



# Land Use Committee Report

## City of Newton In City Council

**Tuesday, March 6, 2018**

**Present:** Councilors Schwartz (Chair), Lipof, Greenberg, Auchincloss, Kelley, Markiewicz, Crossley, Laredo

**Also Present:** Councilor Brousal-Glaser

**City Staff Present:** Associate City Solicitor Bob Waddick, Chief Planner Jennifer Caira, Senior Planner Neil Cronin, Senior Planner Michael Gleba, Planning Associate Valerie Birmingham

All Special Permit Plans, Memos and Application Materials can be found at [http://www.newtonma.gov/gov/aldermen/special\\_permits/current\\_special\\_permits.asp](http://www.newtonma.gov/gov/aldermen/special_permits/current_special_permits.asp). Presentations for each project can be found at the end of this report.

**#92-18      Petition to amend Special Permit #131-16 at 37 Westbourne Road**

JOYCE ZAKIM petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #131-16 to alter an existing nonconforming front and side setback at 37 Westbourne Road, Ward 7, Chestnut Hill on land known as Section 73 Block 45 Lot 09 containing approximately 8,090 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 3.1.3, 7.8.2.C.2, 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord., 2015.

**Action:**      **Public Hearing Closed; Land Use Approved 7-0 (Markiewicz not Voting)**

**Note:**      Attorney Laurance Lee, office of Rosenberg, Freedman and Lee represented the petitioners at 37 Westbourne. The 2016 Special Permit Petition #131-16 was a request to construct an attached garage to create interior access from the garage to the house, making it wheelchair accessible but also requiring a Special Permit for FAR relief in addition to a variance for noncompliant setbacks. Atty. Lee stated that t after approval of Special Permit in May 2016, MGL Chapter 40A changed to allow existing noncompliant dimensional standards to be made legal non-conformities with a Section 6 finding that the proposed use is not substantially more detrimental than the existing non-conforming conditions are to the neighborhood.

Chief Planner Jennifer Caira reviewed the requested relief to extend the non-conforming front and side setbacks. Ms. Caira reviewed the criteria for consideration as follows:

- Grant a one-year extension to May 17, 2018
- Special Permit per §7.3 to alter nonconforming front and side setbacks. §3.1.3, §7.8.2.C.2

When reviewing this request, the Council should consider whether:

- The proposed nonconforming front and side setbacks are substantially more detrimental than the existing nonconforming front and side setbacks are to the neighborhood. § 3.1.3, §7.8.2.C.2

Ms. Caira reiterated that Special Permit #131-16 approved non-conforming FAR to allow construction of an addition including an attached single car garage, kitchen space, interior stairway with a chair lift and one car carport. She noted that the site contained an existing noncompliant detached garage constructed in 1985. The required Section 6 finding proposes that the front and side setbacks are not more detrimental than the existing front and side setbacks. Ms. Caira demonstrated the site plan, existing and proposed elevations and an aerial photo of the property, noting that the Site Plan has not change since approval of the Special Permit #131-16 in 2016. Ms. Caira noted that a new curb cut will be added to access the one car garage (on Francis Street). The curb cut on Westbourne Road will remain.

The Public Hearing was opened. With no member of the public wishing to speak, Councilor Laredo motioned to close the public hearing which carried unanimously. Councilor Laredo motioned to approve the item. Committee members expressed no concerns relative to the proposed amendment to Special Permit #131-16, noting that noncompliant structures and noncompliant uses with no documented enforcement action; non-compliant may be recognized as legally nonconforming finding. The proposed modification to find the setbacks nonconforming rather than noncompliant eliminate the need for a variance. Ms. Caira confirmed that there will be a new, consolidated Board Order.

Committee members reviewed the following draft findings and conditions:

#### Findings

1. The extension of the nonconforming structure with the proposed addition will not be substantially more detrimental than the existing nonconforming structure as it will largely occupy the location of the existing similarly sized garage. §3.1.3, § 7.8.2.C.2

#### Conditions

- This petition consolidates prior special permits.
  1. Plan Referencing Condition.
  2. Standard Building Permit Condition.
  3. Standard Final Inspection/Certificate of Occupancy Condition.

With no changes, Committee members voted unanimously in favor.

**#133-18**      **Petition to allow a restaurant with more than 50 seats at 2095 Commonwealth Ave**  
AUBURNDALE REALTY VENTURES NOMINEE TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing structure to allow a restaurant with more than 50 seats, to allow a free standing sign, to allow more than two secondary signs, waivers to the interior landscaping requirements, waivers to lighting requirements, waivers to perimeter screening requirements, and parking waivers for: parking in the front setback and reduced aisle width at 2095 Commonwealth Avenue, Ward 4, Auburndale, on land known as Section 41 Block 17 Lot 18 containing approximately 19,627 sq. ft. of land in a district zoned

BUSINESS USE 2. Ref: 7.3.3, 7.4, 4.4.1, 5.1.8.A.1, 5.1.13, 5.1.8.C.1, 5.1.8.C.2, 5.1.9.A.1, 5.1.9.B, 5.1.10.A, 5.2.3, 5.2.8, 5.2.13.A of the City of Newton Rev Zoning Ord, 2015.

**Action:** Land Use Held 8-0; Public Hearing Continued to April 3, 2018

**Note:** Mr. Justin Ferris, 96 G Street, South Boston, represented the petitioner. The site at 2095 Commonwealth Avenue includes a Starbucks opened in March 2018. The petitioner is requesting seating for more than 50 customers, requiring a Special Permit. Additionally, the request for additional restaurant seating triggers the need for additional parking, requiring reconfiguration of the lot and creating the need for relief for interior landscaping, lighting, perimeter screening and parking standards. The petition also includes a request for a free-standing sign with three secondary signs. Mr. Ferris stated that the petitioner believes that the current design meets community needs and serves the site well. He noted that the site has presented challenges relative to developing a safe and effective parking plan. Mr. Ferris responded to concerns raised by the Planning Department. Regarding concerns relative to the waivers for perimeter landscaping requirements; the petitioner proposes to maintain existing mature vegetation and fill the gaps with perennials and mulching. Mr. Ferris noted that the site is set back from Commonwealth Avenue as well as Lexington Street, where there is a wide sidewalk. Regarding the requested waiver for interior landscaping, the Planning Department has recommended some landscaping on the “hatched” spaces on the parking plan. Mr. Ferris noted that he is concerned that there is insufficient space to include interior landscaping and believes it could interfere with traffic circulation in the parking lot. He stated that there are plantings around the patio area which are not depicted on the plans.

Regarding the proposed sign package, Mr. Ferris stated that he has not heard concerns relative to the side facades or the brightness of the signs. He noted that he has received complaints regarding the side lights on the exterior of the building which the petitioner proposes to address by installing light shields.

Ms. Caira provided an overview of the relief requested and criteria for consideration as follows:

- §4.4.1, to allow a restaurant with more than 50 seats
- §5.1.8.A.1 & §5.1.13, to allow parking in the front setback
- §5.1.8.C.1, §5.1.8.C.2 & §5.1.13, to allow reduced aisle width
- §5.1.9.A.1 & §5.1.13, to waive perimeter screening requirements
- §5.1.9.B & §5.1.13, to waive interior landscaping requirements
- §5.1.10.A & §5.1.13, to waive lighting requirements
- §5.2.3, §5.2.8 & §5.2.13.A, to allow a free-standing sign
- §5.2.3, §5.2.8 & §5.2.13.A, to allow more than two secondary signs

Criteria for the Council’s consideration:

- The specific site is an appropriate location for restaurant use with more than 50 seats, (§7.3.3.C.1)
- The proposed project as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2)
- There will be no 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 number of vehicles involved. (§7.3.3.C.4)
- Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) 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)
- The nature of the use of the premises, the architecture of the building or its location with reference to the street is such that free-standing signs or exceptions should be permitted in the public interest. (§5.2.13)

Ms. Caira noted that the Starbucks site is zoned Business Use, neighbored by Single Residence 3, Business 1 and Business 2 zones. The land use in the neighborhood is primarily single and multi-family residential with some commercial entities to the south. Ms. Caira noted that the Starbucks is located at the site of a former gas station. She stated that the canopy that was previously at the site has been removed. Ms. Caira confirmed that the restaurant opened with less than 50 seats and is requesting relief to increase the number of seats to 56. Ms. Caira showed photos of the site. The proposed site plan includes two driveways; one on Lexington Street and one on Commonwealth Avenue. The site plan includes 25 parking stalls where 21 are required. 90-degree parking requires a 24' drive aisle. The site plan shows a left drive aisle that is 12' at the narrowest point and 22' for the front drive aisle. The petitioner's request to locate a "Starbucks" free standing sign would be located where there is an existing free-standing sign. The petitioner has requested to locate three secondary signs, where two would be permissible as a matter of right. The Urban Design Commission is supportive of the sign package with the exception that the free-standing sign is reduced from 17' to 16. Ms. Caira noted that the height of the sign has already been reduced. The secondary signs include a channel letter sign on the front entry way, a mermaid sign on the west elevation and a mermaid sign on the east elevation. Mr. Ferris that the lights that will be shielded are the wall pack lights located on the west and east elevations.

Ms. Caira reviewed concerns raised relative to the driveway on Lexington Street. Because the driveway is signalized, Transportation staff believes that there should be visual cues that inform vehicles and pedestrians how to interact in the intersection. The recommendation of the Transportation staff is that approval of the Special Permit is conditioned on: painting of a white bar at the back of the sidewalk (to identify where vehicles should stop), a "Stop Here on Red" sign, a double yellow line down the center of the driveway aisle and sidewalk paint that matches other crosswalks in the area (red). Mr. Ferris confirmed that the petitioner will comply with the Transportation Department's recommendations.

The Public Hearing was Opened.

Ken Leary, 2115 Commonwealth Avenue, owns Ken's Flower Café, Mr. Leary likes the proposed plans and will appreciate the light shields. He suggested that the substandard stalls could be used for compact cars. Mr. Leary noted that the landscaping plans are good, and he hopes that the sight lines can be preserved by not allowing fences at the site. Mr. Leary stated that he hopes that if the neighborhood raises concerns in the future, the petitioner will be receptive. He stated that currently there are no trash receptacles outdoors and customers are littering.

Denine Ledyard, 232 Melrose Street, noted that the lighting outside the building is obsessive. Ms. Ledyard stated that the parking lot is extremely bright and questioned whether the light covers will help. Ms. Ledyard noted that the mermaid signs are not the issue but that the wall lights are brighter than those of other businesses in the neighborhood, causing the lights to shine into abutting homes.

Dan Kaloupek, 230 Melrose Street, lives close to the north west corner of the property. Mr. Colapek emphasized the bright and extreme lighting and noted that residents have voiced complaints to management. He noted that the front of the building has subtle, pleasant lighting but the side lights are extreme. Mr. Colapek noted that casting the lighting downwards may be an improvement.

Lynn Slobodin, 61 Washburn Avenue, stated that she contacted the developer two years ago to begin a dialogue with the neighborhood and noted that the developer was not receptive.

Ezra Hausman, 77 Kaposia Street, stated that he is color blind and noted that the bright lights on the sides of the building are indistinguishable from traffic lights. Mr. Housman remains excited about the new Starbucks but asked that the petitioner be a good neighbor. He noted that the lights have been producing a lot of light pollution and have been lit twenty-four hours a day. He requested that the lights are turned off after closing and believes that the petitioner should be more respectful of the neighborhood character.

Maureen Vahey, 2069 Commonwealth Avenue, is opposed to the free-standing sign. She noted that the previous free-standing sign was an eyesore and she does not want the area to look like a strip mall. Ms. Vahey believes that neighborhood should continue to have a village appearance and noted that the signs take away from the village appearance. Ms. Vahey asked that landscaping be installed to reduce light from headlights on cars entering/exiting the restaurant. She urged the petitioner to maintain the existing number of signs, reduce the intense lighting at the site and keep the site clean.

Kathy Rosen, 405 Wolcott, reiterated that the lighting is excessive and insensitive to the neighborhood. She notes that other Starbucks' are not lit the same way and noted that the mermaid sign on Lexington street side is unnecessarily large and aggressive. Ms. Rosen believes that the signage makes the street look urban and sets a tone for the future. She stated that outside receptacles are necessary. Ms. Rosen questioned whether the lighting can be adjusted post approval. The Chair explained that the conditions run with the property, with Planning and Inspectional Services to ensure that they are abiding by the conditions.

Kathleen Lisbon, Starbucks Project Manager, stated that the lights were not intended to offend the residents and were primarily to address customer safety. Ms. Lisbon stated that she has not spoken to the store manager yet but confirmed that the petitioner will take steps to remedy the situation. Ms. Lisbon confirmed that the concerns relative to lighting and trash outside will be addressed. Mr. Ferris confirmed that he would work with the neighborhood to resolve ongoing concerns.

Jonathan Weisber, 21 Camden Road, stated that he has not heard complaints about the type of lighting being used. He stated that the lighting is an issue because of the type of bulb that is being used. Mr. Weisber stated that a shield won't help because the light is bright white. He noted that he is supportive

of the additional seats but opposed to the free-standing sign that does not fit in the character of the neighborhood.

Richard Kaplan, 18 Woodbine Street, is a shopping center developer. He stated that the community should have been met with in advance. Mr. Kaplan noted that Starbucks has one of the most identifiable logos and people will be able to recognize that the building is a Starbucks. He noted that the signs are brightly lit and there are many alternatives to having a pylon sign. Mr. Kaplan noted that the petitioner has not demonstrated a hardship for the requested relief and traffic circulation at the site is very unsafe. He noted that the previous free-standing sign was used to advertise the price of gas and is unnecessary for Starbucks.

Adrienne Ortega, 7 Freeman Street, stated that her family cares about the character of Auburndale as well as revitalization in the neighborhood. Ms. Ortega stated that she has not seen a landscaping plan but noted that the existing landscaping is unattractive. She asked that to the extent which landscaping interior will be waived, the exterior landscaping should be nicer. She is opposed to the free-standing sign.

Mike O'Connell, 2102-2120 Commonwealth Avenue, likes how Starbucks has improved the site, but is opposed to the free-standing sign. He noted that free standing signs are a hot commodity and does not think Starbucks should have one.

Tom McBride, 41 Albert Road, noted that there is green space between Commonwealth Avenue and the parking lot that could be landscaped. Ms. Caira explained that the green space between the parking lot and Commonwealth Avenue is part of the public right of way. Mr. McBride noted that traffic is backed up going southbound on Lexington street and causes difficulty for drivers trying to turn left into the parking lot. He questioned if the Planning Department has looked at options to improve access to the site. Ms. Caira noted that the traffic engineers have indicated that there are no plans for a dedicated left turn so the only suggested option was to prohibit left turns onto the site. She confirmed that she will discuss whether traffic can be stopped sooner so cars do not block the intersection.

Given the number of concerns raised by members of the public relative to lighting, Committee members asked whether the Planning Department has had the opportunity to review the lighting plan. Ms. Caira stated that the petitioner did not submit a lighting plan with the application. Ms. Caira confirmed that a photometric plan can be requested. A Committee member questioned whether the petitioner can switch the lighting for a trial period while the public hearing is held open. Ward 4 Councilor Markiewicz noted that he visited the site and has concerns about the lighting. He noted that the free-standing sign may be a traffic distraction for the neighborhood, which already has significant traffic concerns. One Committee member noted that large signs focus on car centric ideals. It was suggested that the large free-standing sign is not appropriate for a village, pedestrian oriented experience. Committee members that a neighborhood meeting with the petitioner should occur to resolve issues including lighting, waste management and signage. With a motion from Councilor Auchincloss to hold the item, Committee members voted unanimously in favor.

80 UNION STREET, LLC/DOUBLE J HOSPITALITY, LLC/AMERICAN COMPANIES, INC/UNION REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend prior Board Order #45-10 relating to 70-80 Union Street, Ward 6, Section 61 Block 36 Lot 11A, Newton Centre, containing approximately 2,842 sq. ft. of land in a district zoned BUSINESS 1, to eliminate the requirement for four off-site parking stalls at 93 Union Street, Ward 6, Section 61 Block 36 Lot 09, Newton Centre, containing approximately 31,455 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4 of the City of Newton Rev Zoning Ord, 2015.

**Action:** Public Hearing Closed; Land Use Committee Approved 4-1-2 (Kelley Opposed, Markiewicz, Schwartz abstaining, Laredo Recused)

**Note:** Attorney Katherine Adams, office of Schlesinger and Buchbinder, 1200 Walnut Street represented the petitioners American Companies LLC. Jodie Zussman representing both and James Kaye (Double J Hospitality), Fred Margolis (rep 80 Union Street, LLC). The petitioner is seeking an amendment to Special Permit #45-10. The Special Permit was granted to Deluxe Diner in 2010 to operate in the train station. The diner rented space from American Companies who was renting from 80 Union Street. The Special Permit granted waivers for 18 parking stalls but required leasing of four off-site spaces for employees. In order to fulfil their obligation of leasing four off-site spaces, Deluxe rented four off-site spaces from American Companies, who had entered into a parking agreement with 93 Union Street/Union Street Realty Trust. Atty. Adams noted that while the spaces remained available during the duration of their tenancy, employees did not use the spaces and relied on public transportation.

Deluxe Diner has closed, and a new restaurant plans to operate at the site. The manager, Mr. James Kaye, noted that the number of seats and employees will remain the same. He anticipates that during the largest shift, a maximum of twelve staff members will be present. Mr. Kaye expects that he will need two parking spaces and has leased two on Willow Street. He stated that the remaining ten employees will commute via public transportation. Atty. Adams noted that the petitioner is seeking to eliminate the off-site parking requirement to allow the petitioner flexibility to procure spaces based on the demand, which is subject to change. Atty. Adams noted that for business operations, it would not be sensible for employees to park at meters as they will have to relocate their cars every two hours. It was noted that the petitioner will secure additional spaces if necessary to maintain efficient operations but does not want to have to rent spaces that will go unused. Atty. Adams noted that Board Order #45-10 considers the loss of the four parking spaces as an option and requires an equivalent alternate proposal for review and approval by Planning and Inspectional Services within 60 days. Atty. Adams emphasized that the restaurant is located on the MBTA green line and has bicycle racks. The petitioner does not believe that the elimination of the four parking spaces will have an adverse effect on the neighborhood.

Senior Planner Neil Cronin reviewed the requested relief and criteria for consideration as follows:

- Special Permit to amend Board Order #45-10 to remove a condition requiring off-site parking at 93 Union Street.

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Board Order #45-10. (§7.3.3.C.1)

- The site, due to the amendment to Board Order #45-10, as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendment to Board Order #45-10. (§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)

Mr. Cronin noted that the restaurant has existed on site since 2012, in a transit-oriented village center, near three municipal lots. The Public Hearing was Opened. No member of the public wished to speak. Councilor Crossley motioned to close the public hearing which carried unanimously.

Committee members noted that Newton Centre is busy and employee parking is an ongoing issue. Committee members acknowledged that the metered parking would not be adequate for business operations and noted that the Deluxe Diner did not use the four leased spaces. A Committee member noted that there have been concerns that Newton Centre staff parks in adjacent neighborhoods. Committee members questioned whether the lease of two stalls can be substituted for four as an amendment to the Board Order. Atty. Adams indicated that it is the petitioner's preference to eliminate the condition and secure parking as needed. Committee members questioned whether the parking demand can be addressed without a condition for lease of off-site stalls. Mr. Cronin confirmed that the Committee can amend the Board Order contingent on submission of a Transportation Demand Management Plan that addresses employee parking needs. A new TDM would be submitted with a new owner/tenant. Some Committee members felt that the Board Order waived the 18 stalls but required the four off-site employee stalls because of a demonstrated need. A Committee member noted that while the Deluxe Diner leased the four spaces, they were never used by the restaurant.

Committee members reviewed the following draft findings and conditions:

1. The specific site is an appropriate location for the amendment to Board Order #45-10 concerning off-site parking because the site is adjacent to a transit station in a village center. (§7.3.3.C.1)
  2. The restaurant, due to the amendment to Board Order #45-10 developed and operated, will not adversely affect the neighborhood because the restaurant is located in a village center served by three municipal parking lots. (§7.3.3.C.2)
  3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from the amendment to Board Order #45-10 because the restaurant has existed on site since 2012 which has allowed operations to normalize. (§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)
- This petition consolidates prior special permits.
    1. Plan reference condition
    2. Standard Building Permit Condition.
    3. All conditions of Board Order #45-10 remain in effect.
    4. Standard Certificate of Occupancy Condition.



Committee members asked that a condition is modified to include submission and approval of a TDM plan that addresses employee parking demands. Councilor Crossley motioned to approve the item. Committee members voted 4-1-2, Council Kelley opposed and abstentions from Councilors Schwartz and Markiewicz, Councilor Laredo recused.

**#91-18      Petition to Amend Special Permits #273-14(2) & #40-07 on Elm Street**

NICORE CONSTRUCTION CORP./ANTONIO BONADIO petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Orders #273-14(2) and #40-07 to allow for the location of a new driveway, requiring an amendment to the site plan at 5-7 Elm Street and 11-19 Elm Street, Ward 3, West Newton, on land known as Section 33 Block 23 Lot and Section 33 Block 23 Lot 16, containing approximately 26,320 sq. ft. of land in a district zoned MR2 and MR1. Ref: Sec. 7.3, 7.4, 6.2.B.2 of Chapter 30 of the City of Newton Rev Zoning Ord., 2015.

**Action:**      Public Hearing Closed; Land Use Held 8-0

**Note:**      Attorney Terry Morris, office at 57 Elm Road, represented the petitioner, Nicore Construction Corp., for the Special Permit Petition to amend Special Permit Board Orders #40-07 and #273-14(2). Atty. Morris provided background information for the Special Permits at 5-7 Elm Street and 11-19 Elm Street. In 2007, a Special Permit was granted to 11-19 Elm Street for a five unit attached dwelling. The project was delayed until 2014 when a building permit was issued, and construction commenced. After construction was completed, a condominium was created, and the units went on the market.

While the condos were on the market, the petitioner began planning for the second site, 5-7 Elm Street, which required purchase of a third parcel, on River Street. Due to title issues that delayed acquisition of the River Street property, closing of the sale was delayed. The petitioner was granted Special Permit Board Order#273-14 with respect to 5-7 Elm Street prior to the sale of 3/4 units at 11-19 Elm Street. Due to the delay relative to acquiring the River Street property, the site was vacant and the condo owners at 11-19 Elm Street were unaware that a second development was being built at 5-7 Elm Street. Because there was no site plan on record at the Registry and the condo owners did not reside in the condos during the proceedings for 5-7 Elm Street, the condo owners at 11-19 had no opportunity to review the proposed development. As part of the proposal for Special Permit #273-14 5-7 Elm Street, the petitioner proposed closing and consolidation of two curb cuts and creation of an access easement for the sites at 11-19 and 5-7 Elm Street to share one driveway. Atty. Morris stated that the units at 11-19 Elm Street are now fully occupied and the condominium owners are opposed to the shared access easement which they had no prior knowledge of. He referenced the (attached) letter signed by the condo owners. The request to amend the Board Orders at 5-7 Elm Street and 11-19 Elm Street requires an amendment to the site plan. The petitioner proposes to retain a second curb cut at the site to access the second development. Atty. Morris noted that access easement will be a burden to the residents at 11-19 Elm Street and will not improve circulation or safety at the site. He noted that the Planning Department does not have concerns relative to the maintenance of the second curb cut. Atty. Morris noted that a revised landscape plan has been submitted to the Planning Department.

Senior Planner Neil Cronin reviewed the requested relief and criteria for consideration as follows:

- Special Permit to amend Board Orders #273-14(2) and #40-07(3) to amend the previously approved site plans

When reviewing this request, the Council should consider:

- The specific site is an appropriate location for amendments to Board Orders #273-14(2) and #40-07(3). (§7.3.3.C.1)
- The site, due to the amendments to Board Orders #273-14(2) and #40-07(3), as developed and operated will not 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 Board Orders #273-14(2) and #40-07(3). (§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).

Mr. Cronin showed an aerial photo as shown on the attached presented. He showed the previously approved site plan containing the easement as well as photos of the curb cuts at the site. Mr. Cronin noted that the curb cuts on Elm and River would have been removed. Mr. Cronin showed the proposed site plan with the elimination of the easement and reduction from of one curb cut from 19' - 16'. The location of the driveway will result in the removal of three lilac trees and the relocation of an additional two lilac trees to ensure clear sight lines for drivers.

The Public Hearing was Opened.

Councilor Barbara Brousal Glaser, 20 Auburndale Avenue, noted that she was opposed to the project when it was approved because of the amount of house proposed for the site. She noted that each unit has a two-car garage. Councilor Brousal-Glaser stated that she is happy that the River Street curb cut will be closed but noted that traffic from Elm Street to River Street is complicated, as-is. She stated that turning from Elm Street onto River Street is unsafe. Councilor Brousal-Glaser noted that Julia Malakie highlighted some facts, noting that Planning was in support of the shared driveway that would provide landscaping and added open space. She noted that there is a significant difference in lot coverage at 11-19 Elm Street. She also noted that the reason that the condo owners are against the access easement is because their children play in the driveway, as there is no open space to play in. She questioned how the added impervious surface will be addressed and noted that all the lilac trees should be relocated, rather than replaced. She questioned whether the garages need to be two car garages.

Attorney Morris confirmed that a new storm water catch basin is being installed in order to capture additional runoff. He noted that while the lot coverage is 25% at the site, a two-family could have been built as a matter of right at 30% lot coverage.

Councilor Kelley motioned to close the public hearing which carried unanimously. Some Committee members recalled the project and noted that a fundamental benefit of the contentious project was the elimination of the curb cuts. Atty. Morris noted that while consolidation of the curb cuts was a practical planning measure, it is ultimately not a practical solution. Committee members acknowledged that the condo owners at 11-19 Elm Street do not like the access easement but questioned why they were not aware of the proposed plans, prior to purchase of their property. Committee. The Chair emphasized that

the Committee must evaluate the pending petition, regardless of the previous petitions. After a motion from Councilor Kelley to approve the petition, it was evident that Committee members remained concerned about approval of the petition. Committee members requested that the petitioner work with the neighborhood and unanimously voted to hold the item until March 27, 2018.

**#135-18      Petition to amend Board Order #190-12 at 429 Cherry Street**

429 CHERRY STREET LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #190-12 to remove Conditions 11(a) and (e) from building permit requirements and insert them under Certificate of Occupancy requirements in Condition #12 for 429 Cherry Street, Ward 3, West Newton, on land known as Section 33 Block 23 Lot 20, containing approximately 13,398 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: 7.3.3, 7.4 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      **Public Hearing Closed; Land Use Approved 7-0 (Lipof not Voting)**

**Note:**      Attorney Terry Morris, office at 57 Elm Road, represented the petitioner, 429 Cherry Street, LLC. When the Special Permit Board Order #190-12 was approved in 2012, conditions were drafted to require that the Inclusionary Housing Plan and Regulatory Agreement needed approval by the Department of Housing and Community Development (DHCD) prior to issuance of a building permit. After realizing that the DHCD approval time can take several months, the petitioner is requesting that after submission and approval of the IHP to the City, the petitioner can receive a building permit while the state application (including the IHP and draft regulatory agreement) is pending. Atty. Morris noted that the regulatory agreement is standard and includes hiring of a third party private contractor to administer the Affirmative Fair Housing and Marketing Plan as well as tenant selection process. Upon receipt of approval by DHCD, a restrictive covenant is entered by the petitioner, City and state.

Senior Planner Neil Cronin reviewed the requested relief and criteria for consideration as follows:

- Special Permit to amend Board Order #190-12(3) to restructure conditions pertaining to inclusionary zoning.
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When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Board Order #190-12(3). (§7.3.3.C.1)
- The site, due to the amendment to Board Order #190-12(3), as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendment to Board Order #190-12(3). (§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).

Mr. Cronin reiterated that the approved Board Order required completion of DHCD and City certification prior to issuance of the building permit. City staff has coordinated with DHCD and believe that they can restructure the conditions to allow sufficient vetting according to DHCD and HUD guidelines.

He noted that a temporary Certificate of Occupancy can be granted until receipt of approval by DHCD and noted that there will be no loss of control on the City's part that the inclusionary units will be built accordingly.

The Public Hearing was opened. No member of the public wished to speak. Councilor Kelley motioned to close the public hearing which carried unanimously. It was noted that the Planning Department has analyzed the impacts of restructuring the Board Order and have no concerns relative to coordination with DHCD. Councilor Kelley moved approval which carried unanimously.

**#134-18      Petition to amend Board Order #201-17 at 386-394 Watertown Street**

JLM REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #201-17 to remove Conditions 3, 4 and 17(d) from building permit requirements and insert them under Certificate of Occupancy requirements in Condition #18 for 389-394 Watertown Street, Ward 1, Newton, on land known as Section 14 Block 14 Lots 37-39 containing approximately 9,542 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: 7.3.3, 7.4 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      **Public Hearing Closed; Land Use Approved 7-0 (Lipof not Voting)**

**Note:**      Attorney Terry Morris, office at 57 Elm Road, represented the petitioner, JLM Realty Trust. He noted that the requested relief is to modify the Board Order to allow for the building permit to be issued prior to approval of the IHP and regulatory agreement by DHCH, which can take several months. Mr. Cronin reiterated that the approved Board Order required completion of DHCD and City certification prior to issuance of the building permit. City staff has coordinated with DHCD and believe that they can restructure the conditions in order to allow sufficient vetting according to DHCD and HUD guidelines. He noted that a temporary Certificate of Occupancy can be granted until receipt of approval by DHCD and noted that there will be no loss of control on the City's part that the inclusionary units will be built accordingly.

Mr. Cronin confirmed that once the development is constructed, the petitioner will not be able to make changes relative to the IHP and there will not be issues having the units recognized by the DHCD.

The Public Hearing was Opened.

Patrick Slattery, 143 Bridge Street, stated that he was not noticed prior to the public hearing for Special permit #201-17. He questioned the process and noted that he failed to receive notice for the Washington Place Special Permit in 2016 as well. He noted that he typically receives his mail and has multiple addresses in the City and urged Committee members to analyze the process.

The Clerk's office confirmed that four addresses were listed on the abutters list for the 2017 Special Permit #201-17. The abutters list is generated using a GIS system that often "over notices" more than what is required by MGL Chapter 40A. It was noted that Special Permit petitions are advertised twice in the Boston Globe, once in the Newton Tab, posted at City Hall and signs are posted at the subject site. Councilor Greenberg motioned to close the public hearing which carried unanimously. Councilor Greenberg motioned to approve the item which carried unanimously.

The Committee adjourned at 8:40 pm.

**Respectfully Submitted,**

**Greg Schwartz, Chair**

## Department of Planning and Development



**PETITION #92-18**  
**37 WESTBOURNE ROAD**  
SPECIAL PERMIT/SITE PLAN  
APPROVAL TO AMEND  
SPECIAL PERMIT #131-16 TO  
ALTER EXISTING  
NONCONFORMING FRONT  
AND SIDE SETBACKS.



MARCH 6, 2018

### Requested Relief



- Grant a one-year extension to May 17, 2018
- Special Permit per §7.3 to alter nonconforming front and side setbacks. §3.1.3, §7.8.2.C.2

## Criteria to Consider



When reviewing this request, the Council should consider whether:

- The proposed nonconforming front and side setbacks are substantially more detrimental than the existing nonconforming front and side setbacks are to the neighborhood. § 3.1.3, §7.8.2.C.2

## Special Permit #131-16



- Approved an extension of nonconforming FAR for the construction of an addition to include a new attached single-car garage, additional kitchen space, an interior stairway with a chair lift, and a one-car carport
- The new garage would be accessed from Francis Street and the carport would be accessed from Westbourne Road
- The existing detached garage became noncompliant in 1985 when a deck was added between the garage and house, making the detached garage an attached garage and the front and side setbacks of 4.8 feet and 2.5 feet noncompliant for an attached structure

## Special Permit #131-16

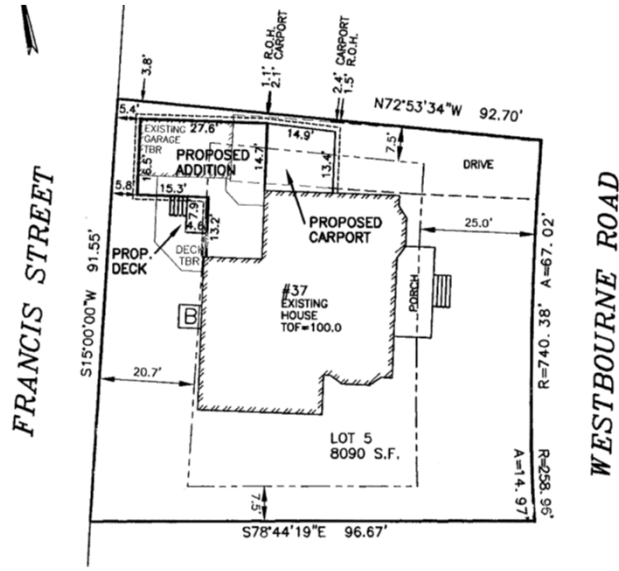
- When Special Permit #131-16 was granted in May 2016, variances were required from the Zoning Board of Appeals for the front and side setbacks
- The recent change to M.G.L. ch. 40A, section 7 allows for those noncompliant setbacks to be legitimized by a Section 6 finding as extension of pre-existing nonconformities
- Petitioner seeks an amendment to the Special Permit to include a finding that the proposed front setback of 5.4 feet and side setback of 2.1 feet are not more detrimental than the existing setbacks of 4.8 feet and 2.5 feet

## AERIAL/GIS MAP





### Site Plan



### Elevations (existing)



1 SOUTH ELEVATION  
1/16" = 1'-0"



2 NORTH ELEVATION  
1/16" = 1'-0"



3 EAST ELEVATION  
1/16" = 1'-0"

## Elevations (proposed)



1 SOUTH ELEVATION  
1/16" = 1'-0"



2 NORTH ELEVATION  
1/16" = 1'-0"



3 EAST ELEVATION  
1/16" = 1'-0"

## Photos



## Photos



## Proposed Findings

1. The extension of the nonconforming structure with the proposed addition will not be substantially more detrimental than the existing nonconforming structure as it will largely occupy the location of the existing similarly sized garage. §3.1.3, § 7.8.2.C.2

## Proposed Conditions



- This petition consolidates prior special permits.
- 1. Plan Referencing Condition.
- 2. Standard Building Permit Condition.
- 3. Standard Final Inspection/Certificate of Occupancy Condition.

## Department of Planning and Development



### **PETITION #133-18 2095 COMMONWEALTH AVE**

SPECIAL PERMIT TO ALLOW A RESTAURANT WITH MORE THAN 50 SEATS, A FREE STANDING SIGN, MORE THAN TWO SECONDARY SIGNS, AND TO WAIVE LIGHTING, SCREENING, AND PARKING DIMENSIONAL REQUIREMENTS.



MARCH 6, 2018

## Requested Relief



### **2095 Commonwealth Avenue**

- §4.4.1, to allow a restaurant with more than 50 seats
- §5.1.8.A.1 & §5.1.13, to allow parking in the front setback
- §5.1.8.C.1, §5.1.8.C.2 & §5.1.13, to allow reduced aisle width
- §5.1.9.A.1 & §5.1.13, to waive perimeter screening requirements
- §5.1.9.B & §5.1.13, to waive interior landscaping requirements
- §5.1.10.A & §5.1.13, to waive lighting requirements
- §5.2.3, §5.2.8 & §5.2.13.A, to allow a free-standing sign
- §5.2.3, §5.2.8 & §5.2.13.A, to allow more than two secondary signs

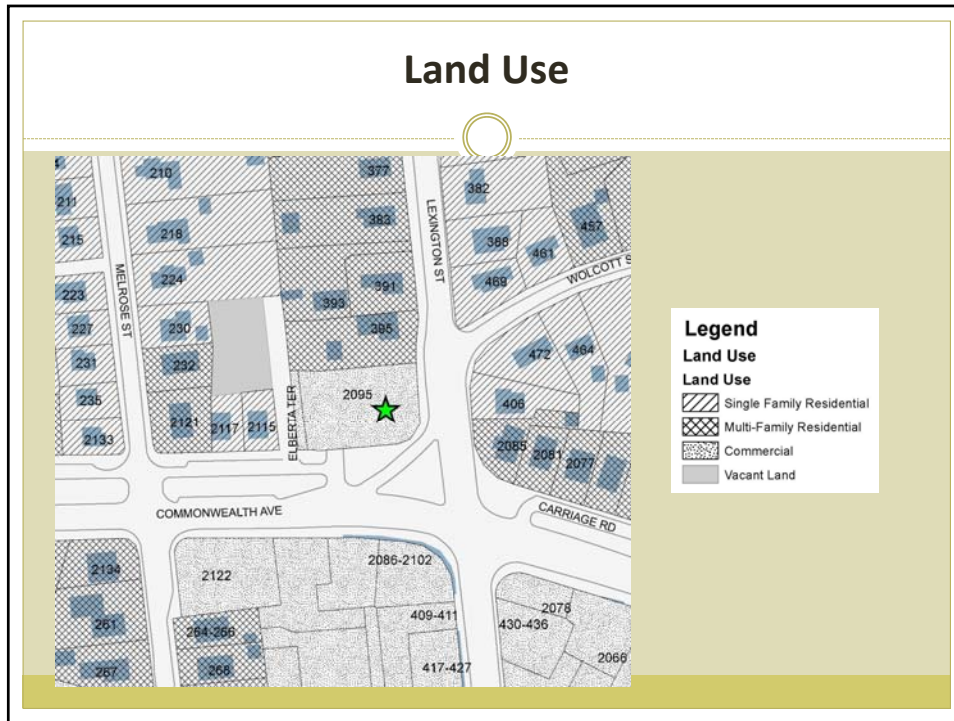
## Criteria to Consider

- The specific site is an appropriate location for restaurant use with more than 50 seats, (§7.3.3.C.1)
- The proposed project as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2)
- There will be no 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 number of vehicles involved. (§7.3.3.C.4)
- Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) 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)
- The nature of the use of the premises, the architecture of the building or its location with reference to the street is such that free-standing signs or exceptions should be permitted in the public interest. (§5.2.13)

## Zoning



## Land Use



## Aerial Photograph



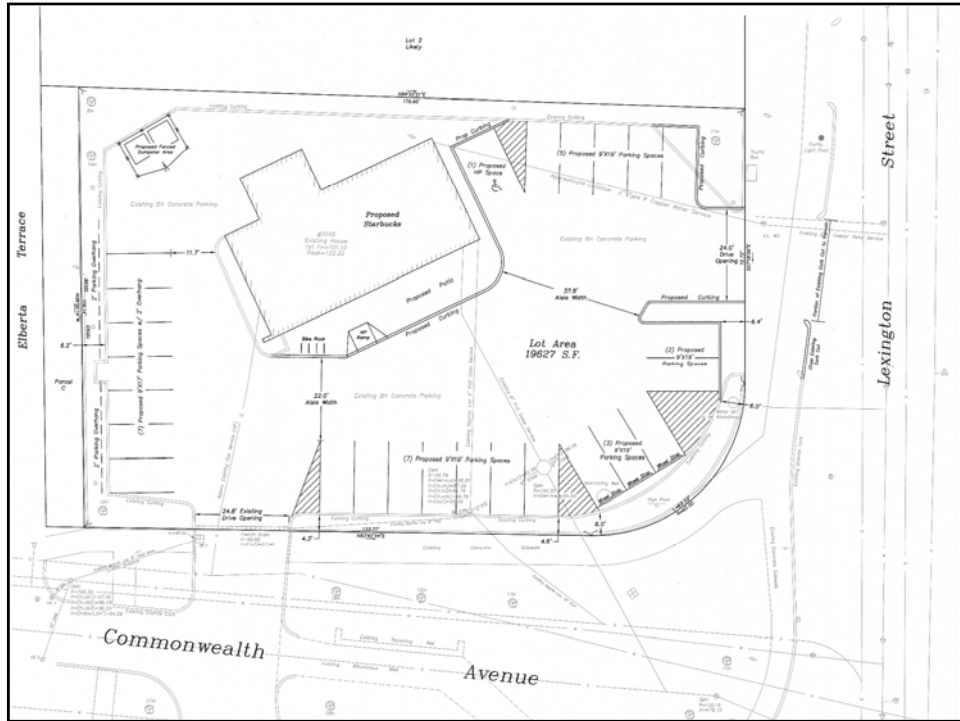
## Photos



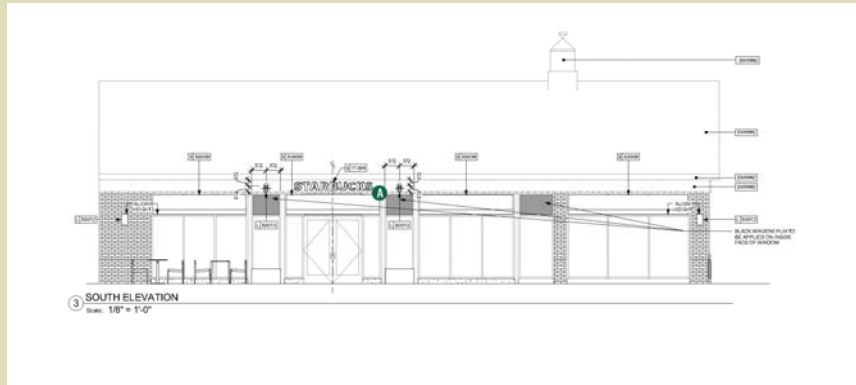
## Photos



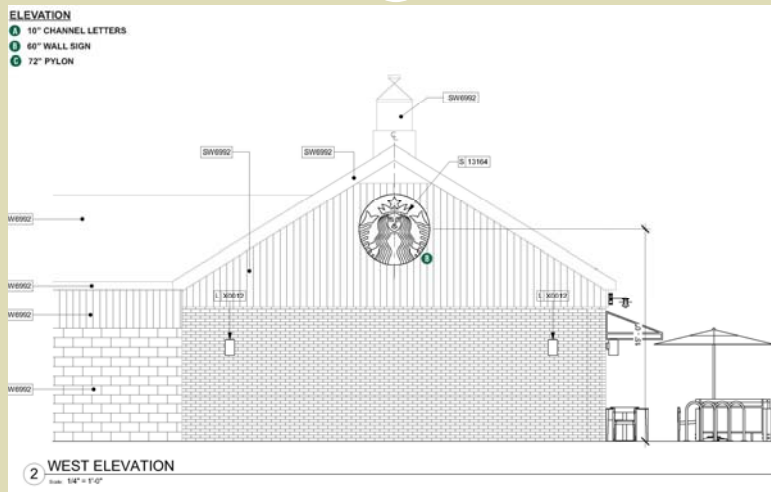




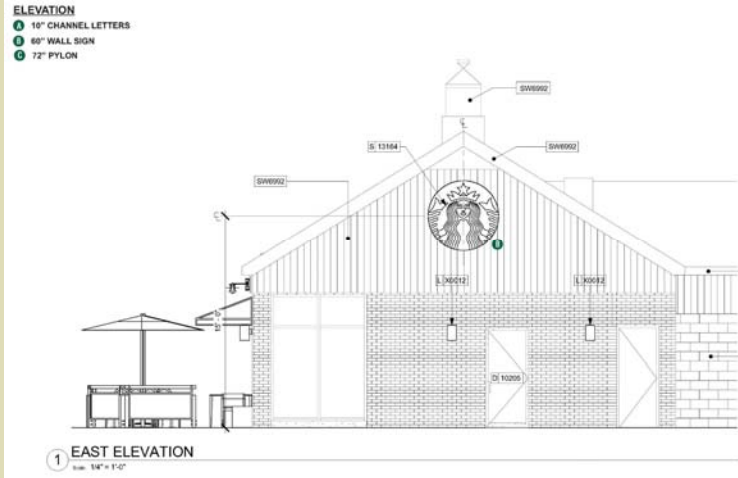
## Front Elevation



## West Elevation



## East Elevation



## Lighting

LED 3000K Outdoor Up & Down Lantern - AZT  
11251AZT30 (Textured Architectural Bronze)



## Lexington Driveway



## Proposed Transportation Conditions



## Proposed Findings



1. The specific site is an appropriate location for a restaurant with more than 50 seats. (§7.3.3.C.1)
2. The proposed project as developed and conditioned will not adversely affect the neighborhood as it is replacing an existing gas station use and improves existing conditions through landscaping, lighting, and striping. (§7.3.3.C.2)
3. There will be no 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)

## Proposed Findings



5. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) is impracticable due to the location of the existing building and the size, width, depth, and shape of the lot and such exceptions are in the public interest. (§5.2.13)
6. The nature of the use of the premises, the architecture of the building and its location set back from the street is such that free-standing signs or exceptions should be permitted in the public interest. (§5.2.13)

## Proposed Conditions



1. Plan reference condition
2. Transportation Conditions:
  - a. The Petitioner shall provide and maintain, to the satisfaction of the Director of Transportation Operations, the following at the Lexington Street driveway:
    - i. A white stop bar and R10-6 'Stop Here on Red' sign located behind the back of sidewalk for cars exiting the driveway
    - ii. A double yellow centerline along the driveway
    - iii. A painted crosswalk along the driveway to match the Commonwealth Avenue driveway
3. The sign plans shall be updated to show the maximum height of the freestanding sign to be 16 feet and the location of the freestanding sign to be the same as the existing freestanding sign.
4. Standard Building Permit Condition.
5. Standard Certificate of Occupancy Condition.

## Department of Planning and Development



**PETITION #90-18  
70 UNION STREET**

**SPECIAL PERMIT TO AMEND BOARD  
ORDER #45-10**



**MARCH 6, 2018**

### Requested Relief



- Special Permit to amend Board Order #45-10 to remove a condition requiring off-site parking at 93 Union Street.

## Criteria to Consider

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Board Order #45-10. (§7.3.3.C.1)
- The site, due to the amendment to Board Order #45-10, as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendment to Board Order #45-10. (§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)

## Aerial Photograph





## Board Order #45-10

- Board Order #45-10 waived 18 parking stalls associated with the 90-seat restaurant.
- Approval required the restaurant operator to enter into a lease with the petitioner (property owner at 93 Union Street) to lease four parking stalls for employees at 93 Union Street.
- The ownership of the restaurant has changed and the petitioner is no longer associated with the property.
- The Planning Department believes removing the requirement will not adversely affect the neighborhood given the restaurant has existed for a number of years, the site is located in a village center served by three municipal lots and adjacent to a transit station.

## Findings

1. The specific site is an appropriate location for the amendment to Board Order #45-10 concerning off-site parking because the site is adjacent to a transit station in a village center. (§7.3.3.C.1)
2. The restaurant, due to the amendment to Board Order #45-10 developed and operated, will not adversely affect the neighborhood because the restaurant is located in a village center served by three municipal parking lots. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from the amendment to Board Order #45-10 because the restaurant has existed on site since 2012 which has allowed operations to normalize. (§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)

## Conditions



- This petition consolidates prior special permits.
  1. Plan reference condition
  2. Standard Building Permit Condition.
  3. All conditions of Board Order #45-10 remain in effect.
  4. Standard Certificate of Occupancy Condition.

## Department of Planning and Development



**PETITION # 91-18  
5-11 ELM AND 11-19 ELM STREET**

**SPECIAL PERMIT TO AMEND BOARD  
ORDERS #273-14(2) AND #40-07(3)**



**MARCH 6, 2018**

### Requested Relief



- Special Permit to amend Board Orders #273-14(2) and #40-07(3) to amend the previously approved site plans

## Criteria to Consider

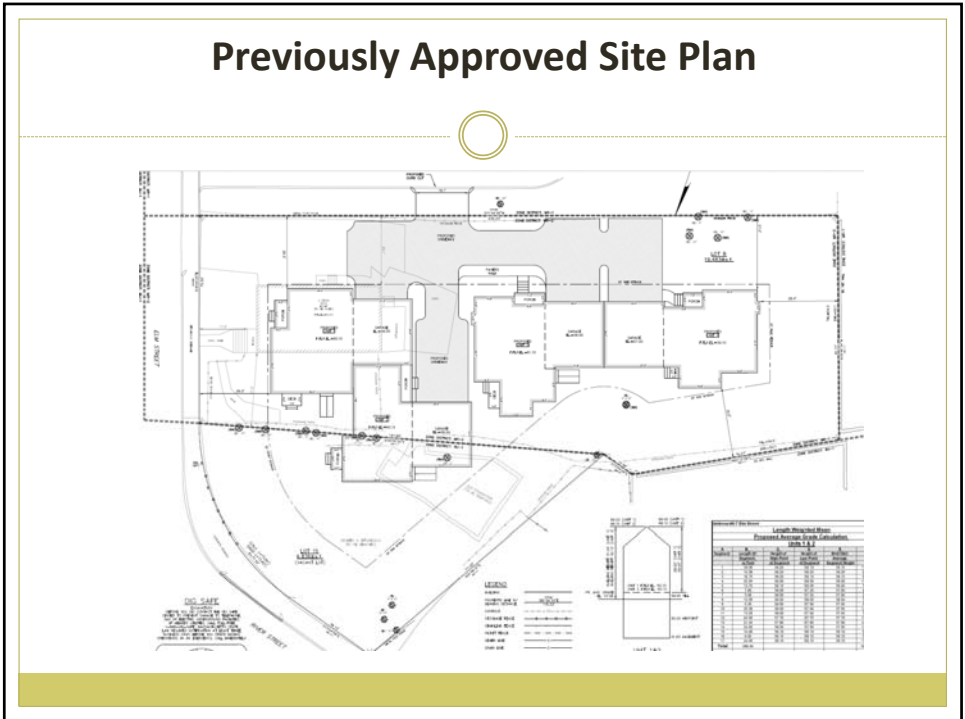
When reviewing this request, the Council should consider:

- The specific site is an appropriate location for amendments to Board Orders #273-14(2) and #40-07(3). (§7.3.3.C.1)
- The site, due to the amendments to Board Orders #273-14(2) and #40-07(3), as developed and operated will not 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 Board Orders #273-14(2) and #40-07(3). (§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).

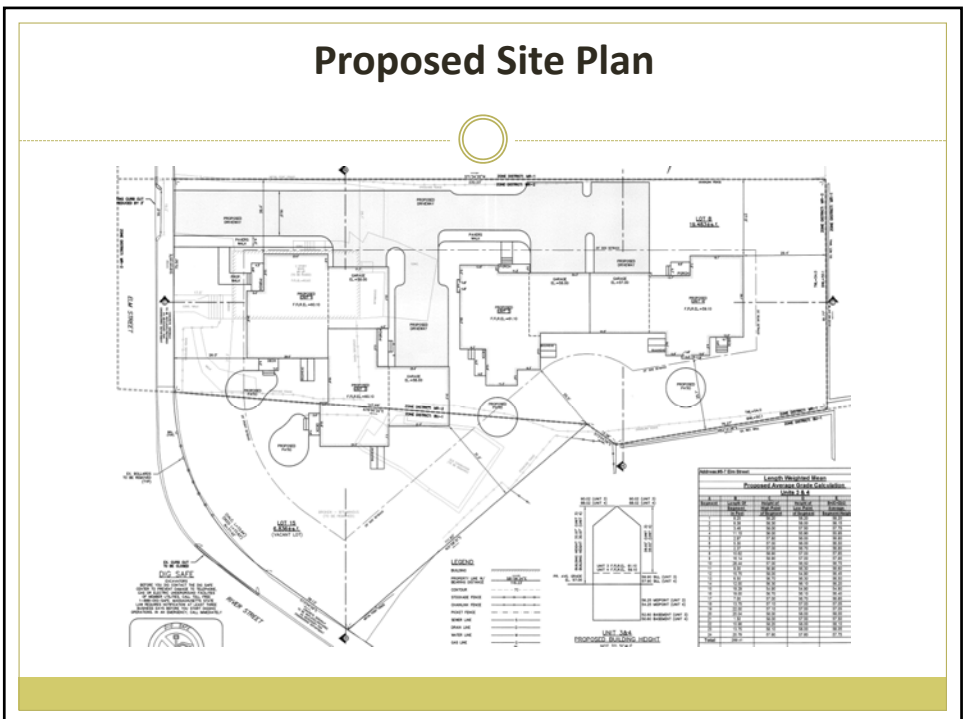
## Aerial Photograph



### Previously Approved Site Plan



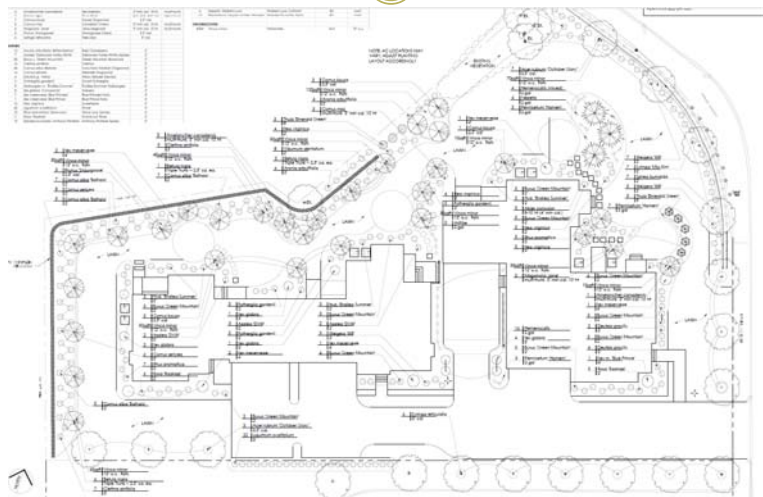
### Proposed Site Plan



## Previously Approved Landscape Plan



## Proposed Landscape Plan



### Findings Regarding #273-14(2)



1. The specific site is an appropriate location for the amendments to Board Order #273-14(2) because direct access will be provided to the Four Single-Family Attached Dwellings. (§7.3.3.C.1)
2. The site, due to the amendments to Board Order #273-14(2) as developed and operated will not adversely affect the neighborhood because the driveway has existed in this location serving the prior two-family dwelling. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from the amendments to Board Order #273-14(2) because adequate sight distances will be provided. (§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)

### Findings Regarding #40-07(3)



1. The specific site is an appropriate location for the amendment to Board Order #40-07(3) because a planned connecting driveway between the two sites will be abandoned, thereby minimizing future pedestrian-vehicle conflict. (§7.3.3.C.1)
2. The site, due to the amendment to Board Order #40-07(3) as developed and operated, will not adversely affect the neighborhood. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians resulting from the amendment to Board Order #40-07(3). (§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)

## Conditions



- This petition consolidates prior special permits.
  1. Plan reference condition
  2. Standard Building Permit Condition.
  3. All conditions of Board Order #273-14(2) and #40-07(3) remain in effect.
  4. Standard Certificate of Occupancy Condition.



February 27, 2018

Land Use Committee  
Newton City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Re: Petition to Amend Special Permits  
# 273-14(2) and # 40-07 on Elm Street

Petition # 91-18

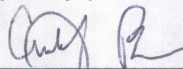
Ladies and Gentlemen:

We are all of the Unit Owners of 13 Elm Street Condominium except for Antonio Bonadio, who is the petitioner. We strongly support approval of this petition.

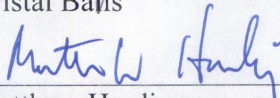
It is the belief of the undersigned that such approval will eliminate serious existing safety concerns and will serve the best interests of both the unit owners of 13 Elm Street Condominium and the residents in the surrounding area.

Thank for you for your consideration of this matter.

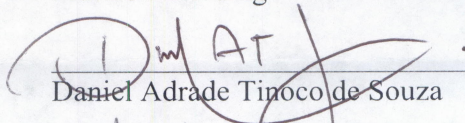
Very truly yours,



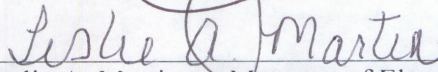
\_\_\_\_\_  
Cristal Balis



\_\_\_\_\_  
Matthew Harding



\_\_\_\_\_  
Daniel Adrade Tinoco de Souza



\_\_\_\_\_  
Leslie A. Martin, as Manager of Elm Street Holdings, LLC and not individually

cc: Terrence P. Morris, Esq.  
57 Elm Road  
Newton, MA 02460-2144

## Department of Planning and Development



**PETITION #135-18  
429 CHERRY STREET**

**SPECIAL PERMIT TO AMEND BOARD  
ORDER #190-12(3)**



**MARCH 6, 2018**

### Requested Relief



- Special Permit to amend Board Order #190-12(3) to restructure conditions pertaining to inclusionary zoning.

## Criteria to Consider



When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Board Order #190-12(3). (§7.3.3.C.1)
- The site, due to the amendment to Board Order #190-12(3), as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendment to Board Order #190-12(3). (§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).

## Board Order #190-12(3)



- Board Order #190-12(3) required the petitioner to complete all steps regarding inclusionary units prior to the issuance of a building permit.
- Inclusionary units are subject to the approval of the Department of Housing and Community Development (DHCD) and the City.
- The Planning Department coordinated with the Housing Division and DHCD to ensure the Orders are structured to comply with DHCD and Housing and Urban Development (HUD) guidelines. As a result, staff believes Order #190-12(3) can be amended to require certain milestones to the building permit and temporary certificate of occupancy stages, while still ensuring compliance with the guidelines set forth by DHCD and HUD.

## Findings



1. The specific site is an appropriate location for the amendments to Board Order #190-12(3) because the site is governed by a special permit allowing the construction of a three-story building containing inclusionary zoning units. (§7.3.3.C.1)
2. The proposed amendments to Board Order #190-12(3) as developed and operated will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendments to Board Order #190-12(3) 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)

## Conditions



- This petition consolidates prior special permits.
  1. Plan reference condition
  2. Prior to the issuance of a building permit, the petitioner shall submit an Inclusionary Housing Plan (IHP) including an Affirmative Fair Housing Marketing and Resident Selection Plan and draft Regulatory Agreement to the Director of Planning and Development for review and approval. Once approved, the petitioner shall submit the IHP to the Department of Housing and Community Development and provide evidence of such submittal to the Director of Planning and Development.

## Conditions (Continued)



No Temporary Certificate of Occupancy shall be issued until the petitioner has:

1. Provided evidence confirming the marketing, lottery, and resident selection for the Inclusionary Units has been completed to the Director of Planning and Development for review and approval.
2. Entered into a Regulatory Agreement and Declaration of Restrictive Covenants for each of the Inclusionary Units with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity. The Regulatory Agreement and Declaration of Restrictive Covenants shall be recorded at the Middlesex Registry of Deeds and evidence of such recording shall be submitted to the Director of Planning and Development and Law Department.

❖ All remaining conditions of Board Order #190-12(3) remain in effect

## Department of Planning and Development



**PETITION #134-18  
386-394 WATERTOWN STREET**

**SPECIAL PERMIT TO AMEND  
COUNCIL ORDER #201-17**



**MARCH 6, 2018**

### Requested Relief



- Special Permit to amend Council Order #201-17 to restructure conditions pertaining to inclusionary zoning.

## Criteria to Consider

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Council Order #201-17. (§7.3.3.C.1)
- The site, due to the amendment to Council Order #201-17, as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians because of the amendment to Council Order #201-17. (§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).

## Council Order #201-17

- Council Order #201-17 required the petitioner to complete all steps regarding inclusionary units prior to the issuance of a building permit.
- Inclusionary units are subject to the approval of the Department of Housing and Community Development (DHCD) and the City.
- The Planning Department coordinated with the Housing Division and DHCD to ensure the Orders are structured to comply with DHCD and Housing and Urban Development (HUD) guidelines. As a result, staff believes Order #201-17 can be amended to require certain milestones to the building permit and temporary certificate of occupancy stages, while still ensuring compliance with the guidelines set forth by DHCD and HUD.

## Findings



1. The specific site is an appropriate location for the amendment to Council Order #201-17 because the site is governed by a special permit allowing the construction of a three-story building containing inclusionary zoning units. (§7.3.3.C.1)
2. The proposed amendment to Council Order #201-17 as developed and operated will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendment to Council Order #201-17 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)

## Conditions



- This petition consolidates prior special permits.
  1. Plan reference condition
  2. Prior to the issuance of a building permit, the petitioner shall submit an Inclusionary Housing Plan (IHP) including an Affirmative Fair Housing Marketing and Resident Selection Plan and draft Regulatory Agreement to the Director of Planning and Development for review and approval. Once approved, the petitioner shall submit the IHP to the Department of Housing and Community Development and provide evidence of such submittal to the Director of Planning and Development.



## Conditions (Continued)



No Temporary Certificate of Occupancy shall be issued until the petitioner has:

1. Provided evidence confirming the marketing, lottery, and resident selection for the Inclusionary Units has been completed to the Director of Planning and Development for review and approval.
2. Entered into a Regulatory Agreement and Declaration of Restrictive Covenants for each of the Inclusionary Units with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity. The Regulatory Agreement and Declaration of Restrictive Covenants shall be recorded at the Middlesex Registry of Deeds and evidence of such recording shall be submitted to the Director of Planning and Development and Law Department.

❖ All remaining conditions of Council Order #201-17 remain in effect