



Ruthanne Fuller
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459
617-796-1120

Petition: #287-23 (B)
Public Hearing:
11/14/23

Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: November 9, 2023
MEETING DATE: November 14, 2023
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Alyssa Sandoval, Deputy Chief Planner for Current Planning
CC: Petitioner

In response to issues raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

PETITION: #287-23 (B)

839-853 Washington Street

Special Permit/Site Plan Approval to amend Special Permit #96-17 by increasing the parking waiver from 97 stalls to 172 stalls and to amend Condition #3 of Special Permit #179-19 at 839-853 Washington Street.

Background

The Land Use Committee heard the petition on September 19, 2023, and voted to recommend increasing the parking waiver and to allow non-accessory parking in the underutilized parking garage, amending Special Permit #96-17. The petitioner also seeks to amend special permit #179-19 to modify the definition of “formula business” as it relates to Condition #3 to allow for greater flexibility in leasing commercial space to small and possibly localized chains.

Councilors and members of the public expressed concern about the amendment to Condition #3, which would change the definition of formula retail to extend to businesses 24 or more locations in Massachusetts. Concerns were raised that the revised definition could have the unintended consequence of allowing large national chains to locate at Trio even if they have few Massachusetts locations. The Public Hearing was held open for the petitioner to work on the proposal to provide further refinements to better address national chains. Please refer to Attachment A for the September

15, 2023 Planning memorandum (including Zoning Memorandum) for further details on the project review.

Since the September 19, 2023 Public Hearing, the Petitioner has proposed a revised definition of formula business. The proposed change would adjust the definition of formula businesses to a business with 24 or more locations worldwide (instead of within Massachusetts only). This change would mean that only non-formula retail, restaurant, or personal service tenants with 23 or fewer locations worldwide would be allowed to lease within the reserved 10,000 square feet of ground floor space.

Planning has no concerns with the revised definition as it will allow for more flexibility for the owner to lease to a greater variety of businesses while still discouraging large national chains from locating at Trio.

ATTACHMENTS:

- Attachment A:** Planning Department Public Hearing memorandum, 9/15/2023 (including Zoning Memorandum)
Attachment B: DRAFT Council Order



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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: September 15, 2023
TO: City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Alyssa Sandoval, Deputy Chief Planner for Current Planning
SUBJECT: **Petition #287-23** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #96-17 by increasing the parking waiver from 97 stalls to 172 stalls and to amend Condition #3 of Special Permit #179-19 at 839-853 Washington Street

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.



839-853 Washington Street

Project Description

Background

The subject property consists of approximately 123,956 square feet (2.85 acres) of land in the Mixed Use 4 (the "MU-4") zone in Newtonville on Washington Street. In 2017, the City Council approved a rezoning of a portion of the site to the MU-4 zone (Council Order #95-17) and a special permit to construct a new mixed-use development, which consists of three interconnected buildings with 140 dwelling units and approximately 47,000 square feet of commercial space, known as Trio (Council Order #96-17). The original order was amended by Council Order #216-18 to permit a revised design for a 140-unit version of the project.

Special Permit

The petitioner seeks to amend special permit for the Trio development, #96-17, to allow non-accessory parking in the underutilized parking garage, and to amend special permit #179-19 to modify the definition of "formula business" as it relates to Condition #3 to allow for greater flexibility in leasing commercial space to local chains.

The original special permit for Trio, #96-17, prohibited the petitioner from leasing commercial space within the development to commercial banks and placed restrictions on the ability to lease parking as part of the parking waiver.

In 2019, the petitioner sought to lease to a bank use and was granted a new special permit to allow for the bank use while also placing restrictions on the leasing to chains (also known as formula businesses) by dedicating 10,000 sf of space on the ground floor to non-formula retail, restaurant, and personal services uses (Council Order #179-19).

Another change sought by the petitioner is for an increase of the parking waiver. The original parking waiver for #96-17 allowed a parking waiver for 97 required parking stalls. The petitioner now seeks to amend the special permit to increase the waiver to up to 172 stalls, rendering these stalls unavailable to the petition which allows for the leasing of up to 75 parking stalls. In addition, the petitioner requests non-accessory parking and assigned parking by special permit that is required in order to lease these stalls. A parking and traffic monitoring study completed in March 2023 finds that Trio's residential parking in the garage is under-utilized while the petitioner notes that the surface lot is often at capacity.

Because the original order is very detailed with subsequent amendments coupled with the nature of the proposed amendment, Planning recommends these amendments, if approved, be handled as a standalone amendment to the existing Special Permit Council Order.

Analysis

Planning is unconcerned with the proposed change to adjust the definition of formula businesses to allow up to 24 businesses with a Massachusetts location at the Trio Development within the 10,000-square-foot allocation set aside for ground floor uses. The definition of formula business

may be too restrictive and does not allow for the variety of local and state chain businesses that might have a larger presence regionally but do not necessarily represent the standard national chain store or restaurant. Commercial property owners need flexibility in order to fill vacancies, and after consulting with the Economic Development Director and Long-Range Planning staff, Planning has no issues with the revised definition to provide this flexibility.

Additionally, the parking waiver and allowance for assigned and leased parking in the Trio parking garage does not concern the Planning Department. The recent parking study provided indicate that the current garage parking has additional capacity that is not used which is consistent with other studies done in the area that show private parking along Washington Street to be underutilized. Planning notes that the leasing of garage parking will not impact customers of the ground floor retail businesses, who will continue to have access to both on-street parking and the surface parking lot.

I. Zoning Relief Requested:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend Special Permit #179-19	
	Amend Special Permits #96-17 and 216-18	
§4.4.1	Request to allow non-accessory parking	S.P. per §7.3.3
§5.1.4 §5.1.13	Request to waive an additional 75 parking stalls for a total waiver of 172 stalls	S.P. per §7.3.3
§5.1.3.E §5.1.13	Request to allow assigned parking	S.P. per §7.3.3

For more details around the zoning analysis please refer to **Attachment A**.

II. Criteria for Consideration per §7.3.3 and/or §5.1.13:

- The specific site is an appropriate location for the amendments to Council Order #96-17 and Council Order #179-19. (§7.3.3.C.1.)
- The site, due to the amendments to Council Order #96-17 and Council Order #179-19, as developed and operated will adversely affect the neighborhood. (§7.3.3.C.2.)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendments to Council Orders #96-17 and Council Order #179-19. (§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.)

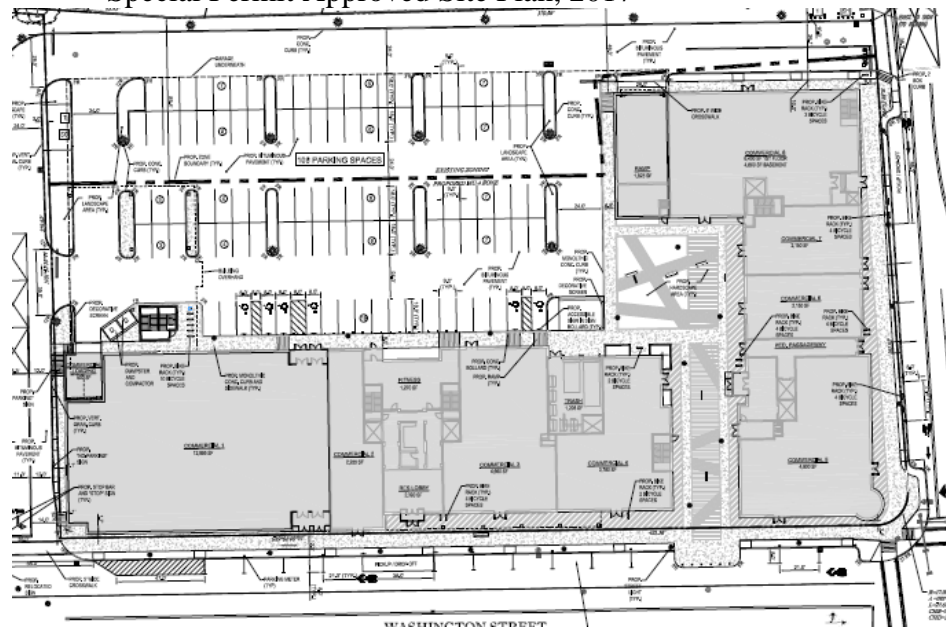
- Literal compliance is impractical due to the nature of the use, or the location, size, frontage, depth, shape, or grade of the lot, or that such exceptions to the parking requirements is in the public interest of safety, or protection of environmental features. (§5.1.13)

III. Project Proposal and Site Characteristics

A. Site

The site consists of a 123,628-square foot lot in the Mixed Use 4 zoning district and is improved with a five-story, 214,690-square foot, mixed use building with 140 residential condo units and 309 parking stalls divided between a surface lot and garage. The site is accessed by one driveway entrance from Washington Street and one driveway entrance from Walnut Street. The garage is located at the northwest of the connected building and the surface parking is located in the rear of the property. There are no changes proposed to the site plan but the special permit site plan is provided for contextual purposes.

Special Permit Approved Site Plan, 2017



IV. Project Description and Analysis

A. Land Use

The current use of the site is mixed use commercial and residential. If approved, the use would not change.

B. Site Design

This petition affects neither the site nor the building design.

C. Use Condition

The original Council Order #96-17 prohibited the petitioner from leasing space to commercial banks. A subsequent amendment (Council Order 179-19) allowed a bank use in Tenant Space 108 totaling 3,760 square feet. While the amendment allowed for the bank use, it also placed restrictions on the leasing to chains (also known as formula businesses) by dedicating 10,000 sf of space on the ground floor to non-formula retail, restaurant, and personal services uses (Council Order 179-19). The current definition of formula businesses under Council Order 179-19 is an establishment with nine or more businesses worldwide. One of the goals was to restrict a certain percentage to non-formula businesses as a way to support independent, neighborhood serving businesses and the village atmosphere of Newtonville.

The proposed amendment seeks to revise the definition of formula business to raise the number of businesses to 24 or more per establishment within Massachusetts.

The region has a number of small, local, "chains" that have successfully thrived and grown that were originally started by locally based entrepreneurs. To gain a sense of magnitude of the types of businesses that might represent both national and regional chains, Planning conducted a small sample of businesses in Massachusetts as provided below.

Business Survey, as of August 2023

Business Name	Business Type	Number in Massachusetts
Clover Food Lab	Restaurant	15
Tatte Café	Restaurant	24
Comella's	Restaurant	11
Blackbird Donuts	Bakery	7
Landry's Bicycles	Retail	8
Lazzoni Furniture	Retail	9
Taco Bell	Restaurant (fast food)	76
99 Restaurant	Restaurant	58
McDonald's	Restaurant (fast food)	249

While understanding the goal to retain Newtonville vibrancy, Planning is supportive of the change to allow regional chains to open up opportunities and reduce vacancies in commercial spaces and believes this change will still support this overall goal. It is notable that Clover (currently at the ground level of Trio) would now not be allowed to establish a new location at Trio under the current special permit since it has expanded to have 15 restaurants in the Boston metro area since it was first established at Trio.

Therefore, Planning is unconcerned with the proposed change to adjust the definition of formula businesses to those establishments having up to 24 businesses with a Massachusetts location at the Trio Development within the 10,000-square-foot allocation set aside for ground floor uses.

D. Parking

Trio's Parking Garage has a total of 210 parking spaces. On average, 136 spaces in the parking garage are currently leased. Of those spaces, 25 are leased to tenants of affordable units, 111 are leased to tenants of market rate units; and 10 are leased to tenants of the retail spaces. Therefore, there are about 64 garage spaces that currently are not leased. The cost of parking is unbundled from the cost of the rent and is a separate fee charged, which also may help to reduce parking demand since tenants pay an additional charge for parking.

Planning supports increasing the parking waiver by 75 spaces for a total waiver of 172 parking stalls because the parking study shows that the garage parking is currently under-utilized on a regular basis. Allowing the property owner to lease additional spaces will open up opportunities for Trio and residents in the area, as well as to

existing retail tenants to utilize these spaces.

The TDM resident survey provided as an appendix to the parking and traffic monitoring study (sample of 30 residents) indicates that Trio residents are using a variety of alternative transportation options nearby, including Green Line/T station, BlueBikes, NewMo, Rideshare, and MBTA Bus, which may be helping to decrease the need for high levels of car ownership and associated parking. Additionally, 13 percent of those residents surveyed do not own a vehicle.

Planning believes the recent parking study and TDM resident survey support increasing the parking waiver to up to 172 spaces as the location of the development supports a high usage of alternative transportation modes.

V. INTERDEPARTMENTAL REVIEW

- A. Transportation: The Transportation Coordinator has reviewed this request during early consultation (Design Review Team meeting) with the petitioner and did not have concerns with the parking waiver and assignment of leased parking.

VI. PETITIONER'S RESPONSIBILITIES

This petition is considered complete.

ATTACHMENTS:

- Attachment A:** Zoning Review Memorandum
Attachment B: Proposed Amendment - Council Order #287-23
Attachment C: Council Order #96-17
Attachment D: Council Order #179-19



Ruthanne Fuller
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: July 13, 2023

To: Anthony Ciccariello, Acting Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Katie Whewell, Chief Planner for Current Planning

Cc: Stephen J. Buchbinder, Attorney
Washington Place Owner LLC
Barney S. Heath, Director of Planning and Development
Jonah Temple, Deputy City Solicitor

RE: Request to increase parking waiver from 97 to 172 stalls amending Special Permit #96-17 and to amend Condition #3 of Special Permit #179-19

Applicant: Washington Place Owner LLC	
Site: 839-853 Washington Street	SBL: 21029 0010MAIN
Zoning: MU4	Lot Area: 123,628 square feet
Current use: Mixed use with commercial, residential and parking	Proposed use: No change

BACKGROUND:

The subject site known as "Trio" is comprised of 123,628 square feet in the Mixed Use 4 zoning district and is improved with a five-story mixed use building with 140 residential units and 309 parking stalls divided between a surface lot and garage. Trio was originally permitted by Special Permit #96-17. A revised design for 140 residential units was amended by Special Permit #216-18 and the most recent amendment, Special Permit # 179-19 modified the prohibition on commercial banks to allow a bank in the tenant mix.

The petitioner now seeks to amend the special permit to allow non-accessory parking in the under-utilized parking garage, and to modify the definition of "formula business" as it relates to Condition #3 to allow greater flexibility in leasing commercial space to local chains.

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

- Zoning Review Application, prepared by Stephen J. Buchbinder, attorney, dated 6/13/2023
- Narrative, submitted 6/13/2023
- Site Plan, prepared by J.G. Swerling, engineer, dated 8/31/2018, revised 1/15/2019, 4/30/2019, 4/7/2020, 6/2/2020, 7/20/2020
- Basement Floor Plan, prepared by PCA, architect, dated 8/31/2018, revised 10/12/2018, 5/23/2019
- Special Permit #216-18

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner seeks to amend the definition of “formula business” found in Condition #3 of Special Permit #179-19. The petitioner seeks greater flexibility in leasing to local chains by seeking the requested changes to the language as shown below:

In the event that the Petitioner leases commercial space to a commercial bank as allowed by this amendment, the Petitioner is required to reserve (i.e., whether leased or vacant and available for lease) at least 10,000 rentable square feet within the ground floor only, for lease to non-formula retail, restaurant, or personal service use tenants, which requirement shall be in place prior to, and remain in effect after, the issuance of a certificate of occupancy for a commercial bank. For the purposes of this condition, formula retail, restaurant, or personal service use is defined as “Any establishment, which along with ~~nine~~ twenty four or more other businesses ~~regardless of ownership or location worldwide~~, located within the Commonwealth of Massachusetts does or is required as a franchise, by contractual agreement, or by other agreement to maintain two of the following features:

1. A standardized menu;
 2. A standardized façade;
 3. A standardized décor and/or color scheme;
 4. A standardized uniform;
 5. A standardized sign or signage; or
 6. A standardized trademark or service mark.”
2. The site has 210 garage parking stalls and 99 surface parking stalls. The surface parking lot is frequently close to or at capacity. However, a parking utilization study commissioned by the petitioner has determined that on average, only 136 of the garage stalls are rented to residential tenants on a month-to-month basis. An additional 10 of the garage stalls are leased to commercial tenants. As such, 64 parking stalls are regularly not leased and thus, vacant every month. The petitioner is seeking a special permit per section 4.4.1 to allow non-accessory parking to allow for up to 75 parking stalls to be leased to outside parties.
 3. Special Permit #96-17 granted a waiver of up to 97 parking stalls. The petitioner seeks to amend the special permit to increase the waiver to up to 172 stalls, allowing for the leasing of up to 75 parking stalls.

4. Per section 5.1.3.E, parking stalls may not be assigned to specific tenants or users, unless by special permit. The petitioner seeks to allow for stalls to be assigned, requiring relief per section 5.1.13.

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Amend Special Permit #179-19	
	Amend Special Permits #96-17 and 216-18	
§4.4.1	Request to allow non-accessory parking	S.P. per §7.3.3
§5.1.4 §5.1.13	Request to waive an additional 75 parking stalls for a total waiver of 172 stalls	S.P. per §7.3.3
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CITY OF NEWTON
IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site, as defined below, 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 Council Order #179-19 to modify a condition preventing the petitioner from leasing space to formula businesses, as recommended by the Land Use Committee and 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 #179-19 allowing a greater number of business types to locate at Trio given the site is located within a Village Center containing a variety of uses. (§7.3.3.C.1)
2. The amendment to Council Order #179-19 will not adversely affect the surrounding neighborhood and will help to foster a vibrant commercial center with appropriately-scaled businesses. (§7.3.3.C.2)
3. The amendment to Council Order #179-19 will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. The dedication of 10,000 square feet within the ground floor of the development to non-formula retail, restaurant, or personal service uses helps to create a more vibrant, diversified mix of businesses. Allowing small chain businesses with fewer than 24 locations worldwide within the ground floor will provide more flexibility to lease these spaces and create a dynamic mix of businesses, helping to provide for an active streetscape. The Council finds that dedicating space to such uses will support the village atmosphere of Newtonville.

PETITION NUMBER: #287-23

PETITIONER: Washington Place Owner LLC c/o Mark Development LLC

LOCATION: 845-853 Washington Street known as Section 21, Block 29, Lot 10

OWNER: Washington Place Owner LLC

ADDRESS OF OWNER: 275 Grove Street, Newton, MA 02466

TO BE USED FOR: Amendment to Special Permit #179-19 concerning leasing space to formula businesses

RELIEF GRANTED: Special permit per §7.3.3 to amend Council Order #179-19 to revise the definition of non-formula businesses (§7.3.3)

ZONING: Mixed Use 4 district

Approved subject to the following Conditions.

This Special Permit/Site Plan Approval amends Council Order 179-19 regarding Condition 3 defining non-formula businesses. All other conditions of Council Order #96-17 and Council Order #179-19 remain in full force and effect.

1. The petitioner shall reserve 10,000 rentable square feet within the ground floor only, to non-formula retail, restaurant, or personal service tenants. This requirement shall be met prior to and remain in effect after, the issuance of a certificate of occupancy for a commercial bank. For the purposes of this condition, formula retail and restaurant uses are defined as “Any establishment, which along with twenty-four or more other businesses regardless of ownership or location worldwide, does or is required as a franchise, by contractual agreement, or by other agreement to maintain two of the following features:
 - A standardized menu;
 - A standardized façade;
 - A standardized décor and/or color scheme;
 - A standardized uniform;
 - A standardized sign or signage; or

- A standardized trademark or service mark.”
2. Prior to issuance of any Building Permits for the Project, the Petitioner shall record a certified copy of this Council Order with the Registry of Deeds for the Southern District of Middlesex County and file a copy of such recorded Council Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

DRAFT