

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, which grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow Elder Housing with services, to allow a development in excess of 20,000 sq. ft., to allow a five-story building, to allow a retaining wall greater than 4-feet in height within a setback, to allow a free-standing sign, to allow parking within the front setback, and to waive lighting requirements as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories. The Project's location along Route 9 and large lot area lends itself to a larger building and elderly housing with services use. The Project provides housing for seniors that have a need for a greater level of care and fills a need of this specific type of residential care. The location is an appropriate location for the proposed free-standing sign as the sign is designed to be visually integrated within the existing wall and is not obtrusive. The site is an appropriate location for the proposed retaining wall greater than four feet in height within a setback as the wall is well-designed and landscaped. (§7.3.3.1)
2. The proposed elderly housing facility will not adversely affect the neighborhood as the building is located on a property that was previously used as a commercial enterprise and the site has adequate access to major arterial roads, including Route 9. The Project's design has been carefully considered to minimize impacts on abutting properties and provides extensive landscape buffering so as not to impact adjacent and neighboring residential properties. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the Project provides safe vehicular access via two driveways to the main building and a pedestrian path to the existing sidewalk on Florence Street. The driveway on Boylston Street (Route 9) to the additional parking area will also include an improved sidewalk adjacent to the driveway. In addition, there will be improvements to the intersection of Boylston Street and Florence Street, which will provide for enhanced pedestrian accommodations as part of this Project. (§7.3.3.3)

4. Access to the site is appropriate for the types and numbers of vehicles involved because the Project complies with the parking requirements of the Ordinance and provides for a variety of visitor, employee, and resident parking. (§7.3.3.4)
5. The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy, including the following: (a) minimizing operating energy; (b) minimizing the use of fossil fuels; and (c) implementing a transportation plan that will minimize carbon footprint. (§7.3.3.C.5)
6. Literal compliance with the dimensional parking requirements 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)
7. Literal compliance with the lighting requirements for parking facilities over five stalls is not in the public interest as allowing the Petitioner to provide lower levels of lighting will benefit nearby residential areas. (§5.1.13)
8. The proposed free-standing sign should be permitted and is appropriate due to the nature of the use of the premises, the architecture of the buildings or its location with reference to the street, such that such exception is in the public interest. (§5.2.13)
9. In accordance with Section 29-169 of the Revised Ordinances of Newton, Massachusetts, 2017 (the "Revised Ordinances"), the Council finds there is good cause, based on recommendations from the City Engineer and the Director of Planning and Development and in part on other mitigation and community benefits offered by the Petitioner, to waive 75% of the infiltration/inflow calculation for the Project. (§29-169)

PETITION NUMBER: #356-22

PETITIONER Sunrise Development, Inc.

LOCATION: 11 Florence Street and 318 Boylston Street also identified as Section 82, Block 4, Lots 49 and 47, containing approximately 82,945 square feet of land

OWNER: Seltzers Garden City, Inc. (11 Florence Street)  
Seltzers Realty LLC (318 Boylston Street)

ADDRESS OF OWNER: 160 Southampton Street  
Boston, MA 02118

TO BE USED FOR: Elderly Housing with Services Facility

RELIEF GRANTED: Special Permit per §7.3.3 to allow an elder housing with services facility (§4.4.1, §6.2.10), development of 20,000+ square feet of gross floor area (§4.1.2.B.1), allow a building with five stories (§4.1.2.B.3, §4.1.3), allow a retaining wall in excess of 4 feet in a setback (§5.4.2.B), allow parking within the front setback (§5.1.8.A.1, §5.1.13), waive lighting requirements (§5.1.10.A, §5.1.13), and allow one free-standing sign (§5.2.13)

ZONING: Business Use 4 district

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. Site Plans, “Sunrise at Chestnut Hill”, prepared by VHB, dated October 18, 2021, most recently revised May 12, 2023.
    - i. Sheet 5, Site Layout and Materials Plan
  - b. Architectural Plans and Elevations prepared by JSA, dated August 22, 2022:
    - i. A-04 Exterior Elevations, north, east, south, and west
  - c. Landscape Plan, prepared by JSA, dated July 19, 2021, revised October 10, 2023.
2. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required (“ANR”) plan combining the two lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works and submitted with the building permit application.
3. Prior to the issuance of any building permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, the Engineering Division of Public Works, and the Fire Department.
4. Prior to the issuance of any building permit, the petitioners shall obtain a written statement from the Planning Department that confirms that the building permit plans are consistent with plans approved in Condition #1.
5. Prior to the issuance of any building permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the “O&M Plan”) for stormwater management to the Engineering Division of Public Works for review and approval, should a system be required. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of

the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.

6. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate any activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
  - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.
  - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration.
  - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction assessment of the site and the neighborhood.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
7. Prior to the issuance of any building permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor. This information shall also be posted in a clear and visible manner at the construction site.
  - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for

construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control. The petitioner shall be responsible for ensuring that no construction vehicles idle on or within the immediate vicinity of the site.

- d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
  - e. Proposed methods for dust control including, but not limited to: watering, covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
  - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
  - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
8. All exterior construction activity shall be limited to 7:00AM-4:00PM Monday through Friday and 8:00AM-4:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13.
  9. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
  10. The parking facility shall provide access to electric vehicle charging stations for a minimum of 20% of parking spaces.
  11. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.
  12. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
  13. Deliveries of construction materials shall not occur before 7:00 am or after 5:00 pm.
  14. Construction vehicles may not park on surrounding residential streets or public sidewalks.
  15. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the site. All repair work shall be done prior to the issuance of the final certificate of occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public

- safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
16. The Petitioner shall design and construct, at no cost to the City, the Boylston Street (Route 9) and Florence Street mitigation improvements as shown on the Conceptual Plan by VHB, dated August 30, 2023, entitled Conceptual Intersection Mitigation Improvements.
    - a. To the extent required, it shall be the responsibility of the Petitioner to receive all necessary approvals from MassDOT to complete the Route 9 Intersection Mitigation Improvements. The Petitioner shall document its best efforts to diligently obtain all necessary approvals for the improvements.
    - b. Prior to issuance of a building permit, the Petitioner shall coordinate with MassDOT and provide proof of coordination to the Director of Planning and Development and Commissioner of Public Works.
    - c. Prior to issuance of a certificate of occupancy (temporary or final), the Route 9 Mitigation Improvements must be substantially complete and operationally approved by MassDOT. The Petitioner shall provide proof of this completion and approval by MassDOT to the Director of Planning and Development and Commissioner of Public Works.
    - d. The final cost of the improvements shall be credited toward the payment referenced in Condition #19 herein, subject to review and approval from the Commissioner of Public Works. In the event MassDOT does not approve the proposed improvements, the Petitioner shall no longer be obligated to construct the improvements and there will not be any reduction of or credit toward to the payment amounts referenced in Condition #19.
  17. The Petitioner shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment associated with demolition or ledge/rock removal:
    - a. Prior to the issuance of any demolition, foundation, or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project (as measured from the Project's property lines) for which the owner of the building or structure has granted approval at no charge to the owners. The survey must include photos taken both inside and outside prior to construction to set a baseline of existing conditions. Copies of the survey and photos shall be provided to owners.
    - b. Prior to the issuance of any demolition permit, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor).
    - c. If a property owner has consented to a pre- and post- construction survey as set forth in this condition and the property owner believes its buildings or structures have suffered damage due to vibration impacts from the Project, the

property owner may make a claim to the vibration mitigation fund by submitting its claim, along with supporting documentation and photographs, to an independent third party hired and paid for by the Petitioner, subject to review and approval by the City Solicitor, for the independent third party's review. Notice shall be provided to such private property owners on how to make a claim for damages. Only those property owners who consent to a pre-construction survey as set forth above shall be eligible to make a claim to the vibration mitigation fund. If a claim is approved by the independent third party, property owners receiving payment from the mitigation fund must sign a release of claims as a condition to the receipt of such payment. In lieu of seeking payment from the vibration mitigation fund, a property owner may pursue a claim for damages for any amount through private action.

- d. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:
  - Measurements of static ground vibration prior to construction.
  - Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV) at the property line of the Project.
  - Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
  - Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
  - A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
- e. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation, or building permit.
- f. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- g. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.



- f. Provide 20% Electric Vehicle (EV) Charging Stations.
  - g. Provide \$31,250 as a one-time contribution for employee Public Transportation Subsidies. If the \$31,250 is not dispensed/expended after a period of five years from any certificate of occupancy, the remainder shall be paid to the City for transportation related improvements or towards funding the City's shuttle system or other public transportation systems. Petitioner/Operator shall provide reports each year, annually on the anniversary of the issuance of the certificate of occupancy, of the number of transit passes issued and funds expended pursuant to this condition.
  - h. Provide a \$23,400 one-time contribution to the City prior to the issuance of a building permit for vertical construction toward City-initiated transit improvements such as bus shelter, transit, and/or City's shuttle system.
  - i. Provide a resident welcome package including all TDM initiatives that are offered.
  - j. Provide an onsite car-pool rideshare program with guaranteed ride home for employees.
  - k. Provide preferential electric vehicle/low emission car parking in parking garage by designating spaces.
  - l. Provide a small-scale shuttle and/or sedan available to transport residents to medical and other necessary appointments off site.
21. In accordance with the City's Inclusionary Housing Ordinance, Section 5.11, based on the 120 beds, the Project shall include 6 affordable housing beds.
  22. Prior to the issuance of a building permit for vertical construction, the Petitioner shall apply to Traffic Council to eliminate approximately four parking stalls along the Florence Street frontage.
  23. All rooftop equipment and mechanicals must be sufficiently screened and noise from mechanicals must comply with the noise ordinance. A plan showing rooftop mechanicals and screening must be submitted for review and approval by the Director of Planning and Development prior to the issuance of a building permit.
  24. The Project shall conform to the applicable Massachusetts Architectural Access Board (MAAB) requirements. The applicant shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements.
  25. All buildings shall be designed and constructed to achieve Passive House Rating program in accordance with the Sustainable Development Requirements set forth in Section 5.13.4 of the Zoning Ordinance.
  26. Prior to issuance of a building permit, the Petitioner shall submit to the Planning Department the following:
    - a. an updated Rating System Checklist enumerating the criteria set forth in the applicable Green Building Rating program and indicating which technical and

design requirements will be met in the green building project design and the resulting rating level of the project.

- b. an updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.
  - c. an updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
  - d. a document demonstrating the credentials of the project's designated green building professional.
  - e. an affidavit signed by the green building professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project is being designed to achieve Passive House.
  - f. the credentials of the project's green commissioning agent.
  - g. the credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating they have been hired to complete the on-site verification process.
  - h. the credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services.
27. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
  - b. Prior to vertical construction, the petitioner shall submit an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with this Order, and §5.11.8 of the Zoning Ordinance.
  - c. Submitted a recorded lot consolidation plan to the City Engineer and included a copy with the building permit application in accordance with this Order.
  - d. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
  - e. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and

Development, the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with this Order.

- f. Received approval from Inspectional Services for the Pest Control inspection report and the remediation action plan.
  - g. Received approval from Inspectional Services for the vibration control plan.
  - h. Submitted documentation prepared and certified by a Green Building Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate meeting the requirements of Passive House.
  - i. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
28. Prior to issuance of a certificate of occupancy, the Petitioner shall submit to the Planning Department any updates to the above referenced documents along with the following:
- a. An affidavit certifying that the pre-construction commissioning process requirements of Passive House Rating have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
  - b. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.
29. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
  - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.
  - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
  - d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction in perpetuity. In addition, the Petitioner will provide evidence satisfactory to the Law Department

that the Regulatory Agreement have been recorded at the South Middlesex District Registry of Deeds.

- e. Inclusionary beds shall be completed no later than the completion of the market-rate beds. If the Inclusionary beds are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate beds equal to the number of Inclusionary beds that have not been completed.
  - f. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
  - g. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
  - h. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements.
  - i. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by this Order.
  - j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for Passive House level of construction of the subject building have been satisfied.
30. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material. In addition, the Petitioner shall ensure that landscape maintenance on the property near Route 9 is conducted as needed to improve sight lines.
31. Provided that all other requirements in Condition #28 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may in their discretion issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).
32. The Petitioner may store snow on the Site to the extent that it does not impede parking and circulation and pedestrian movements. To the extent snow removal is necessary, such removal will be conducted pursuant to a Snow Removal Plan, which shall be maintained on file at the Project and be available for review upon request by the Director of Planning and Development. The Petitioner shall remove snow along the sidewalks abutting the Site

in accordance with the City's snow removal ordinance. Petitioner shall not use salt as part of its removal of snow or maintenance of roadways or sidewalks.

33. The Petitioner shall replace the sidewalks along the entire frontage of the Project in accordance with Section 29-185 of the City of Newton Revised Ordinances.
34. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the Development Parcel. All repair work shall be done prior to the issuance of the final certificate of occupancy for the final dwelling unit in the Project, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
35. The trash and recycling disposal shall be handled by a private entity and shall comply with the City's Noise Control Ordinance.