

City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

617-796-1120

Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: August 8, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Cat Kemmett, Senior Planer

SUBJECT: **Petition #261-23**, for SPECIAL PERMIT/SITE PLAN APPROVAL to amend condition 8 of Special Permit 113-23 to allow expanded hours of operation for the patio until 10 P.M.

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.



344-346 Elliot Street

I. Project Description

Current use

Restaurant with 109 seats.

Zoning

Business Use-1, with direct abutters in Multi-Residence 2, Multi-Residence 3, Manufacturing, and Public Use zones

Structures on site

2,023 square foot building and 10-stall surface parking facility

Lot size

9,676 square feet

Proposal

Several special permits have been granted for the property since 1994, including relief for the number of seats at the restaurant, parking waivers, waivers for parking lot screening and lighting requirements, and dimensional relief for parking.

Special permit #113-23 was granted earlier this year, which amended the prior special permit with site plan modifications to remove ten parking stalls to use that space for outdoor dining and a waiver of 24 parking stalls. Condition 8 of this special permit states that the petitioner “shall not operate the outdoor dining area past 9:00 P.M. on the days the outdoor dining is in use.” The petitioner has requested to amend their special permit to extend the hours of operation for the outdoor dining area to 10:00 P.M. on the days the outdoor dining is in use.

Analysis

The Planning Department is not concerned with the proposed amendment to special permit #113-23. At the public hearing for special permit #113-23, some members of the public and Committee members shared concerns about the potential noise nuisance the outdoor patio seating could impose on the neighboring residences. However, the petitioner has stated that there will be no live performances outside and music that is played out of speakers for the outdoor patio is kept at a reasonable volume. The location of the outdoor patio means that there is some distance between the patrons on the outdoor patio and the residences in the abutting residential zones, which should mitigate some of the noise associated with the patio operations.

II. Zoning Relief Requested

There is no zoning relief associated with this application. This is an amendment to Condition 8 of the prior special permit.

III. Criteria for Consideration per §7.3.3. and/or §7.8.2.C.2:

- The site in BU-1 is an appropriate location for the requested amendment to special permit #113-23. (§7.3.3.C.1)
- The requested amendment to special permit #113-23 will not adversely affect the neighborhood (§7.3.3.C.2)
- The requested amendment to special permit #113-23 will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

IV. Project Proposal and Site Characteristics

The petitioner is not proposing any changes to parking or circulation.

V. Interdepartmental Review:

No interdepartmental review is required at this time.

VI. PETITIONER'S RESPONSIBILITIES

The petition is considered complete.

ATTACHMENTS:

Attachment A: Zoning Review Memorandum

Attachment B: DRAFT Council Order

#261-23
344-346 Elliott Street

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 amend Special Permit #113-23 (which granted relief to remove ten parking stalls for use as outdoor dining seats and to waive 24 parking stalls) to extend the hours of operation for outdoor dining 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 amendment to Council Order #113-23 that extends the hours of operation for the outdoor dining patio to 10:00 P.M. because it is located in the Business Use 1 district, which allows for restaurant operations. (§7.3.3.C.1)
2. The amendment to Council Order #113-23 will not adversely affect the neighborhood because the outdoor patio is already open during evening hours, and an additional hour of service per day is unlikely to have a significant negative impact. (§7.3.3.C.2)
3. The amendment to Council Order #113-23 will not create a nuisance or serious hazard to vehicles or pedestrians because no physical changes are proposed to the site. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved because no changes are proposed to the site that would negatively impact access. (§7.3.3.C.4)

PETITION NUMBER:

#261-23

PETITIONER:

Seana Gaherin and Robert Dunn, Trustees of D&G Realty Trust

LOCATION:

344-346 Elliot Street, Ward 5, Newton Upper Falls, on land known as Section 51 Block 41 Lot 10, containing

approximately 9,676 sq. ft. of land

OWNER: D&G Realty Trust

ADDRESS OF OWNER: 344 Elliot Street
Newton, MA 02464

TO BE USED FOR: Restaurant with 109 seats

CONSTRUCTION: No new construction proposed

EXPLANATORY NOTE: Amendment to Council Order #113-23 to update Condition #8 and extend the hours of operation for the outdoor dining patio from 9:00 P.M. to 10:00 P.M.

Special Permits carried over from #215-16(2):

- Modify Special Permit Council Order #501-94(2)
- Allow parking in a side setback (§5.1.8.A.1, §5.1.13)
- Waive aisle width requirements (§5.1.8.C.1, §5.1.8.C.2, §5.1.13)
- Waive certain parking lot screening requirements (§5.1.9.A, §5.1.13)
- Waive parking lot security lighting requirements (§5.1.10, §5.1.13)
- Allow a retaining wall greater than 4 feet within a setback (§5.4.2.B)

Special Permits carried over from #113-23:

- Site plan modifications and waiver of 24 parking stalls (§5.1.4; §5.1.13)

ZONING: Business Use 1 (BU1) District

This Special Permit amends Council Order #113-23 by changing the allowed hours of operation for the outdoor dining patio. All other conditions of Council Order #289-18 and Council Order #215-16(2) remain in full force and effect.

Approved, subject to the following conditions:

1. Condition #8 shall be deleted and replaced with the following, "The petitioner shall not operate the outdoor dining area past 10:00 PM on the days the outdoor dining is in use."