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#223-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: April 26, 2022
Land Use Action Date: July 5, 2022
City Council Action Date: July 18, 2022
90-Day Expiration Date: July 25, 2022

DATE: April 22, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Michael Gleba, Senior Planner

SUBJECT: **Petition #223-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to allow parking facility waivers including; to allow parking in the front setback, to waive interior landscape requirements and to waive lighting requirements in order to expand an existing parking area at **55-67 Border Street**, Ward 3, West Newton, on land known as Section 33 Block 13 Lot 17, containing approximately 38,036 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec. 7.3.3, 7.4, 5.1.8.A.1, 5.1.13, 5.1.9.B, 5.1.13, 5.1.10 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



55-67 Border Street

EXECUTIVE SUMMARY

The subject property at 55-67 Border Street consists of a 38,036 square foot lot in a Manufacturing (MAN) zoning district improved with a one-story machine repair and assembly building constructed in 1961, as well as a paved parking area accommodating 29 stalls, and an unpaved and unlined gravel parking area in the northern portion of the property.

The petitioners seek to increase the number of paved parking stalls on-site by paving and striping the existing gravel area to contain 17 stalls. Per Section 5.1.2.C of the Newton Zoning Ordinance (NZO), when a parking facility's capacity is increased the expanded portion must be constructed in accordance with the requirements of Section 5.1. That said, although the existing paved 29-stall parking area has several nonconforming dimensional and design aspects, as that area will not be modified, per Sec. 5.1.2.B the present petition only addresses proposed changes to the gravel parking area.

The Planning Department notes that the proposed plans include the establishment of three accessible stalls in the existing portion of the parking facility. Modifications to an existing parking facility to construct required accessible parking in accordance with the requirements of 521 CMR 23, do not trigger updates to all other dimensional requirements relative to parking per section 5.1 in the existing portion of the facility.

Regarding the proposed paving and lining of the gravel area, Sec. 5.1.8.A.1 provides that parking shall not be located within any required setback distance from a street or side lot lines. Per Sec. 4.3.3 the required front setback in a MAN district is the greater of half the building height or 15 feet when abutting a residential district. The one-story building requires a 15-foot front setback as it abuts a Multi Residence 1 district to the north. The petitioner proposes to construct parking stalls within five feet of Harvey Place, thus located within the front setback, requiring a special permit per Secs. 5.1.8.A.1 and 5.1.13.

Per Sec. 5.1.9.B, outdoor parking facilities with more than twenty stalls are required to provide interior landscaping, with an area equivalent to at least five percent of the total parking facility with a minimum 25 square feet, and with no dimension less than five feet. Further, there must be at least one tree per each ten parking stalls. While significant perimeter landscaping is proposed along the Harvey Place frontage of the portion of the property to be paved, as well as along its northern property line (adjacent to a residential use), no interior landscaping is proposed. The petitioner requires the interior landscaping requirements to be waived per Sections 5.1.9.B and 5.1.13.

Lastly, the petitioner seeks a waiver from the requirements of Sec. 5.1.10.A which requires that parking facilities used at night have security lighting with a minimum intensity of one foot candle on the entire surface of the parking facility.

The Planning Department is generally not concerned with the petitioner's request for relief from certain parking, lighting, and landscaping requirements. The proposed changes largely reflect what is existing and will consist of paving and striping an existing parking area, which will aid parking and circulation. Also, as the property abuts residential uses, the proposed perimeter screening landscaping in lieu of interior landscaping and the lighting waiver are appropriate for the location.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site in a Manufacturing zoning district and that abuts a Multi Residence 1 (MR1) district an appropriate location for the proposed site changes and parking, landscape and lighting waivers (§7.3.3.1);
- The proposed site changes and parking, landscape and lighting waivers will not adversely affect the neighborhood (§7.3.3.2);
- Access to the site over streets is appropriate for the types and numbers of vehicles involved with the proposed parking accessory to a manufacturing use in a residential district (§7.3.3.3);
- There will be no nuisance or serious hazard to vehicles or pedestrians associated with the proposed site changes and parking, landscape, and lighting waivers (§7.3.3.4);
- Granting the requested exceptions to provisions Section 5.1 related parking in a front setback (§3.2.3, §5.1.8.A.1), interior landscaping requirements (§5.1.9.B), and lighting requirements (§5.1.10) would be appropriate because literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the northeast corner of Border Street and Harvey Place. The surrounding area is a mix of single- two- and multi- family dwellings and commercial and industrial uses, with Washington Street and the Massachusetts Turnpike located to the south (**Attachment A**). The site and nearby parcels to the east and west along Washington Street are within a MAN zoning district while parcels to the north along Webster Street are zoned Multi Residence 1 (MR1) (**Attachment B**).

B. Site

The subject property consists of a 38,036 square foot lot improved with a one-story machine repair and assembly building constructed in 1961, a paved parking area accommodating 29 stalls, and an unpaved/unlined gravel parking area in the northern portion of the property.

The parcel slopes approximately two feet upward from south to north. Vehicular access is provided via a curb cut on Border Street near the structure. There is little to no landscaping on the property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain industrial, with a machine repair shop.

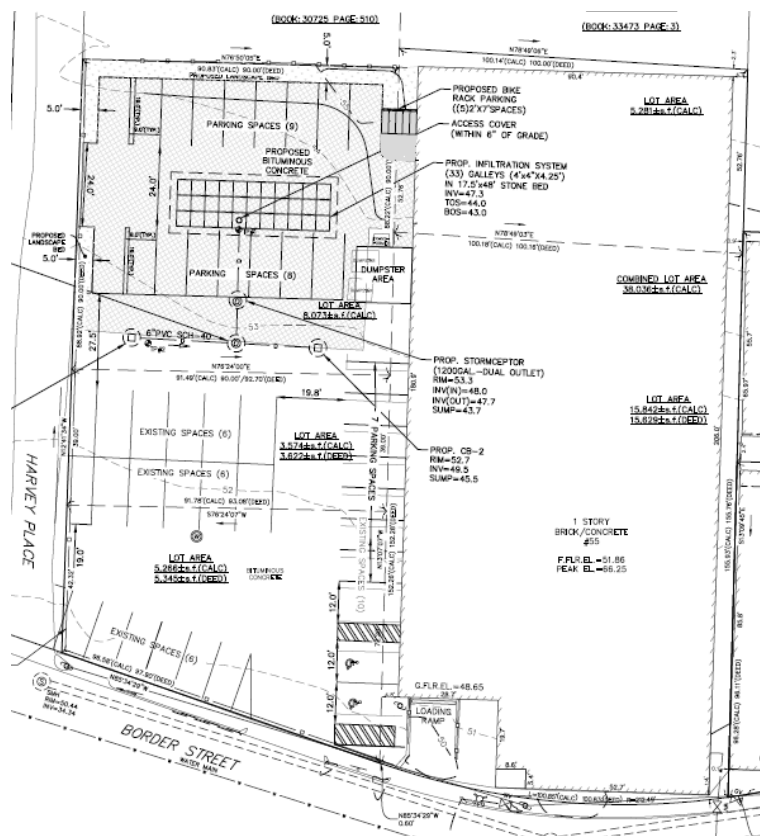
B. Building Design

No changes to the existing structure are contemplated by this petition.

C. Parking, Landscaping, and Lighting

The site currently has 29 surface parking stalls. The petitioner is proposing to expand the existing parking facility by paving an existing informal gravel parking area which would result in 17 additional paved and lined spaces on site and the addition of 6,473 square feet of impervious area to the property.

The site has frontage on both Harvey Place and Border Street, and, as proposed, several of the new stalls would be located in the front setback along the Harvey Street frontage. The parking would continue to be accessed via an existing curb cut on Border Street.

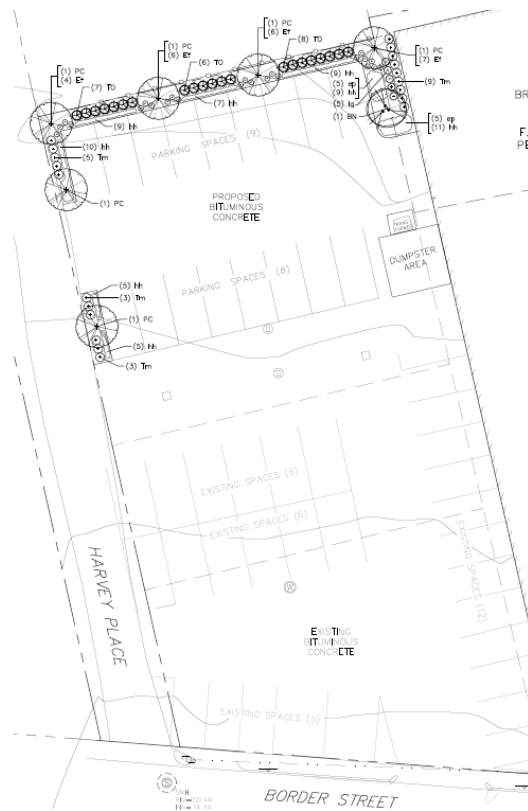


Proposed site plan

Parking facilities with more than 20 stalls are required to provide one bicycle parking stall per ten stalls. The current proposal includes the installation of a five-space bike rack near the northeast corner of the parking area.

D. Landscaping and Lighting

The petitioner submitted a planting plan with the petition that indicates 28 trees (including 21 arborvitae) would be installed, mostly along the property line shared with the residential property that abuts directly to the north. The Planning Department requests the petitioner clarify if a fence would also be located along that boundary.



Proposed planting plan

While the petitioner is proposing such perimeter landscaping, they are seeking a waiver from the requirement for parking facilities with 20 or more stalls to have interior landscaping of an area equivalent to 5% of the total parking facility with a minimum of 25 feet of landscaping. No interior landscaping is proposed, and the proposed changes reflect largely what is already existing on site.

The petitioner is also seeking relief from the requirement that parking facilities used at night must have security lighting with a minimum of one-foot candle. The Planning Department is generally not concerned with the waiver as the property abuts several residential uses, therefore the lighting waiver is appropriate for this location.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special Permit per §7.3.3 to:
 - allow parking in the front setback (§5.1.8.A.1, §5.1.13)

- waive interior landscaping requirements (§5.1.9.B, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)

B. Engineering Review

The attached Engineering Division Memorandum (**Attachment D**), drafted in response to a previous petition for the project submitted in 2020, provides an analysis of the proposal with regard to engineering issues. As the project would need to be reviewed by the Engineering Division in advance of the issuance of a building permit in the event this petition is granted, the petitioner should ensure that the issues discussed with the memo are addressed with the Engineering Division.

C. Historic Review

Review of the proposal by the Newton Historic Commission is not required.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: DRAFT Order

ATTACHMENT A







Land Use

55-67 Border St.

*City of Newton,
Massachusetts*

Land Use

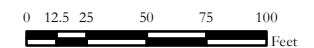
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Mixed Use
-  Open Space

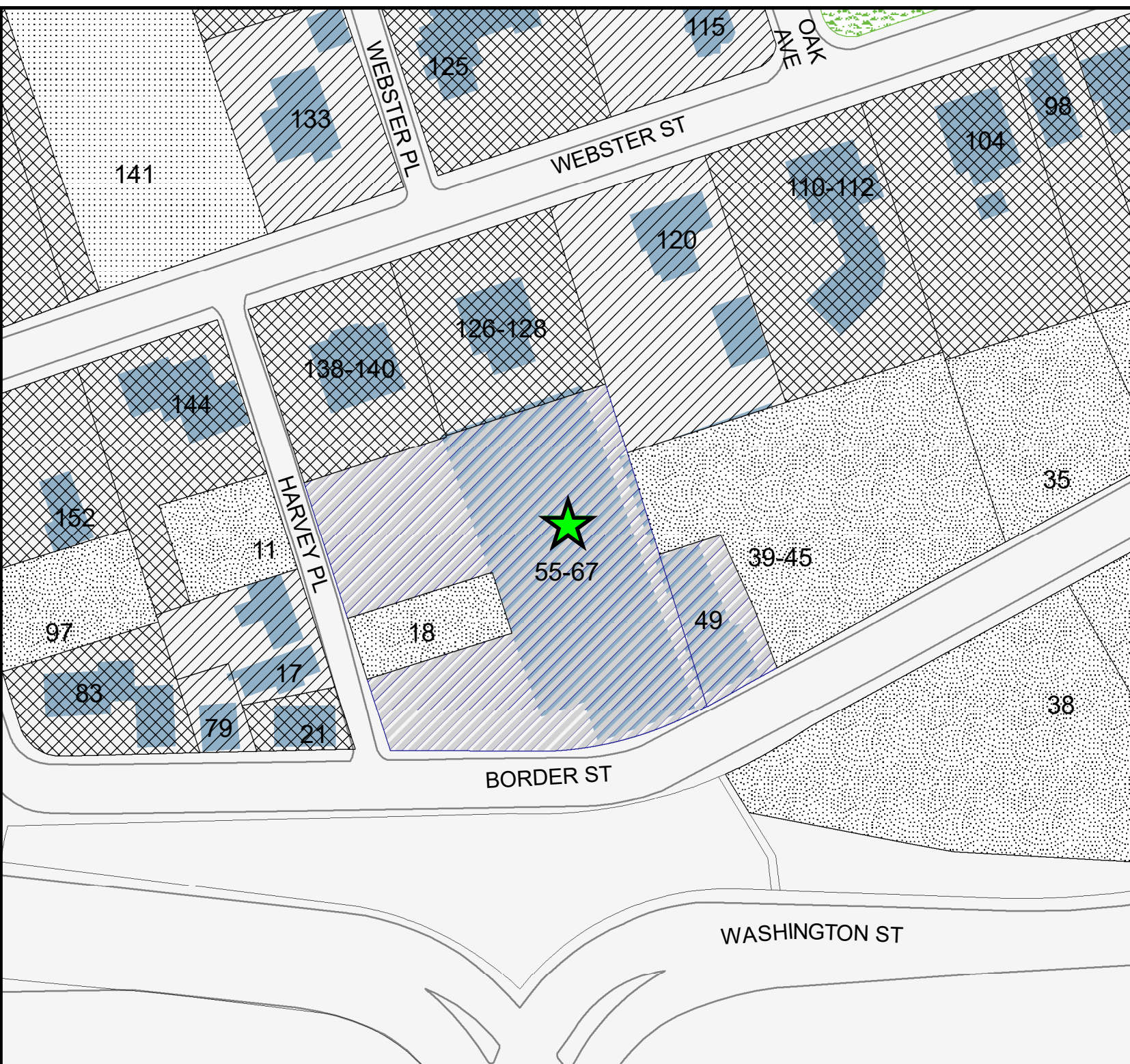


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



Map Date: April 14, 2022






ATTACHMENT B

Zoning

55-67 Border St.

*City of Newton,
Massachusetts*

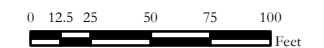
Legend

-  Multi-Residence 1
-  Manufacturing
-  Public Use

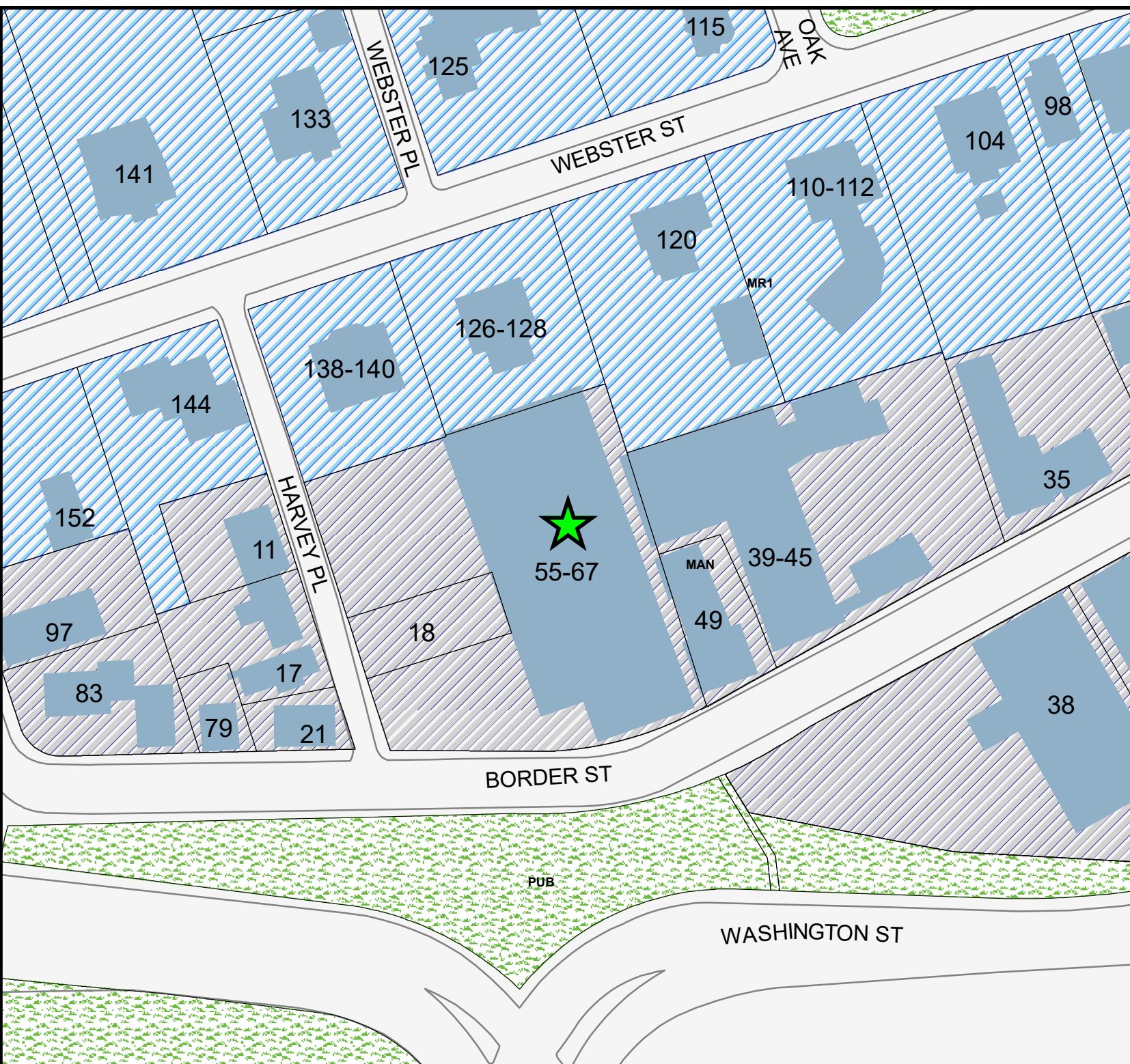


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: April 14, 2022





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: January 25, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: 55 Border Street LLC, applicant
G. Michael Peirce, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request for waivers from parking design criteria

Petitioner: 55 Border Street LLC	
Site: 55-67 Border Street	SBL: 33013 0017
Zoning: MAN	Lot Area: 38,036 square feet
Current use: machine repair shop with 29 parking stalls	Proposed use: machine repair shop with 46 parking stalls

BACKGROUND:

The property at 55-67 Border Street consists of a 38,036 square foot lot improved with a one-story machine repair and assembly building constructed in 1961 with a paved parking area accommodating 29 stalls and an unlined gravel parking area. The petitioners seek to expand the parking by paving and striping the existing gravel area.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared by G. Michael Peirce, attorney, dated 7/24/2019
- Zoning Plan, signed and stamped by Joseph R. Porter, dated 7/17/2019, revised 1/15/2021

ADMINISTRATIVE DETERMINATIONS:

1. The existing parking facility is nonconforming with regard to several dimensional and design regulations. The existing paved facility will not be modified and this memo addresses changes to the gravel parking area at the rear of the property. Per section 5.1.2.C, where parking facilities are increased in capacity, the expanded portion must be constructed in accordance with the requirements of section 5.1, however per section 5.1.2.B the existing parking facility may remain as is.
2. Section 5.1.8.A.1 states that no parking shall be located within any required setback distance from a street or side lot lines. Per section 4.3.3, the required front setback in the Manufacturing district is the greater of half the building height or 15 feet when abutting a residential district. The one-story building requires a 15-foot front setback as it abuts an Multi Residence 1 district to the north. The petitioner proposes to construct parking stalls within five feet of Harvey Place, thus located within the front setback, requiring a special permit per sections 5.1.8.A.1 and 5.1.13.
3. In accordance with the requirements of 521 CMR 23, three accessible stalls are required on site. The petitioner intends to construct three parking stalls in the existing portion of the parking facility. Modifications to an existing parking facility to construct required accessible parking do not trigger updates to all other dimensional requirements relative to parking per section 5.1 in the existing portion of the facility.
4. Per section 5.1.9.B, outdoor parking facilities with more than 20 stalls must provide interior landscaping. No interior landscaping is proposed, requiring a special permit to waive the requirement per section 5.1.13.
5. Section 5.1.10.A requires that parking facilities which are used at night have security lighting with a minimum intensity of one foot candle on the entire surface of the parking facility. The petitioner seeks a waiver from the requirements of section 5.1.10.A.
6. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§5.1.8.A.1 §5.1.13	To allow parking in the front setback	S.P. per §7.3.3
§5.1.9.B §5.1.13	To waive interior landscaping requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive the lighting requirements	S.P. per §7.3.3

CITY OF NEWTON
Department of Public Works
ENGINEERING DIVISION

MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – #55 Border Street

Date: January 7, 2020

CC: Barney Heath, Director of Planning
Jennifer Caira, Chief Planner
Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Michael Gleba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

Topographic Site Plan
Showing Proposed Parking at #55 Border Street
Prepared by: VTP Associates Inc.
Dated: June 13, 2019

Executive Summary:

This application entails the improvement of a gravel parking lot into a paved facility with on site drainage collection and infiltration. The existing gravel lot is adjacent to residential homes along the northern property line, commercial building on the east, Border Street (public way) along the south, and Harvey Place (along the western property line). The drainage calculation methodology is acceptable however, it is incomplete, the calculations does not substantiate the number of leaching galleys being provided, an updated calculation is needed to verify the design. Snow storage areas should be delineated on the site plan or if the intent is to haul snow off site.

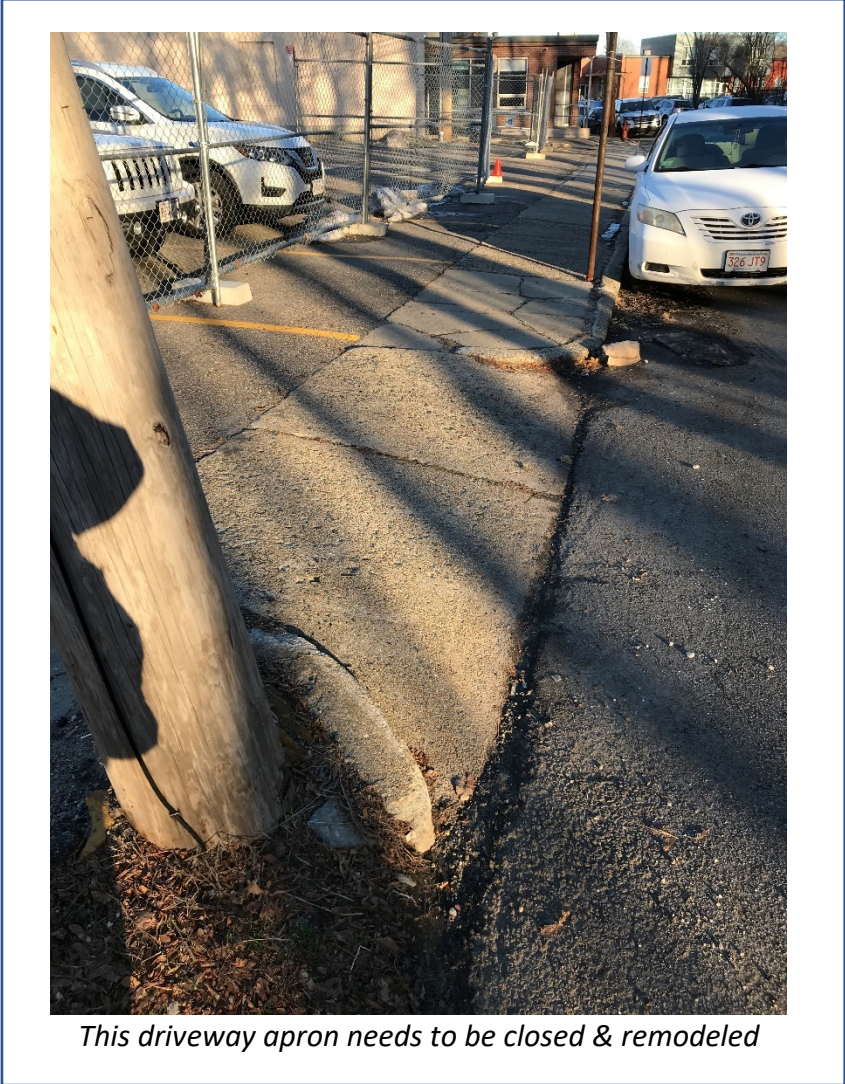
If the special permit is approved an Approval Not Required [ANR] plan will be required in accordance to Massachusetts General Laws Chapter 41 Section 81P requiring the multiple separate lots to be combined into one lot.

Based on a site visit the parking lot appears to be encroaching Harvey Place, some sort of delineation such as curbing should be installed at the edge of the parking lot to define the limits.

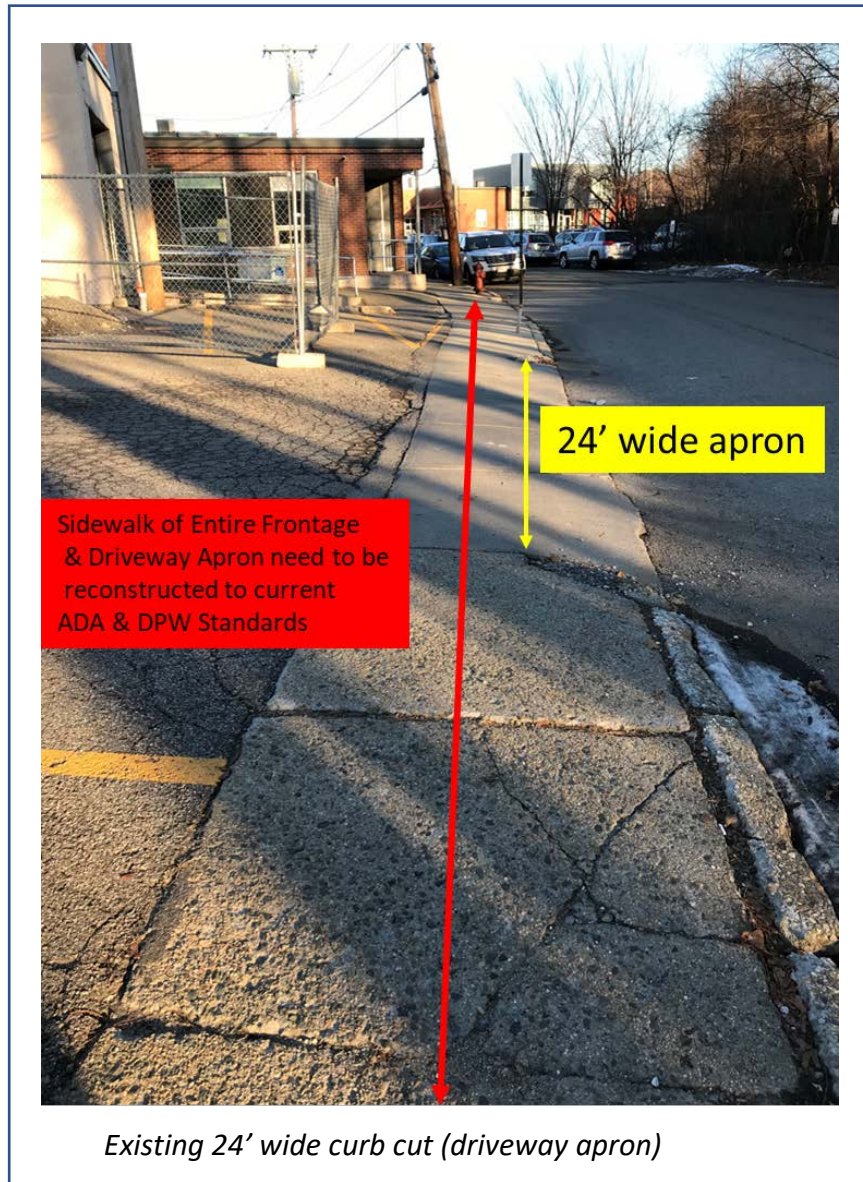


Parking stalls appear to be encroaching Harvey Place

The existing driveway curb cut at the corner of Border Street & Harvey Place needs to be eliminated and remodeled as sidewalk since parking stalls are juxtaposed to this apron; the main driveway has an existing 24' wide curb cut that can accommodate two-way traffic in and out of the parking lot.



Sidewalks along the entire frontage are not compliant and need to be updated to current ADA and DPW Standards as part of the Special Permit, see photo on following page.



Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.

3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Drainage:

1. An Operations and Maintenance (O&M) plan for the long-term maintenance of the proposed stormwater management facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by the applicant/property owner, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
2. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, trench drains, and pipe(s) are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E Investigation and report been performed on the site, if so, copies of the report should be submitted to the Newton Board of Health and Engineering Division.
2. Are there any existing underground oil or fuel tanks? Have they been removed, if they have been, evidence of the proper removal should be submitted to the Newton Fire Department and the Board of Health.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the drainage system will be made available for an inspection. The system shall be fully exposed for the Inspector to

view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*

4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.
5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the As built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
6. All site work including trench restoration, sidewalk, curb ,apron and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. The contractor of record shall contact the Newton Police Department 48-hours in advanced and arrange for Police Detail to help residents and commuters navigate around the construction zone.
8. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to

allow parking in the front setback (§5.1.8.A.1) and grant exceptions to certain interior screening (§5.1.9.B) and lighting (§5.1.10) requirements for parking facilities as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed site changes and parking and landscape waivers due to its location in the Manufacturing Zone (§7.3.3.1).
2. The proposed site changes and parking and landscape waivers will not adversely affect the neighborhood as the proposed changes largely reflect the existing layout of the site and the petitioner is proposing landscaping where there currently is none (§7.3.3.2).
3. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.3).
4. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.4).
5. Granting the requested exceptions to provisions Section 5.1 related to parking in a front setback (§3.2.3, §5.1.8.A.1), interior landscaping requirements (§5.1.9.B), and lighting requirements (§5.1.10) would be appropriate because literal compliance is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13).

PETITION NUMBER: #223-22

PETITIONER: 55 Border Street LLC

LOCATION: 55-67 Border Street, on land known as Section 33 Block 13
Lots 17 and 20, containing approximately 38,036 square feet

of land

OWNER: 55 Border Street LLC

ADDRESS OF OWNER: 45 Border Street
Newton, MA 02465

TO BE USED FOR: Expansion of parking facility

CONSTRUCTION: Site Work Only

EXPLANATORY NOTE: Special Permit per §7.3.3 to:

- allow parking in the front setback (§5.1.8.A.1, §5.1.13)
- waive interior landscaping requirements (§5.1.9.B, §5.1.13)
- waive the lighting requirements (§5.1.10, §5.1.13)

ZONING: Manufacturing (MAN)

Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features shall be located and constructed consistent with:
 - a. A plan entitled "Topographic Site Plan, Newton, Massachusetts, Showing Proposed Parking at #55 Border Street." prepared by VTP Associates, signed and stamped by Joseph R. Porter, Professional Land Surveyor, dated June 13, 2019, as revised through January 15, 2021
 - b. A plan entitled "55 Border Street, Newton, MA, Planting Plan (Sheet No. L-1)," prepared by Leone Company, signed and stamped Randall Clemence, dated November 17, 2019
2. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Recorded a certified copy of this Order for the approved Special Permit/Site Plan Approval with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Provided a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works, and Fire Department.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.

- e. Provided a Final Landscape Plan for review and approval by the Director of Planning and Development.
 - f. Provided a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Registry of Deeds for the Southern District of Middlesex County. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
 - g. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
3. No Occupancy Permit/Final Inspection for the use covered by this Special Permit/Site Plan Approval shall be issued until the petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
 - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division certifying that the final site construction details have been constructed to the standards of the City of Newton Engineering Division.
 - d. Filed with the City Clerk and the Commissioner of Inspectional Services, a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
4. Notwithstanding the provisions of Condition #3 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provided that the petitioner shall first have filed a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.
5. All landscaping shall be maintained in good condition and shall be replaced with similar material as necessary.