials submitted to the Massachusetts Department of Public Health in seeking registration, but only to confirm that the other information provided to the Planning Board "is consistent with the information provided to the Massachusetts Department of Public Health."

Significantly, the "Special Permit Criteria" for granting a special permit for a Registered Marijuana Dispensary, found in Section 11.804 of the Cambridge Zoning Ordinance, cover six specific areas of concern, *none of which* touch upon either the nature of the entity or its funding and capital structure.

Second, nowhere in the Cambridge Zoning Ordinances specifically governing Medical Marijuana Dispensaries (Section 11.800) are there any provisions relative to the economic structure, capital, financing, or other investment criteria as to the entity to which a special permit for a Registered Marijuana Dispensary is or may be issued.

Specifically, Section 11.802.3 of the Cambridge Zoning Ordinance states:

"A special permit authorizing the establishment of a Registered Marijuana Dispensary shall be valid only for the registered entity to which the special Permit was issued, and only for the site on which the Registered Marijuana Dispensary has been authorized by special permit."

The 1001 Special Permit clearly pertains to the Locus – there is no current or prospective change in the Locus. The 1001 Special Permit clearly pertains to Sira Naturals, Inc. (see footnotes 1 and 2 herein) – there is no current or prospective change from that entity. To be clear, Sira Naturals, Inc. is not attempting to assign or directly transfer its interests to *any other entity*. Therefore, the internal financial arrangements and capital structure of the entity holding the 1001 Special Permit is off limits – barring any such assignment or direct transfer – because it is not within the scope or purview of the Planning Board in its deliberations as to special permits under the Cambridge Zoning Ordinance.

Third, there is a procedural limitation in Section 11.802.3, with three triggers, which further protects the contemplated investment in Sira Naturals, Inc.

Specifically, Section 11.802.3 of the Cambridge Zoning Ordinance states:

"If the registration for a Registered Marijuana Dispensary has not been renewed or has been revoked, transferred to another controlling entity, or relocated to a different site, a new special permit shall be required prior to issuance of a Certificate of Occupancy."

Not only are the three triggers not tripped (i.e. (i) there has not been any non-renewal or revocation; (ii) the registration has not been transferred to another controlling entity; and

(iii) there has been no relocation to a different site), but the Certificate of Occupancy for the Locus has already been issued – thus precluding any requirement for a “new special permit” (even were one of the triggers tripped).

Note: the language in Section 11.802.3 quoted above is tracked by the language in the December 17, 2018 Adult Use Ordinance as relates to a Cannabis Retail Store or Cannabis Production Facility, without material deviation or addition, slated to take effect April 20, 2019. The current establishment is presently only a RMD.

Fourth, there are no specified conditions particular to the 1001 Special Permit which alter the foregoing analysis. There are also no findings in the 1001 Special Permit as to either the nature of the entity, or its financial and capital structure, whatsoever.

As stated above, Sira Naturals, Inc. is not transferring the registration to any other entity. To the extent that the City seeks to equate internal investment transactions as being a “transfer (of the registration) to another controlling entity”, it is not only ignoring the plain language of its own ordinances – see excerpts quoted above – but it is engaging in an exercise beyond the scope of its authority. The statute and regulations leave it to the Cannabis Control Commission as the state agency responsible for reviewing and vetting internal ownership and investment in medicinal and retail facilities. Additionally, the City needs to be cognizant of the actual facts – the current investment scenario: (i) keeps the original shareholder group economically invested in the enterprise; (ii) retains all 5 existing directors, adding only one new director, and thus retains the current “controlling group” in actual control; (iii) the current “Executive Management Team” running the company’s operations remains the same; and (iv) the entity does not change legal identity – it is Sira Naturals, Inc., a Massachusetts corporation now, and it will remain Sira Naturals, Inc., a Massachusetts corporation after the investment. We trust the foregoing voluntary disclosures will assuage any potential concerns.


Finally, the Massachusetts Cannabis Control Commission has promulgated a process it refers to as a “change in ownership or control.” This process requires Commission approval for a wide range of activities under this broad (and somewhat misleading) label. The process encompasses a range of changes within a marijuana company’s corporate and capital structure, and it accommodates, on the less impactful end, routine changes in executive team members, board members, investors and others in a position to influence management decisions. Notwithstanding the broad description of this process under the rubric of a “change of ownership or control”, that characterization is in no way dispositive as to the nature or substantive impact of the changes sought by the applying marijuana establishment. For example, no one would argue that the addition of a single vice president to a five-member management team would substantively constitute a “change of ownership or control.” Similarly, to the point in this case, taking on additional investment while leaving the management, the controlling board of

directors, and the fundamental entity structure intact, also does not constitute such a substantive change.

Consequently, given the foregoing straight up analysis of the direct language of the Cambridge Zoning Ordinance, any attempts by the Cambridge Planning Board to add non-stated standards (such as financial or investment criteria) to the mix in considering the issuance or continued validity of a special permit, would clearly expose such deliberations to claims that decisions based thereon are indeed "arbitrary, capricious, and an abuse of discretion" by the municipal agency. While local boards are given broad leeway in the administration of a municipality's zoning ordinances, that authority is not unlimited, and where there are no categorical standards set out in the field of play, such considerations clearly would be out of bounds.

Please feel free to contact us should you have any questions concerning the foregoing.

Very truly yours,



Christopher C. Tsouros, Esq.

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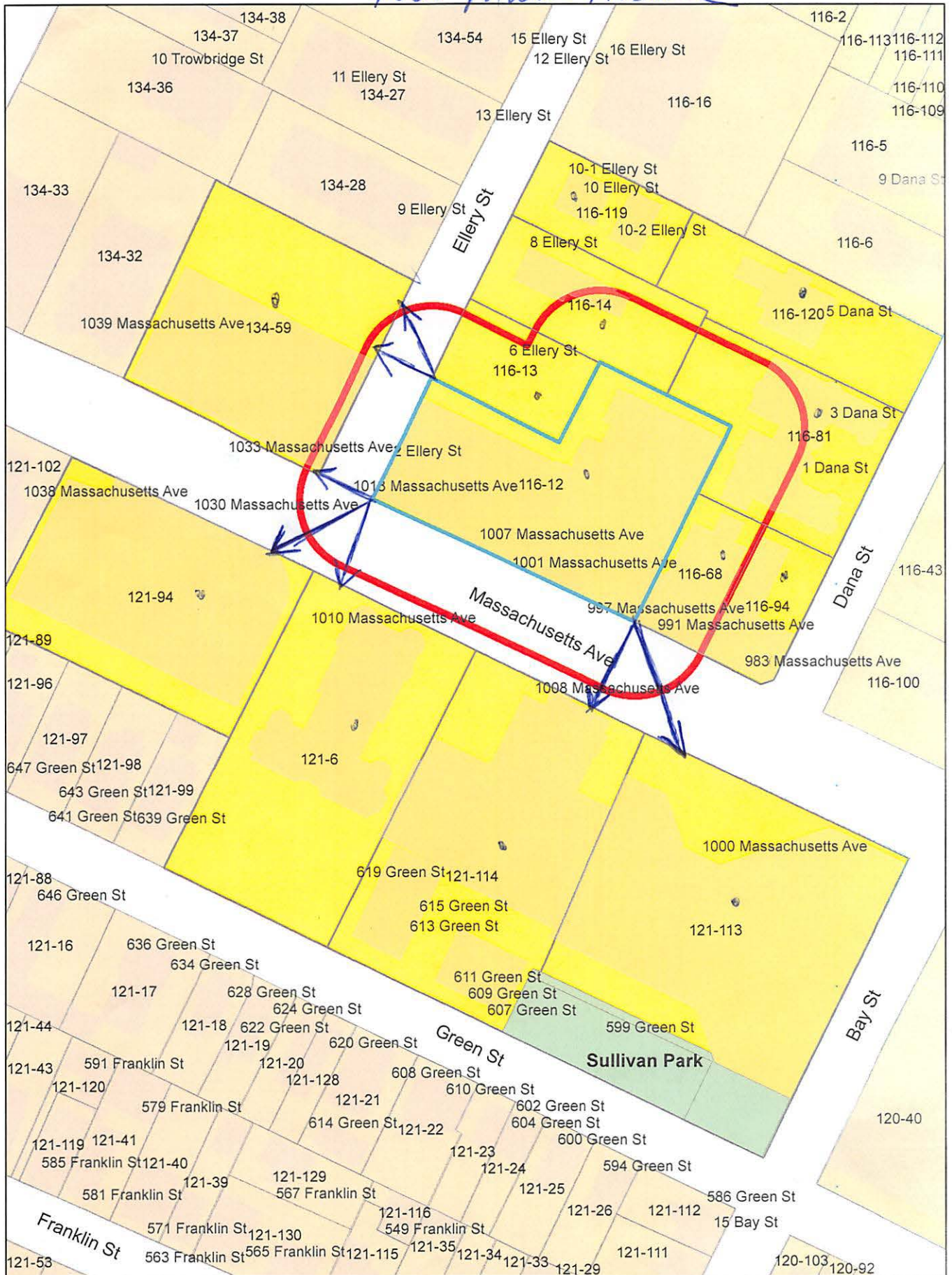
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May 23, 2019
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1001 Mass Avenue



(Appeal) 1001 Mass Ave

Petitioner

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121-94
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121-114
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121-114
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