Date Filed: 10/28/2026 5:04 PM
Land Court
Docket Number: 26 MISC 000403

COMMONWEALTH OF MASSACHUSETTS
LAND COURT DEPARTMENT OF THE TRIAL COURT

MIDDLESEX, SS DOCKET NO. 26 MISC 000403

MISTY MOUNTAIN SHOP LLC, and HALONA MUI, Plaintiffs,
v.
CITY OF MALDEN, and PEG CROWE, PAUL CONDON, AMANDA LINEHAN, RYAN O'MALLEY, ARI TAYLOR, STEPHEN WINSLOW, CHRIS SIMONELLI, JADEANE SICA, MICHELLE LUONG, KAREN COLÓN-HAYES, and CAREY MCDONALD, as Members of the CITY OF MALDEN CITY COUNCIL; DMS TRINITY, LLC, BEACH HOUSE CANNABIS, LLC; and ROSEANNE J. SPINNEY, as trustee of the CHARLES STREET REALTY TRUST 2020, Defendants.

DEFENDANTS DMS TRINITY, LLC AND ROSEANNE J. SPINNEY, as trustee of the CHARLES STREET REALTY TRUST 2020'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

Pursuant to Mass. R. Civ. P. 12(b)(1) and 12(b)(6), defendants DMS Trinity, LLC and Roseanne J. Spinney, as trustee of the Charles Street Realty Trust 2020, move to dismiss the Second Amended Complaint of plaintiffs Misty Mountain Shop LLC and Halona Mui. As grounds, defendants state as follows.

1. Neither plaintiff is a person aggrieved under G.L. c. 40A, § 17, and standing is jurisdictional. Misty Mountain asserts only a competitor's interest, which the Zoning Act does not protect, and Mui, an abutter entitled to no presumption of standing under the 2024 amendment to § 17, has not pleaded a particularized,

measurable injury to a protected interest. The appeal should be dismissed under Mass. R. Civ. P. 12(b)(1).

2. If the Court reaches the merits, the plaintiffs' recording theory fails as a matter of law, because use or construction, not recording, governs a special permit's validity, and the plaintiffs' own allegations establish substantial construction and use.

3. The City Council had authority as a special permit granting authority to remove the non-transferability condition, so the plaintiffs' ultra vires theory fails.

4. The Host Community Agreement and competitive-licensing theories are not cognizable in this zoning appeal, because they fall outside the scope of G.L. c. 40A, § 17, outside this Court's subject matter jurisdiction, and are immaterial to whether the Council exceeded its zoning authority.

5. The Court need not reach whether the Benevolent Botanicals judgment voids the decision, because the appeal can and should be resolved on the narrower grounds above.

In further support of this motion, defendants rely on and incorporate the accompanying Memorandum of Law.

WHEREFORE, defendants DMS Trinity, LLC and Roseanne J. Spinney, as trustee of the Charles Street Realty Trust 2020, respectfully request that the Court dismiss the Second Amended Complaint as to Misty Mountain and Mui under Mass. R. Civ. P.

12(b)(1) and 12(b)(6) for lack of standing, and, in the alternative, for failure to state a claim, and grant such other and further relief as is just and equitable.

Defendants request a hearing on this motion.

Respectfully submitted

DMS TRINITY, LLC AND ROSEANNE J. SPINNEY, as trustee of the CHARLES STREET REALTY TRUST 2020,
By their attorneys,

/s/ Roberto Di Marco
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350 Main Street, 3rd Floor
Malden, MA 02148
(781) 322-3700

Dated: October 27, 2026

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record for each other party by the Court's electronic filing system and by electronic mail on the date set forth above.

/s/ Roberto Di Marco

Roberto Di Marco

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