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October 16, 2020

**VIA EMAIL ([mkrepelka@town.arlington.ma.us](mailto:mkrepelka@town.arlington.ma.us))  
AND OVERNIGHT MAIL**

Select Board  
Town of Arlington  
C/O Marie Krepelka, Administrator  
730 Massachusetts Avenue  
Arlington, MA 02476

**Re: Calyx Peak of MA  
Proposed Adult Use Marijuana Retail Establishment  
251 Summer Street**

Dear Select Board:

We represent Calyx Peak of MA (“Calyx”) with regard to its proposed Adult Use Marijuana Retail Establishment at 251 Summer Street. On behalf of Calyx, I am writing to follow up on some of the points made at your October 5<sup>th</sup> meeting, where you considered applications from both Calyx (251 Summer St.) and The Human Connection (“THC”) (23-35 Mass Ave.) under the Select Board’s Host Community Agreement Process.

**Required 2,000 Foot Buffer Zone From Other Marijuana Retailers.**

Section 8.3 (B) of the Zoning By Law describes required buffer zones for Marijuana Establishments. By Law § 8.3(b)(3) provides that a Marijuana Retailer “shall not be permitted within 2,000 feet of another Marijuana Retailer”. Section IV(A)(d) of the Select Board’s Host Community Agreement Process and Criteria requires all applicants to provide a Certification of Zoning Compliance, which includes compliance with the required buffer zones. Pursuant to footnote 7 of that section, the Arlington Redevelopment Board may waive buffer zone requirements from schools, play grounds and libraries, but there is no provision that allows for any waiver of the 2,000 foot buffer zone from other Marijuana Retailers. Consistent with the Board’s stated criteria, *Town Counsel has advised multiple times that the 2,000 foot buffer cannot be waived*. Further, Cannabis Control Commission regulation 935 CMR 500.110 (3) provides that buffer zones established under the corresponding regulations “shall be measured in a straight line

from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located”. While 935 CMR 500.110 (3) provides an option for a municipality to adopt an ordinance or by law that reduces the buffer zone distance, it does not allow a municipality to change the method by which the buffer zone distance is measured. Further, the Town has consistently applied the measuring of buffer zones from property line to property line to all other applicants and the same standard should be applied in this matter.

The Select Board may recall that Calyx previously proposed utilizing the site at 1215 Mass Ave. for an adult use marijuana retail establishment, but was advised, appropriately, that because it was only 1,960 feet from Apothca’s new facility at 1386 Mass Ave., that site could not be used due to the 2,000 foot buffer requirement. Per town counsel, that requirement could not be waived, and Calyx was denied a Host Community Agreement for that site at the hearing on May 20, 2019. Calyx requested the opportunity to find a new site under the HCA process that was ongoing at the time and was told by the Town that Calyx would have to find a new site and apply during the next HCA process. Also, during that same hearing in May of 2019, the Town denied a Host Community Agreement for Metro Harvest, Inc. for a proposed site at 1306-1308 Mass Ave. due to the location also being less than 2000 feet from the new Apothca location. The current Calyx site proposed at the Oct 5, 2020 hearing fully complies with the 2,000 foot buffer as well as all other buffers required under the Arlington Zoning Bylaw; without the need for waivers.

THC’s site at 23-35 Massachusetts Avenue, Assessors’ Parcel 23:5-4A, is approximately 1,620 feet from the marijuana retail establishment at 23 Broadway St., well below the 2000-foot requirement. The same standard applied to Calyx and Metro Harvest during the last HCA process conducted by the Town (2019), which standard is consistent with the applicable state regulation, should be applied during this HCA process. The THC site is simply a non-starter. The recent contention of counsel for THC that Arlington must change its rules, or waive its buffer requirements, because there are no other viable sites, is simply wrong. Calyx’s site complies with all buffer requirements. THC’s site does not comply.

### Parking

Parking at 251 Summer Street is more than ample. As the Board will recall, the site is currently used as an auto body shop, with approximately 25 vehicles of various shapes and sizes typically kept on site, and not in accordance with any designed parking plan. At the recent hearing Ed Schmults of Calyx detailed the anticipated parking demand based on his extensive experience in retail, and Calyx’s specific experience with marijuana facilities. It is evident that once the site is cleared, a new building constructed, and the parking area paved and striped, *there will at least twenty parking spaces in the lot at 251 Summer Street, which Calyx will have exclusive use of*. On the other hand, the parking area at THC’s site at 23-35 Massachusetts Avenue is shared by

multiple tenants, including a hotel, a restaurant, a pharmacy and a Community Pediatrics Center. 25B Massachusetts Avenue, the portion of the building that THC proposed to use during the public hearing, but not specifically cited in their application, *has only four dedicated parking spaces* based on Slide 17 of THC's presentation to the Board. Once those four spaces are filled, any customers or staff for the proposed THC site will end up looking for parking on Massachusetts Avenue and other nearby streets. There can be no question that the Calyx site provides superior parking than the THC site.

#### Impact on Abutters

At the hearing, THC indicated that Calyx has more residential abutters at its proposed location. After reviewing the GIS data within 300 feet of both locations, this is not accurate. The Calyx site has 62 abutters and approximately 7 of those are commercial properties, netting 55 residential abutters of which the direct abutter to Calyx is the property owner of 251 Summer St. The THC site has 91 abutters and approximately 10 of those are commercial, netting 81 residential abutters. THC in fact has more residential abutters. Many commercial areas in Arlington are abutted by residential neighborhoods due to the density of the municipality. The way that Calyx operates its business, like constructing a new building that allows deliveries of product to be completely inside the building and out of view, providing ample on-site parking, and attractive landscaping, will minimize if not eliminate any impact on abutters. Indeed, we believe that many abutters will find having Calyx Peak as a neighbor an improvement over the current use.

#### Social Distancing

Related to the issue of impact on abutters is the issue of whether a proposed site can provide for adequate social distancing of customers during the current pandemic. Social distancing will simply not be an issue for Calyx which has ample on-site parking and will occupy a private lot without other shared uses. On the other hand, the sidewalk in front of the newly proposed THC site at 25B Massachusetts Avenue is shared with the neighboring businesses and the building itself is surrounded with parking lot drive lanes for the neighboring businesses. THC customers will likely encroach on the neighboring businesses space or into the parking lot drive lanes, which poses a much greater risk to public safety than having customers contained on a private lot with no other surrounding uses or additional vehicle traffic moving through the site.

Experience.

During its presentation, THC seemed to seek a preference for local operators. As noted by THC on slide 11 of its presentation, there is no such preference stated in the Board's rules and criteria. Calyx has significant operations in Massachusetts. It is a pioneer in the cannabis industry having entered the industry almost five years ago, and has successfully operated marijuana facilities in four states. As stated by Mr. Schmults at the recent hearing, Calyx will apply what it has learned at its other facilities so as to enable it to operate a business that will provide the best service to the community.

Conclusion.

On behalf of Calyx, I would like to thank the Board for its consideration of Calyx's application. We trust that the Board will continue to uphold the non-waivable 2,000 foot buffer requirement set forth in the governing ordinance, as it has done up to this point. We also encourage the Board not to deviate from measuring the buffer zone lot line to lot line, as it has done in the past, consistently with the Code of Massachusetts Regulations. Calyx's site complies with the 2,000 foot buffer requirement. THC's site does not. Calyx's application meets the requirements of the Town of Arlington and we are hopeful that it will be finally approved.

Very truly yours,

*Alan E. Lipkind (lpp)*

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