



Land Use Committee Agenda

City of Newton In City Council

Special Meeting

Monday, December 18, 2017

6:45 PM
Room 205

#190-12(3) Request for an Extension of Time to Exercise Special Permit #190-12
YOUNG INVESTMENTS, LLC/NEWTON COMMUNITY SERVICE CENTER request for an EXTENSION OF TIME in which to EXERCISE Special Permit #190-12 granted on December 2, 2013, to demolish an existing 2-story building and construct a 3-story (36.5') multi-family structure with 13 units, an 18-stall below grade parking garage, and to waive 11 parking stalls at 429 CHERRY STREET, Ward 3, WEST NEWTON, said extension will run from September 20, 2017 to September 20, 2018. Ref: Sec 30-24, 30-23, 30-15 Table 3, 30-11(d)(8), 30-5(b) and (b)(4), 30-19(d)(1), (d)(11), 30-19(h)(3), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012

NOTE: The special permit was appealed to Land Court, which upheld the special permit decision and there was a further appeal to the Appeals Court, which affirmed the Land Court Decision on August 29, 2016. The 20-day appeal period expired on September 20, 2016.

#304-17 Special Permit Petition to allow single-family dwelling in MR-1 at 336 Newtonville Ave
DONALD AND LINDA STANTON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to relocate an existing dwelling, add a unit to the rear of the dwelling and construct two additional single-family attached dwellings in an MR-1 district, requiring a special permit at 336 Newtonville Avenue, Ward 2, Newtonville, on land known as Section 22, Block 07, Lot 19, containing approximately 29,896 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1 of the City of Newton Rev Zoning Ord, 2015.

Public Hearing Closed 11/28/2017

Please see the attached request to Withdraw without Prejudice

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

Request for a Consistency Ruling Relative to the Austin Street project. Requesting changes to the underground garage shape, number and location of trees, and building height as they relate to Special Permit #119-15.

- #384-17** **Class 2 Auto Dealers License**
VELOCITY MOTORS
14 Hawthorn Street
Nonantum, MA. 02458
- #385-17** **Class 2 Auto Dealers License**
ENZO'S AUTO SALES
10 Hawthorn Street
Nonantum, MA. 02458
- #386-17** **Class 2 Auto Dealers License**
CITY OF NEWTON
1000 Commonwealth Avenue
Newton Centre, MA. 02459
- #387-17** **Class 2 Auto Dealers License**
NEWTON CENTRE SHELL
1365 Centre Street
Newton Centre, MA. 02459
- #388-17** **Class 2 Auto Dealers License**
JR CAR CARE, INC.
454 Watertown Street
Newton, MA. 02460
- #357-17(2)** **Class 2 Auto Dealers License**
SONOMA CLASSICS LLC.
1215 Chestnut Street
Newton, MA. 02464
- #358-17** **Class 2 Auto Dealers License**
MAP DEVELOPMENT & INVESTMENTS
d/b/a CHRISTIAN TAPIA/MASTER USED
CARS of WATERTOWN
175 North Street
Newtonville, MA. 02460
- #359-17** **Class 2 Auto Dealers License**
AUCTION DIRECT PREOWNED
1545 Washington Street
West Newton, MA. 02465

- #360-17** **Class 2 Auto Dealers License**
OLD TIME GARAGE LTD.
1960 Washington Street
Newton Lower Falls, MA. 02462
- #361-17** **Class 2 Auto Dealers License**
NTC-NEWTON TRADE CENTER ASSOCIATES, INC.
103 Adams Street
Nonantum, MA. 02458
- #362-17** **Class 2 Auto Dealers License**
LIFT THROTTLE AUTOMOTIVE, LLC
64 Hillside Avenue
West Newton, MA. 02465
- #363-17** **Class 2 Auto Dealers License**
ROBERT'S TOWING, INC.
926r Boylston Street
Newton Highlands, MA. 02461
- #364-17** **Class 2 Auto Dealers License**
NEWTON AUTO GROUP, INC.
1235 Washington Street
West Newton, MA. 02465
- #365-17** **Class 2 Auto Dealers License**
REGANS INC.
2066 Commonwealth Avenue
Auburndale, MA. 02466
- #366-17** **Class 2 Auto Dealers License**
STAN'S AUTOMOTIVE INC.
249 Centre Street
Newton Corner, MA. 02458

Respectfully submitted,

Marc C. Laredo, Chair

Terrence P. Morris, Esq.
Law Offices of Terrence P. Morris LLC
57 Elm Road
Newton, MA 02460
617 202-9132

November 21, 2017

Nadia Khan, Clerk of Committee *By electronic transmission*
Newton City Council
1000 Commonwealth, Avenue
Newton, MA 02459

Re: 429 Cherry Street: Board Order #190-12
Extension of Special Permit

Dear Ms. Khan:

On December 2, 2013, the then Board of Aldermen granted a special permit (Board Order #190-12) for the above-referenced property. The special permit was appealed to the Land Court, which upheld the permit on June 30, 2015. There was a further appeal to the Appeals Court, which affirmed the Land Court Decision on August 29, 2016. The 20-day period for the GBCCA to seek further appellate review then ran, after which all avenues had been exhausted. The City Clerk then certified the special permit/site plan approvals, noting that all appeals had been exhausted. The decision and certification were then recorded in the Registry of Deeds on September 28, 2016.

I am writing this letter to request an extension of time in which to exercise this special permit until September 28, 2018. This request is being made pursuant to Section 7.3.2.E of the zoning ordinance, which provides that “[t]he City Council may extend the period of time granted under this subsection for good cause, whether or not such period of time shall have expired, without the necessity of a further public hearing thereon”.

The reason for this request and basis for the good “cause” is the protracted effort required to marshal the resources to further the project after the extraordinary length of time that had elapsed to reach a successful conclusion. Re-financing for construction of the project is in place and the building permit application is pending.

Thank you for your attention to this matter.

Sincerely,

Terrence P. Morris

Terrence P. Morris, Esq.
Counsel for Young Investments, LLC

ROSENBERG, FREEDMAN & LEE LLP

ATTORNEYS AT LAW

246 Walnut Street
Newton, Massachusetts 02460-1639

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Sender's e-mail: llee@rfl-law.com

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Andrea Hickey **
Peter C. Beebe
Ashley Y. Aubuchon

Of Counsel:
Karen M. Buckley*
Elizabeth Baum, P.C.
*admitted in MA and NY
**admitted in MA, NH and NY

December 13, 2017

Marc Laredo, Chair
Land Use Committee
City Council
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Nadia Khan, Committee Clerk
Office of the City Council
City of Newton
1000 Commonwealth Avenue
Newton, MA 02459

Re: 336 Newtonville Avenue, Newton

Dear Marc and Nadia:

On behalf of 336 Newtonville Ave, LLC, the owner of 336 Newtonville Avenue, please accept this letter as a formal request for the withdrawal of the special permit petition without prejudice. We intend to re-file the petition in 2018.

Please call or email me with any questions. Always, thank you, for your help.

Sincerely,



Laurance S.L. Lee

cc: Ouida Young, Esq., Law Department
Michael Gleba, Senior Planner
Councilors Susan Albright, Emily Norton, Jake Auchincloss

119-15 (Austin Street) - Consistency Ruling

Austin Street Partners LLC
c/o Dinosaur Capital Partners LLC
800 Boylston Street, 27th Floor
Boston, MA 02199

9 November 2017

Mr. John Lojek
Commissioner, Inspectional Services
City of Newton
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Dear Commissioner Lojek:

Pursuant to Special Permit # 119-15, we hereby request a consistency ruling relative the following seven modifications we seek to make to the Approved Plans submitted with the above referenced Special Permit:

1. Relocate nine street trees to avoid conflict with National Grid gas pipe. Nine street trees that were to be planted along the south side of Austin Street in front of the building will be planted on the north (Star Market) side of Austin Street. This change is due to the discovery of the existence of a National Grid natural gas pipe which would interfere with planting. The number of trees as well as their size and specie will remain unchanged from the Approved Plans. Only the location will be changed. In addition, low plantings along the south side of Austin Street in lieu of trees will be substituted in front of the new building. *See Figure 1.*
2. Make roof solar ready rather install solar panels as solar may be economically infeasible due to changes in state subsidy. Rooftop solar panels that were shown on the Approved Plans may not be included since the state's SREC subsidy program has ended possibly making solar panels economically infeasible. While we are still exploring alternatives and hopeful of finding an economic installation method, we seek the flexibility to design and construct the building and roof ready to accept solar panels should they become economically feasible in the future but not install them initially. *See Figure 2.*
3. Build a rectangular underground parking garage rather than an "L" shaped garage shown on Approved Plans. Building a rectangular parking garage improves constructability and reduces construction time and disruption to municipal parking. There is no change to the required 90 parking spaces provided. *See Figure 3.*
4. Some trees in the public plaza may be relocated as the proposed rectangular garage extends under the plaza. Planting trees on top of the concrete roof of the garage may prove problematic and require planter boxes or mounded beds. Alternatively, some trees may be relocated within the plaza area to allow them to be planted adjacent to rather than above the concrete garage roof to ensure their health and ability to thrive.

119-15 (Austin Street) - Consistency Ruling

Letter to Commissioner Lojek
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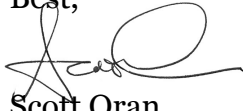
The number of trees as well as their size and specie will remain unchanged from the Approved Plans. Only the location will be changed. *See Figure 4.*

5. Three 6' arborvitae or comparable evergreen trees will be planted at the southern boundary as screening of the "12' Passageway" shown on the Approved Plans. Austin Street Partners agreed to add three 6' arborvitae or comparable evergreen trees selected by the City of Newton Director of Urban Forestry as part of the settlement of litigation concerning issuance of the Special Permit. This will result in three additional trees on the site. *See Figure 5.*
6. The height of the building may exceed 48' by as much as 6". Due to the need to accommodate a 12' tall fire truck under the building while maintaining adequate ceiling heights within the proposed apartments, the building may exceed the permitted height of 48' by up to 6" depending on structural system employed. *See Figure 6.*
7. The electrical transformer must be relocated from the northwest corner of the site to the southeast corner of the site pursuant to new requirements from Eversource, the electric utility. Eversource has decided that they prefer and require the new transformer to be moved from the previously proposed location under the building in the northeast corner of the site to an open location in the southeast corner of the parking lot. The transformer will be screened with plantings and there will be no change in the number of parking spaces. *See Figure 7.*

Please let us know if we can provide additional information. We await your determination.

Thank you for your thoughtful consideration.

Best,



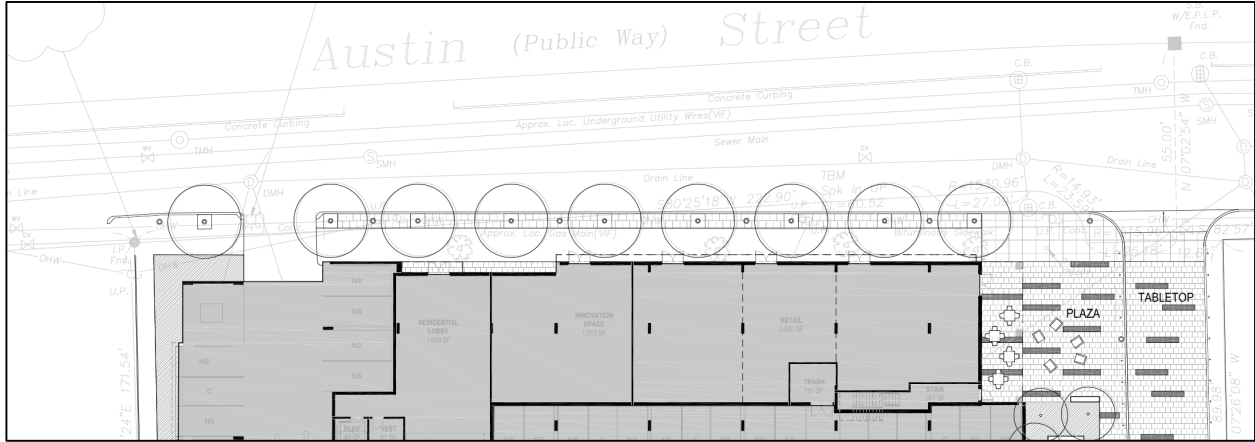
Scott Oran
Manager

Cc: Councilor Jake Auchincloss, Austin Street Liaison Committee
Ouida Young, Associate City Solicitor, City of Newton
Barney Heath, Director, Planning, City of Newton
Rachel Blatt, Long Range Planner, City of Newton
Gwendolen Noyes, Austin Street Partners
Art Klipfel, Austin Street Partners
Mark Dufton, Austin Street Partners
Alan Schlesinger, Schlesinger and Buchbinder

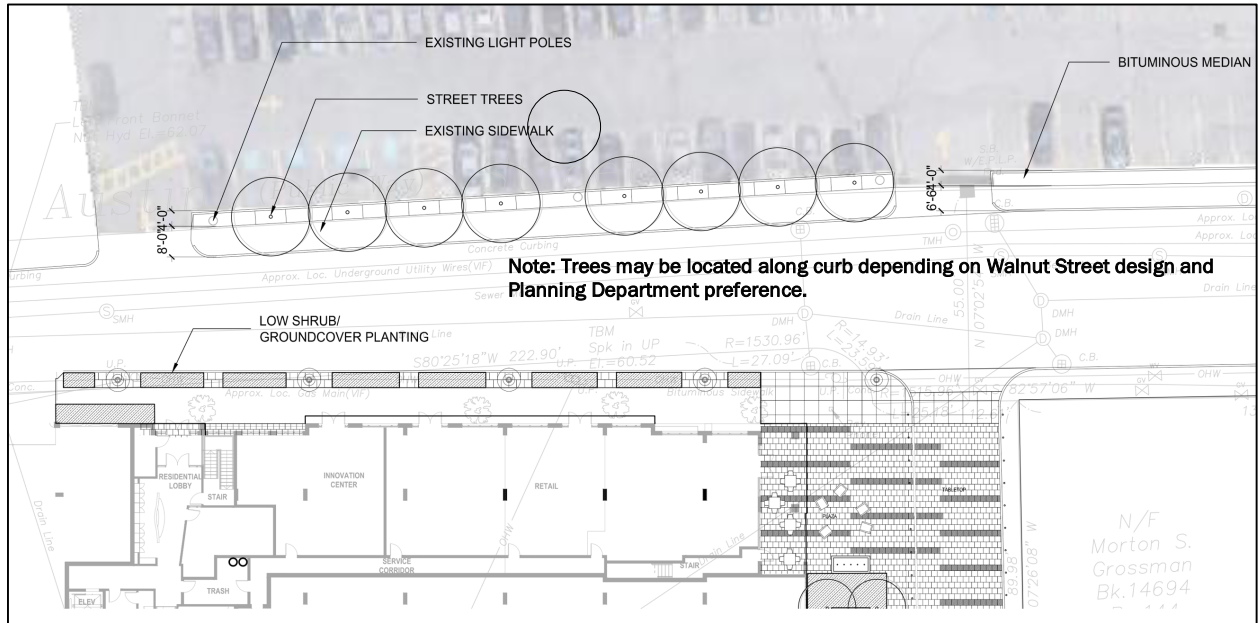
119-15 (Austin Street) - Consistency Ruling

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Figure 1.



Per Approved Plans.

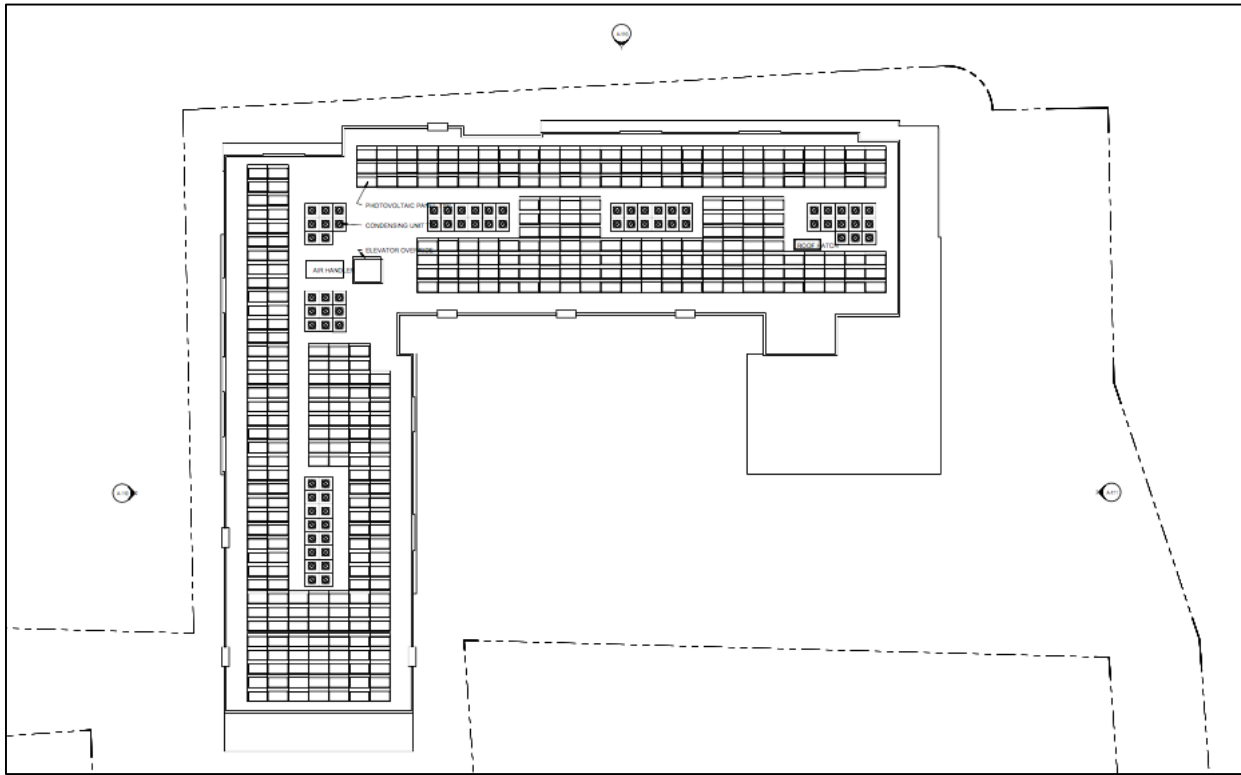


Per Proposed Construction.

119-15 (Austin Street) - Consistency Ruling

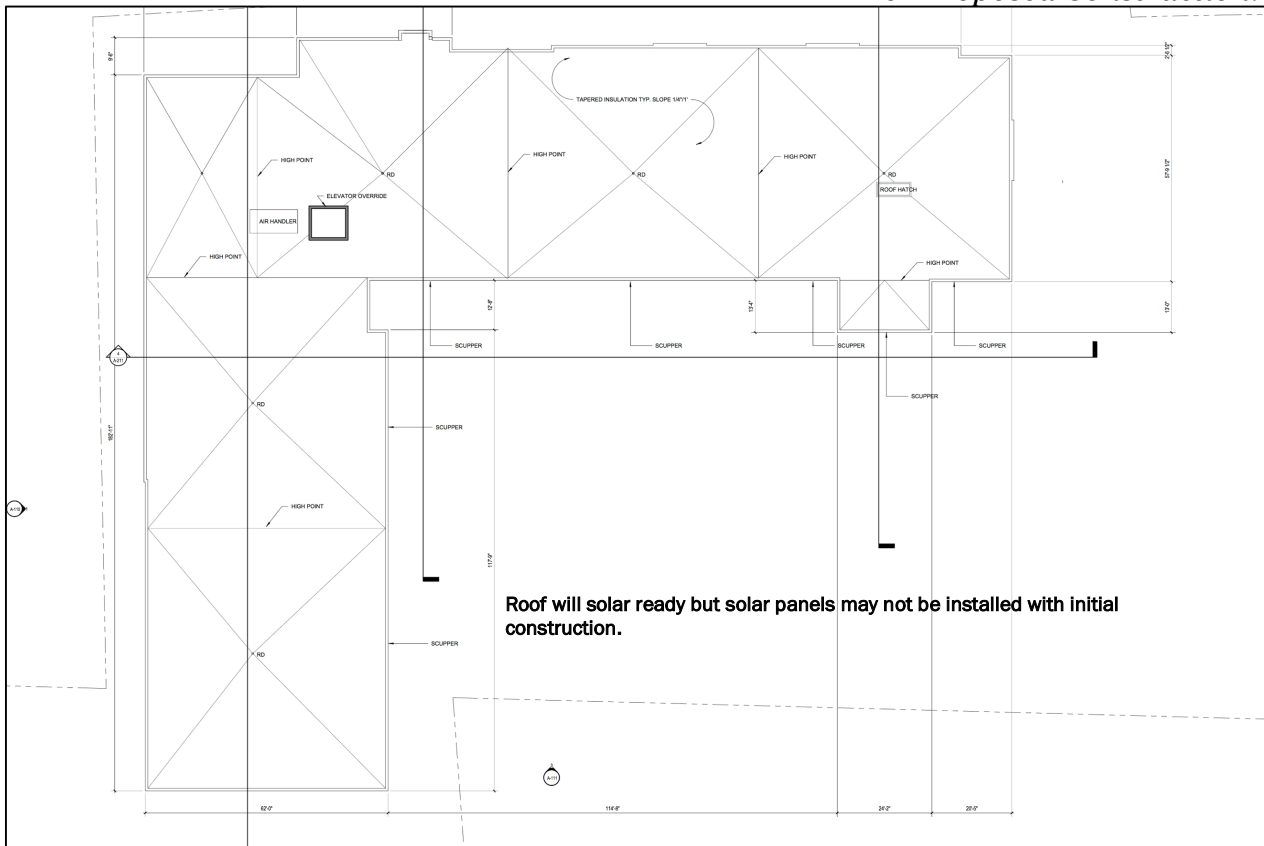
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Figure 2.



Per Approved Plans.

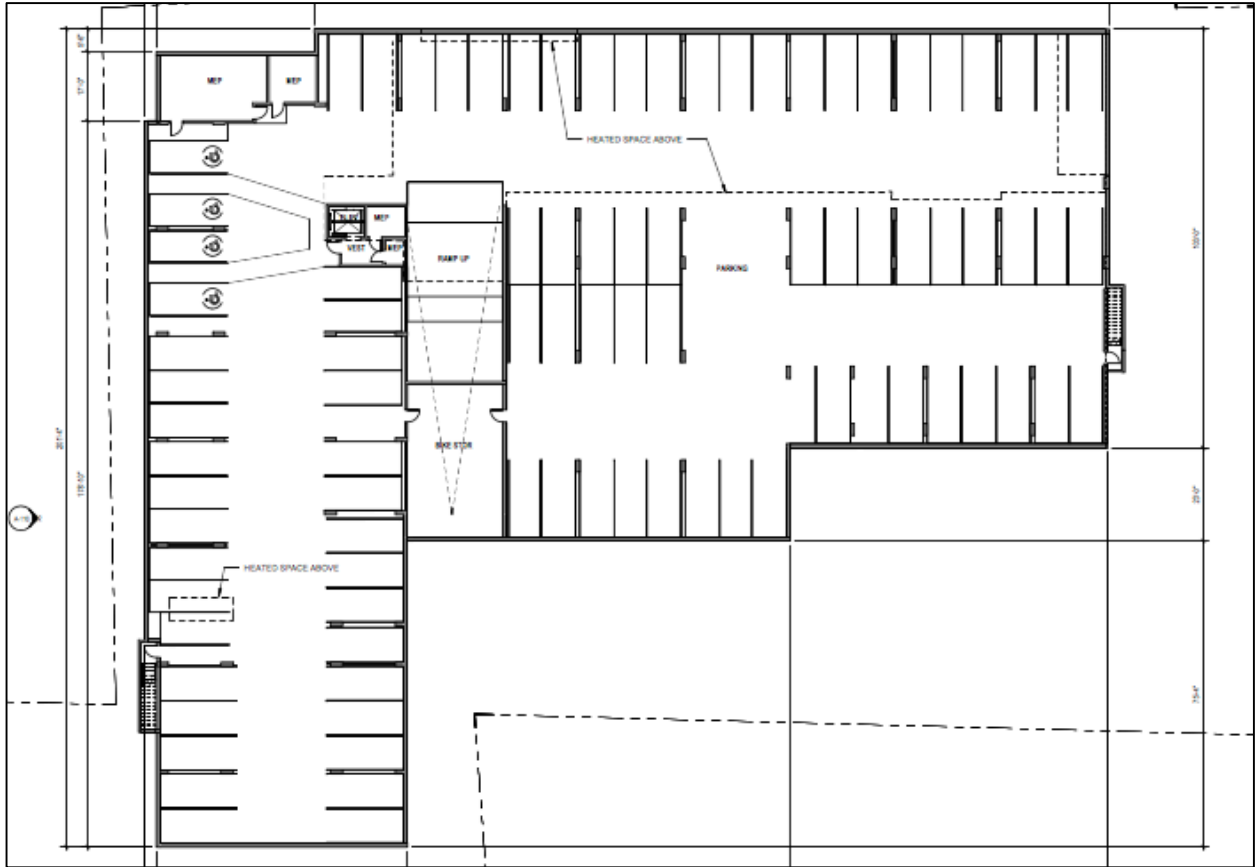
Per Proposed Construction.



119-15 (Austin Street) - Consistency Ruling

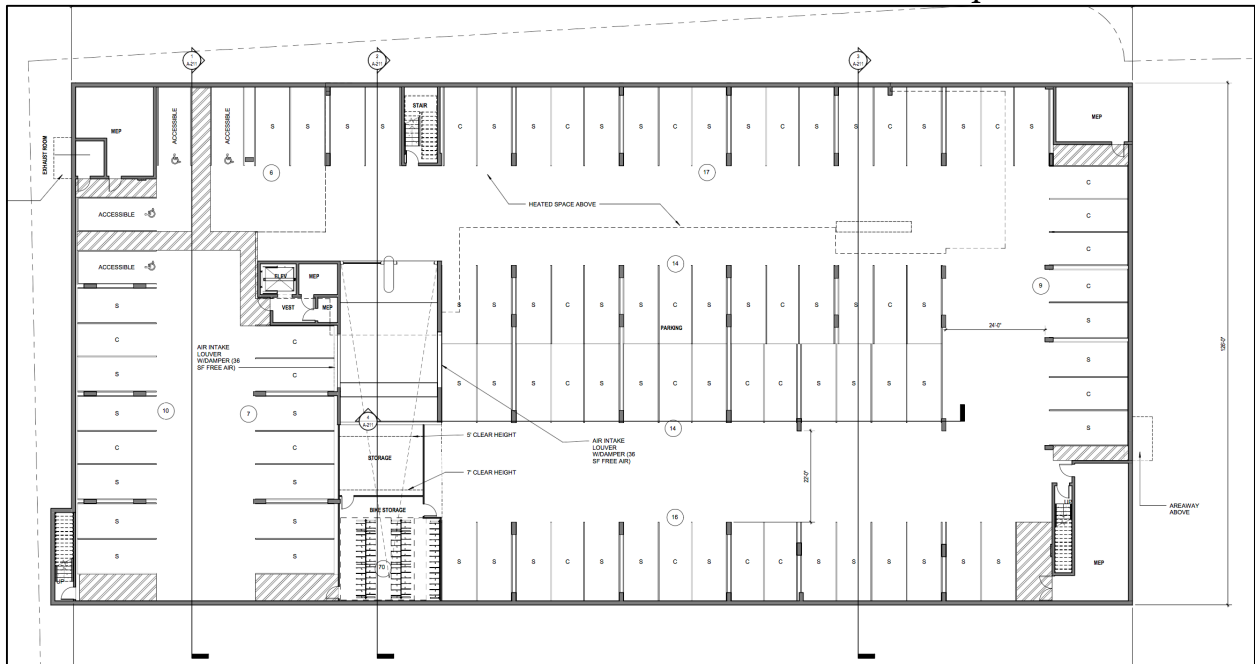
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Figure 3.



Per Approved Plans.

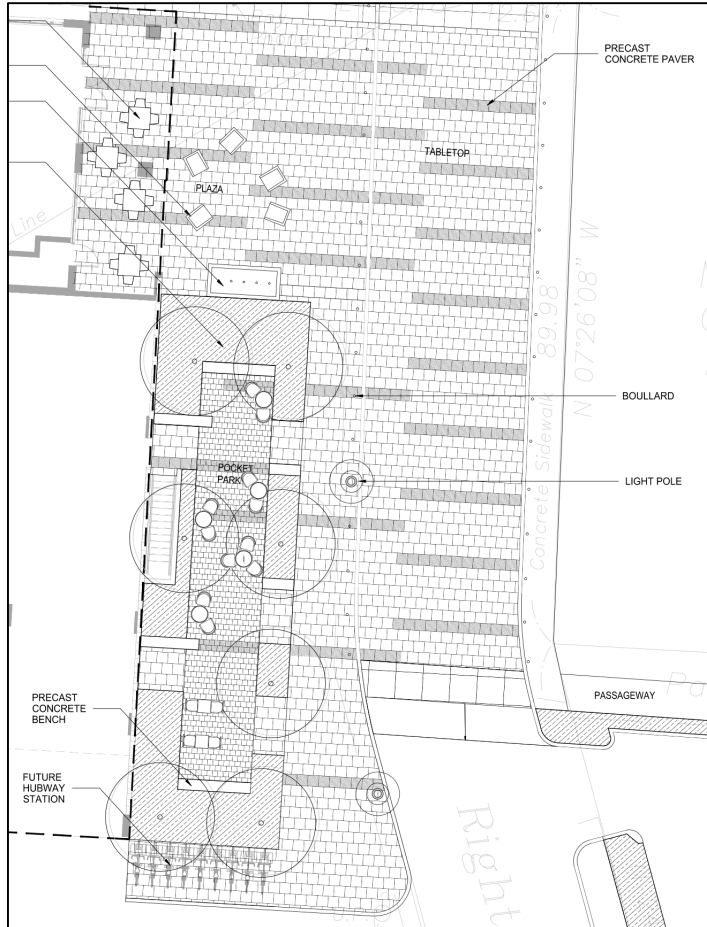
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119-15 (Austin Street) - Consistency Ruling

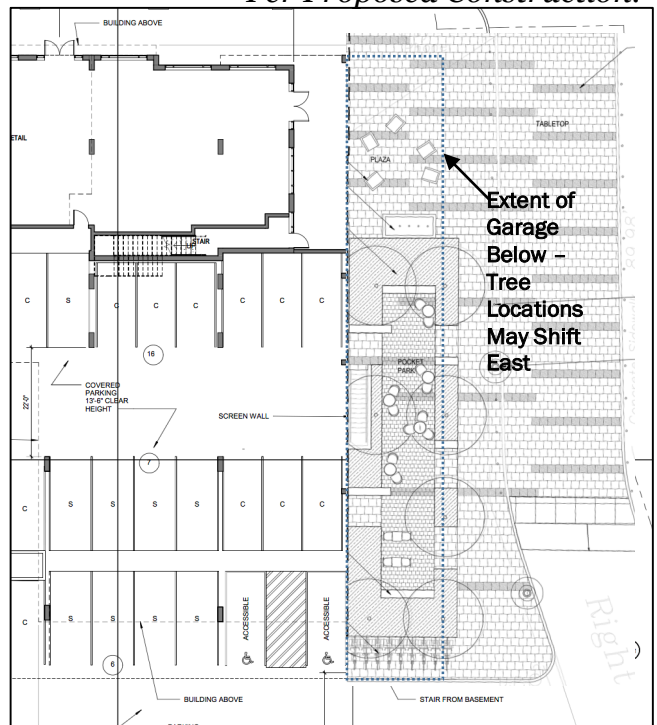
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Figure 4.



Per Approved Plans.

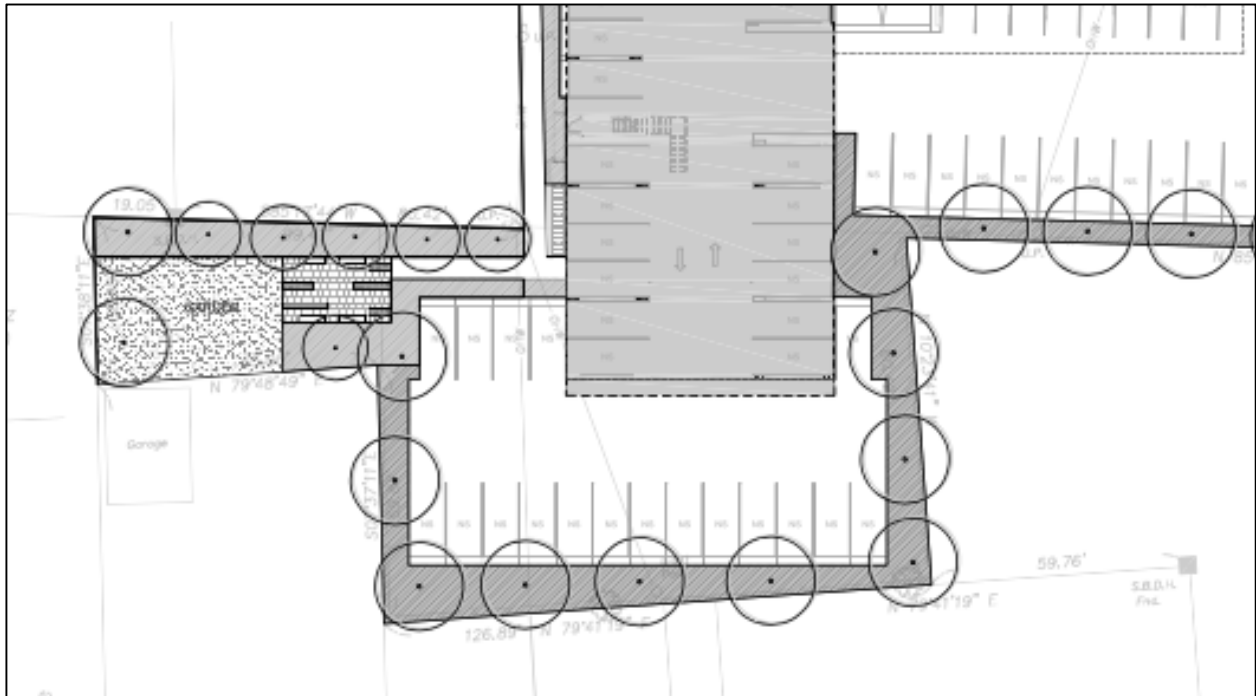
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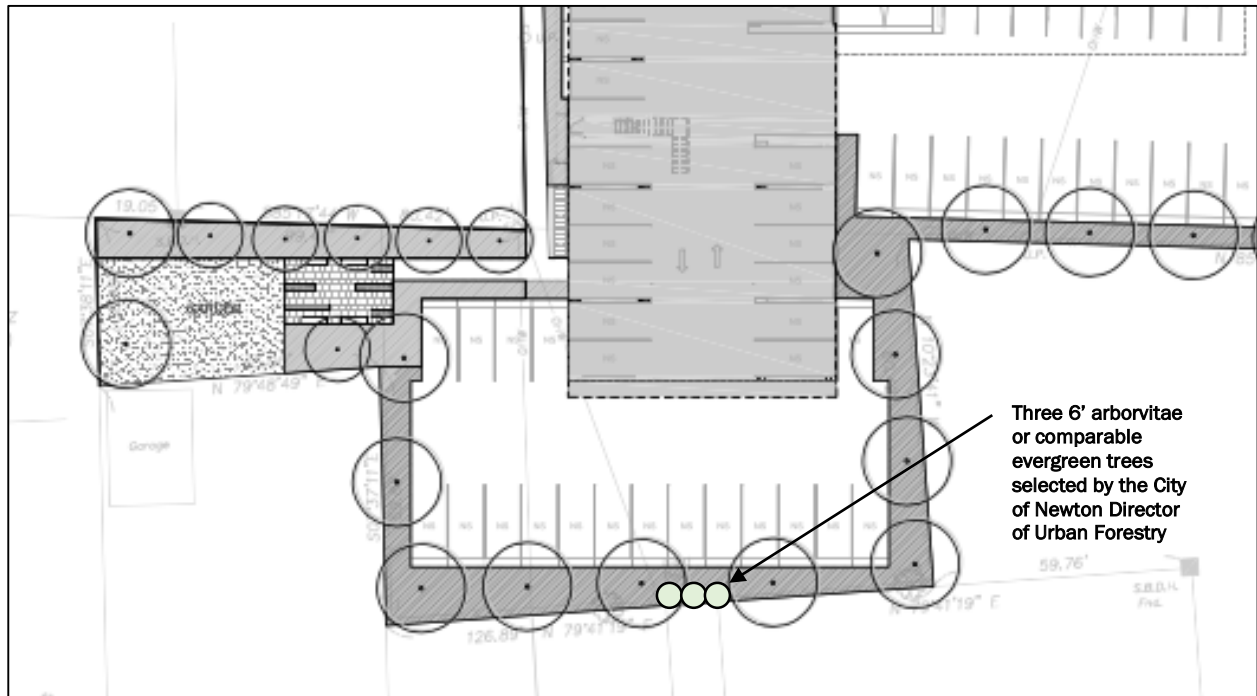
119-15 (Austin Street) - Consistency Ruling

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Figure 5.



Per Approved Plans.

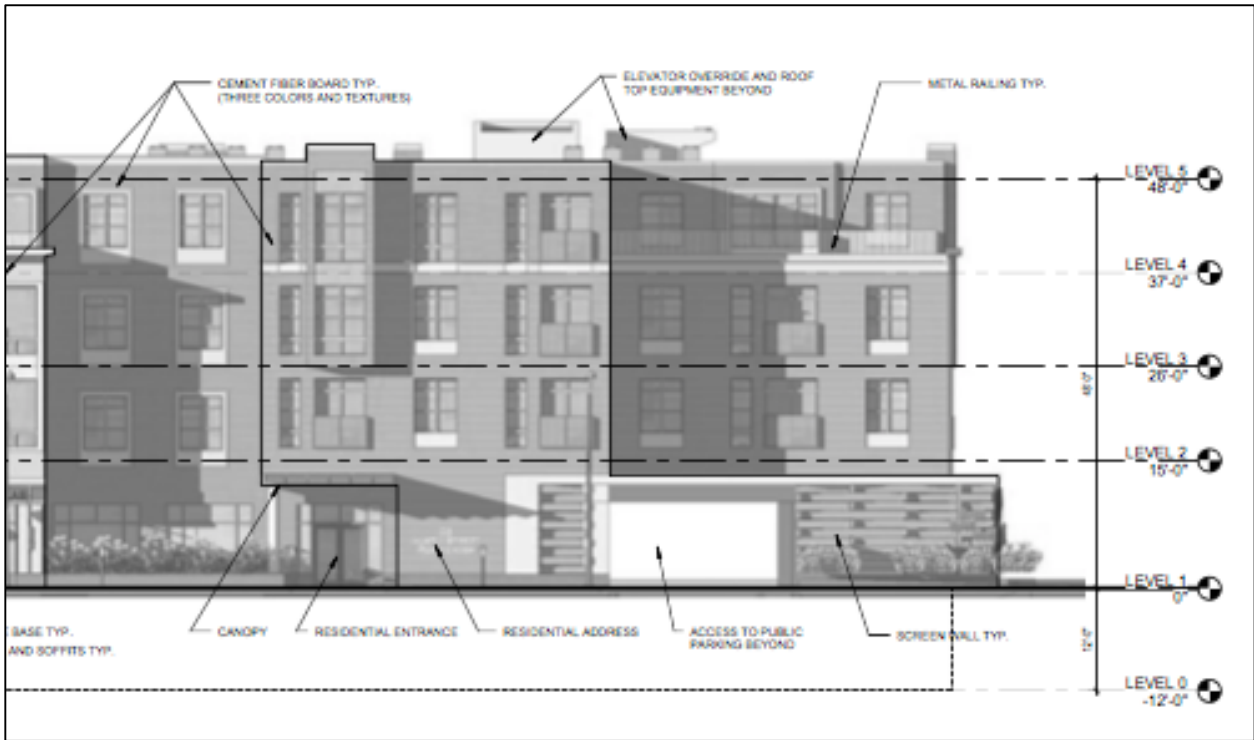


Per Proposed Construction.

119-15 (Austin Street) - Consistency Ruling

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Figure 6.



Per Approved Plans.

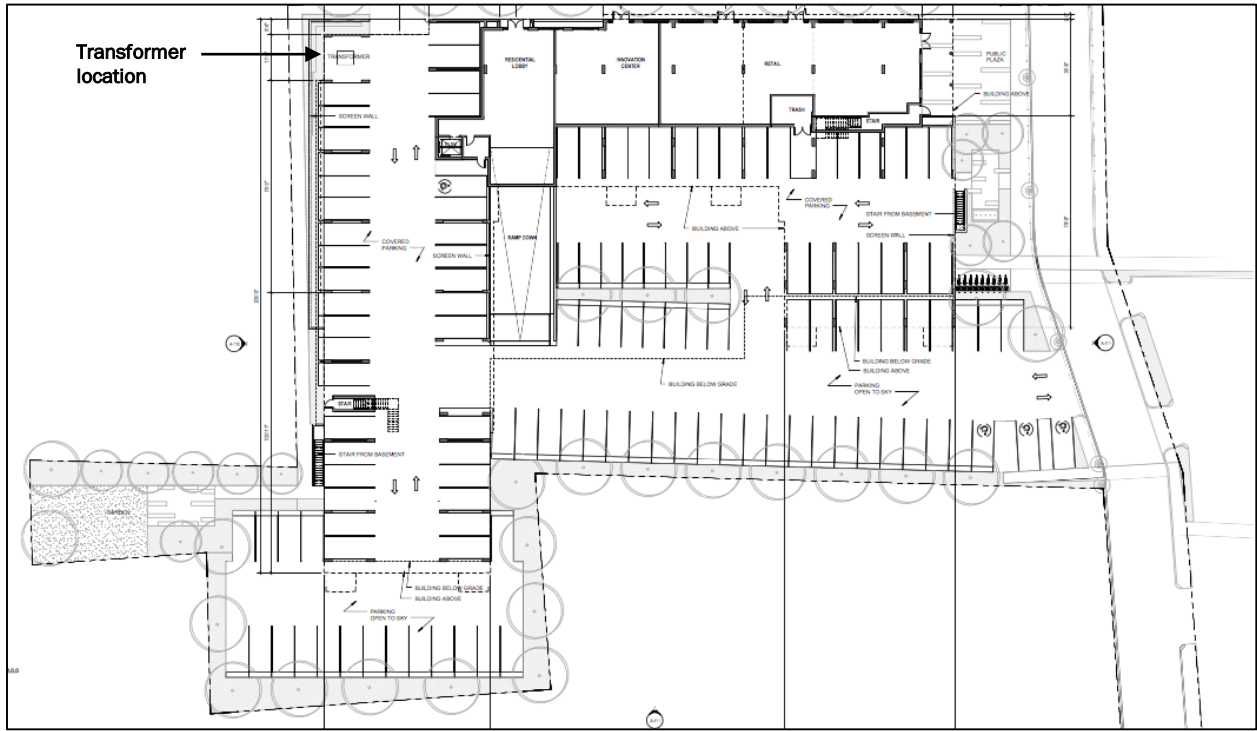


Per Proposed Construction.

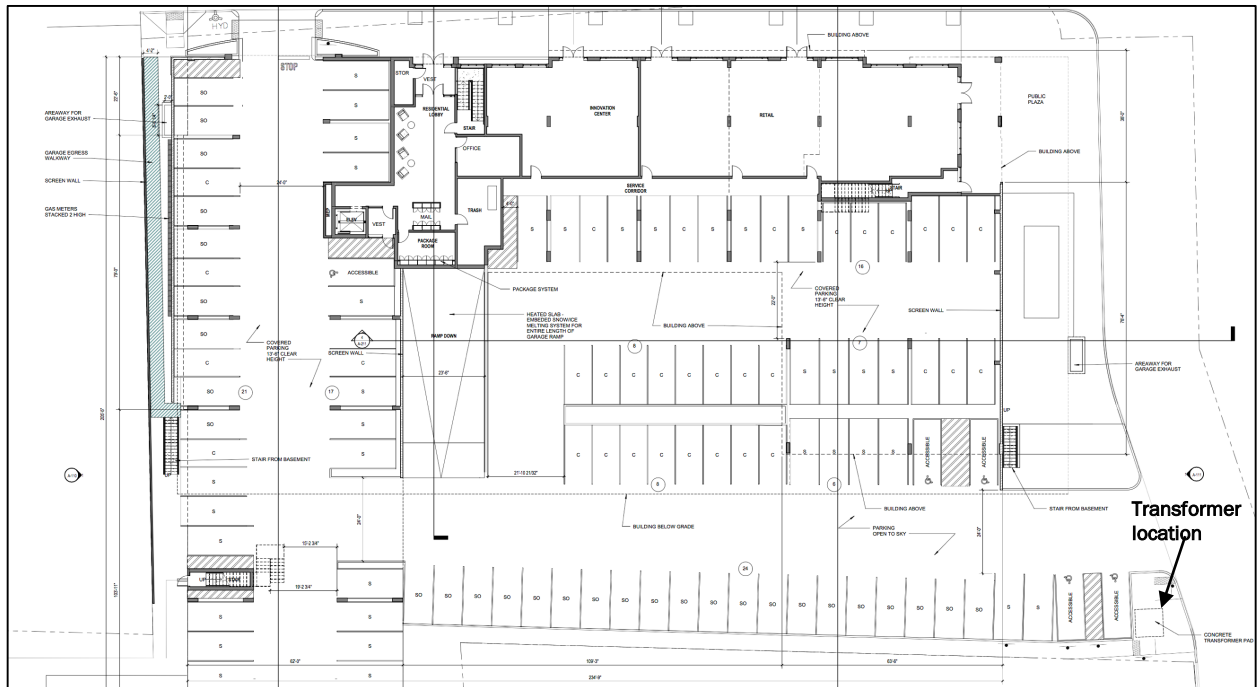
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Figure 7.



Per Approved Plans.



Per Proposed Construction.

119-15 (Austin Street) - Consistency Ruling



1200 WALNUT STREET
NEWTON, MASSACHUSETTS 02461-1267

BOARD OF ELECTION
COMMISSIONERS

2017 JUN 21 A 11:49

NEWTON, MASS

TELEPHONE (617) 965-3500
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RACHAEL C. CARVER

RECEIVED
NEWTON CITY CLERK
2017 JUN 21 PM 12:40
David A. Olson, City Clerk
Newton, MA 02459
jspiro@sab-law.com

June 21, 2017

David Olson, City Clerk
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Dear Mr. Olson,

Re: City Council Order #119-15 - Austin Street

Pursuant to and as required by Section 23a of Board Order #119-15, enclosed is a copy of the Order as recorded with the Registry of Deeds for the Southern District of Middlesex County in Book 69440, Page 80.

Sincerely,

Jan Spiro
Legal Assistant

cc: John Lojek, Commissioner, Department of Inspectional Services
Barney Heath, Director, Department of Planning and Development

Middlesex South Registry of Deeds

BOARD OF ELECTION
COMMISSIONERS

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JUN 21 11:49

NEWTON, MASS

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Document Type	: NONE
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Number of Pages(including cover sheet)	: 22
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RECEIVED
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 DAVID A. OLSON, CMC
 NEWTON, MA 02459

Middlesex South Registry of Deeds

Maria C. Curtatone, Register

208 Cambridge Street

Cambridge, MA 02141

617-679-6300

www.cambridgedeeds.com

#119-15

CITY OF NEWTON

IN BOARD OF ALDERMEN

December 8, 2015

Title Reference

Book: 7113

Page: 232

ORDERED:


That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to redevelop a municipal parking lot with a mixed use building consisting of approximately 5,000 square feet of commercial space on the ground floor, 68 dwelling units with 90 underground parking spaces, a public plaza, and 124 public parking spaces, in accordance with the recommendation of the Land Use Committee and the reasons given by the Committee therefore, through its Chairman, Alderman Marc C. Laredo.

Procedural Background.

The proposed development (the "Project") for the Austin Street municipal parking lot (the "Site") was submitted jointly by the City of Newton (the "City") and Austin Street Partners, LLC ("ASP")(collectively the "Petitioners") and reflects efforts to diversify Newton's housing stock, provide affordable housing choices, encourage pedestrian-oriented development with a mix of residential and business uses, and enhance the quality of life in Newtonville and Newton's village commercial centers in accordance with Newton's *Comprehensive Plan*. Those efforts included the creation of a MU4 ("MU4") zoning district by Ordinance A-4 on October 1, 2012 and re-zoning of 28 Austin Street to the MU4 Zoning district by Ordinance A-5 on the same date.

The Project proposes that the City retain ownership of the Site and continue to operate a 124 space municipal parking lot on the Site. ASP will receive a ground lease from the City to develop the Project in accordance with the terms and conditions of this special permit/site plan approval and as well as the terms and conditions of the ground lease.

The special permit/site plan application for the Project was filed with the City Clerk on May 12 2015. Notice of the public hearing was published on May 19, and May 26, 2015, in *The Boston Globe* and on May 27, 2015, in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and G.L. c. 40A, sec. 11. The Land Use Committee ("LUC") of the Board of Aldermen opened the public hearing on June 2 and continued the public hearing on June 9, July 21, September 24, October 6, October 29, November 10, and November 12, 2015. Over the course of the hearing presentations were made by ASP and its project team including the project architect Werner Hofmann of ADD,

A True Copy
Attest

City Clerk of Newton, Mass.

Inc./Stantec and transportation consultant Jason Schreiber of Nelson Nygaard. Presentations were also made by City staff including the Commissioner of Public Works, the Director of Transportation, the Planning and Development Department, the City's transportation consultant and peer reviewer Jeffrey Dirk of Vanasse and Associates, and financial consultant Kyle Talente of RKG Associates.

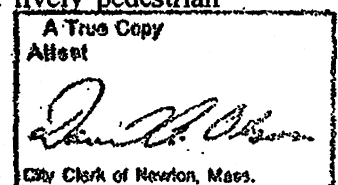
The LUC received extensive oral and written testimony from the public and written reports from the City's professional consultants and various City boards, commissions and departments, including the Planning and Development Department, the Engineering Department, the Fire Department, the Newton Housing Partnership, the Newton Fair Housing Committee, the Newton Council on Elders, the Urban Design Commission, the Economic Development Commission, and the Newtonville Area Council. During the review process, supplemental materials and testimony have been submitted in response to requests by the Board and public. All testimony, written reports and supplemental materials prepared by ASP and its consultants, and the City and its staff, consultants, boards, and commissions, as well as public testimony are included in the record of the Board's proceedings and provide factual and technical background for the Findings and Conditions set forth within the body of this order.

Following a final presentation by ASP and City staff, as well as public testimony, the public hearing was closed on November 12, 2015. On November 12, 2015, the LUC voted to recommend approval of the Project to the Board pursuant to a draft Board Order. On November 16, 2015, the Board recommitted the draft Order to the LUC for further review and revision by the LUC. On November 24, 2015, the LUC reviewed and revised the draft Order and again voted to recommend approval of the Project to the Board as follows:

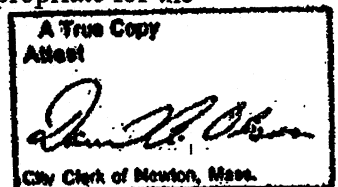
Finding that all applicable provisions of the Zoning Ordinance have been complied with and taking into consideration the testimony and evidence provided by all interested parties, the Board GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the LUC of the Board:

With regard to how the Project furthers the purposes of the MU4 District and meets the requirements of §30-24(d)(1)-(5) Revised §7.3.3. C. 1.-5., for those uses or dimensional waivers requiring special permits:

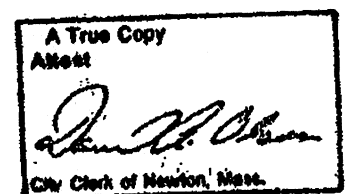
1. The Board finds pursuant to the requirements of §30-13(h)(1) and(2) Revised §4.2.C. and §4.2.1. C. 1.-5., that the proposed use is not inconsistent with the purposes of the MU4 district or the Newton *Comprehensive Plan* in that:
 - a. the Project will allow the development of buildings and uses appropriate to the Newtonville village center as described in the *Comprehensive Plan*;
 - b. the Project will better connect the businesses and residences on Austin Street to the commercial core of Newtonville village;
 - c. the Project will allow sufficient density and intensity of uses through the mixture of housing and commercial uses to promote a lively pedestrian



- environment and streetscape throughout the day and week;
- d. the Project will provide 68 mixed income rental housing units with proximity to a variety of services and public transit, increasing the quantity and diversity of housing resources in the City;
 - e. The Project is located so as to encourage both the use of public transportation and the walkability of the Newtonville area including the village center and the surrounding amenities.
2. ASP has agreed to increase the number of affordable units from 17 units (25% of the total number of units) to 23 units (33% of the total number of units) without decreasing any of the public amenities or Project costs imposed on ASP by this special permit/site plan approval. The Board finds that the proposed residential units fill a demonstrated and growing need for smaller, accessible, energy efficient residential units; that 33% of the units will be affordable to households earning up to 80% of Area Median Income and that six of those units will be targeted for lower income households holding rental assistance vouchers which have a payment standard consistent with the maximum monthly rent that can be charged per Massachusetts Department of Housing and Community Development (DHCD) Subsidized Housing Inventory (SHI) requirements to the extent legally permissible; ASP intends to solicit initial tenants in the commercial space who will complement and not compete with existing retailers in Newtonville; and the public plaza is a beneficial amenity that will create an attractive public gathering place for Newtonville.
 3. The Board finds that the Project is an example of proactive municipal planning which will utilize a municipal parking lot to achieve additional public benefits while still retaining City operation of the parking lot and ownership of the Site.
 4. The Board finds that the Site is an appropriate location for the proposed mixed-use building as the Project site plan maximizes the benefits of its Newtonville village location by expanding needed housing choices, diversifies commercial options in the village, connects the site to the village and maximizes the number of municipal parking spaces available on site to the greatest extent consistent with appropriate site planning.
 5. The Board finds that the use as developed and operated will not adversely affect the neighborhood as the Site will retain 124 parking stalls that are important to the Newtonville businesses, will enhance the long term economic stability and vitality of the village, and will create an attractive public gathering space.
 6. The Board finds that through careful attention to traffic calming design elements, particularly at Philip Bram Way adjacent to the proposed plaza and by providing clear visibility, wide sight lines and pedestrian markings and improvements at the western parking lot entrance on Austin Street, there will be no nuisance or serious hazard to vehicles or pedestrians.
 7. The Board finds that access to the Site over the surrounding streets is appropriate for the



- types and numbers of vehicles involved. ASP and the City have conducted numerous parking studies which concluded that the new parking lot will accommodate peak hour parking demand. ASP also submitted a Transportation Impact Study that shows that the traffic implications of this Project will have a minimal impact on Newtonville.
8. The Board finds that the site planning, building design, construction, maintenance and long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy. The Project is located in a village center close to multiple transit options and the benefits of a walkable village center are maximized. The building in this location has been designed to be LEED for Neighborhood Development Certifiable at a minimum of the Gold Level and construction will be efficient and minimize waste through use of the GreenStaxx modular construction system. The building provides smaller energy-efficient units. Solar panels on the roof will offset a significant portion of the building's energy consumption.
 9. The Board finds that 23 fully accessible/adaptable affordable dwelling units will be created by the Project, and that the other 45 fully accessible/adaptable market rate dwelling units will add to the diversity of Newton's housing stock, thereby increasing housing choices and opportunities in the City.
 10. The Board finds that ASP had carefully studied and understands current and projected parking demand and that the redevelopment of this site will not adversely affect the future parking availability in Newtonville.
 11. The Board finds that ASP has developed a comprehensive Interim Parking Plan and a preliminary Construction Management Plan, both Plans to be reviewed and approved by the City prior to the issuance of any building permits as provided in Conditions #10 & 12. Additionally, the creation of a Liaison Committee will help to address concerns that will arise during construction (Condition #8). During construction ASP will provide a minimum of 50 public parking stalls on the Site and 20 public parking stalls in the Star Market parking lot during construction for the public (the City will provide 20 parking stalls on Austin Street if ASP is unable to secure parking in the Star Market parking lot). The City will provide 3 public parking stalls on Philip Bram Way during construction. Finally, during construction, and at its sole expense, ASP will provide a free shuttle to free off-site parking at Aquinas School that will be available to medium- and long-term parkers (Condition #6).
 12. The Board finds that ASP had developed a Business Engagement Plan and a Construction Mitigation Fund to help mitigate the concerns of Newtonville merchants that may arise during construction. The Business Engagement Plan includes a business liaison facilitator to coordinate between businesses and ASP, and the City's Director of Economic Development will be available to offer assistance as well.
 13. The Board finds that the City intends to make significant improvements to the village center of Newtonville and to the intersection of Walnut and Austin Streets as soon as practicable.



14. The Board finds that the Reuse Board Order #150-09(6) resolves "That funds at least equal to the monetary bid received for the lease of the property be used to enhance the redevelopment of the site and improve Newtonville center more generally," and the Mayor reiterated his intentions to follow through with this commitment in a letter to the Board dated November 12, 2015, on file with the City Clerk.
15. The Board finds that construction of the Project will not take more than 15 months. It is expected that Project Construction will begin in the spring of 2017, after the City has completed utility work on Austin Street.

With regard to the special permit to allow street-level office uses and a restaurant with more than 50 seats, §30-13(h)(2), Table B Revised §4.4.1.:

16. The Board finds that the Site is an appropriate location for a small (approximately 1,500 square feet) shared-office "innovation center" on the ground floor and for a restaurant with up to 75 seats, as the proposed uses are appropriate for the commercial center of the village, will encourage an active, pedestrian-oriented streetscape throughout the day and week, fill a demonstrated need for the uses within the vicinity (see the Economic and Fiscal Impact Analysis completed by the City as part of this project), and are consistent with the purposes of the MU4 district of the City of Newton Revised Zoning Ordinances and the *Comprehensive Plan*.

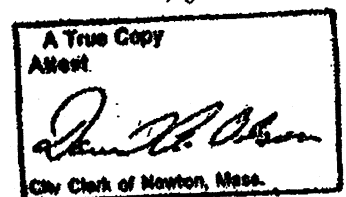
With regard to the special permit to allow a building in excess of 20,000 sq. ft. of gross floor area, §30-13(j) Revised §4.2.2. B.1., 2.:

17. The Board finds that the size of the building is in keeping with the vision for the subject parcel in the Request for Proposals and is not inconsistent with the MU4 district of the City of Newton Revised Zoning Ordinances or the *Comprehensive Plan*. The proposed site plan and building form is compatible with the neighborhood context, improves the pedestrian environment, creates beneficial open space, improves Philip Bram Way, and the proposed mix of uses will enhance the commercial and civic vitality of the vicinity.

With regard to the special permit to allow a building height of 48 feet and four stories, §30-15(w)(2), and §30-15, Table 3 Revised §4.2.5. A. 1.:

18. The Board finds that the building height of 48 feet and four stories will not adversely affect the neighborhood as the proposed structure is compatible in visual scale to its surroundings, does not adversely affect its surroundings by creating shadows or blocking views of surrounding properties, and advances the purposes of the MU4 district. The height is in keeping with existing landmarks in Newtonville including the Masonic Hall and the Swedenborgian Church and the height is allowable by special permit in the MU4 district.

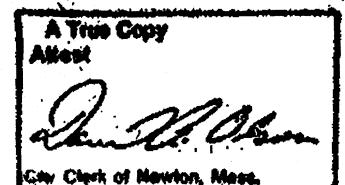
With regard to special permits for the number of parking spaces and various requirements for the design of parking facilities, §30-19(d)(2) and (10)-(13) Revised §5.1.4. A.; §30-19(e) Revised §5.1.5. A.; §30-19(h)(1) Revised §5.1.8. A.; §30-19(h)(2)a) and b) Revised §5.1.8. B. 1. 2.; §30-



19(i)(1) and (2) Revised §5.1.9. A. and B.; §30-19(j)(1) revised §5.1.10. A.; §30-19, Table of Off-Street Loading Revised §5.1.12.; and §30-19(m) Revised §5.1.13.:

19. The Board finds that exceptions to the parking requirements including a waiver for 80 required parking stalls, to locate parking within a setback, and within five feet of a residential structure, to waive the dimensional requirements for some parking stalls, to waive the screening requirements for parking lots, to waive the interior landscaping requirements, and to waive the off-street loading requirements, are in the public interest and that such exceptions are in the interest or protection of environmental features for the following reasons:

- a) The Project will provide 90 parking stalls in the basement garage and 124 parking stalls in the municipal parking lot. Five handicap stalls (three van accessible) will be provided in the municipal parking lot and four additional handicap stalls will be provided in the basement garage. A total of 170 parking stalls (two stalls per dwelling unit and 34 stalls for the commercial space) would be required without a waiver. ASP is proposing 1.25 parking stalls per residential unit (a waiver of 51 stalls) and five stalls for the commercial uses (a waiver of 29 stalls). For practical purposes this parking waiver sets the intensity of commercial uses that can operate in the Project without further parking waivers as those commercial uses which, in aggregate, do not require more than 34 stalls (5 actual and 29 waived stalls).
- b) The parking for the market rate residential units will be charged separately and in addition to the residential rent so as to reduce demand for parking by the market rate residential units. The rent for the affordable units will include one parking stall at no additional charge for those households with a car. Recent parking utilization studies of other comparable multi-family projects in Newton have shown a parking utilization rate of less than 1.25 stalls per unit and the Project is within walking distance of the Newtonville commuter rail station, MBTA bus routes, and a broad spectrum of neighborhood amenities. The relatively small average size of the apartments will likely attract tenants disposed to use public transportation or more likely to have only one automobile per unit, making a parking waiver appropriate at this site. Covered bicycle parking will also be provided in the below-grade garage to encourage the use of alternative modes of transportation and ASP will seek to have car-sharing services provided in the municipal parking lot;
- c) The commercial and residential uses are complementary and will allow for some coordinated or shared usage of the garage at different times by commercial tenants and residential users. Accordingly, the Board concludes that the number of parking spaces required by the Zoning Ordinance would be more than necessary to meet the realistic demand for parking that could be expected to be generated at the Project;
- d) The location of parking within setbacks and within five feet of a residential structure makes for the most efficient layout of the parking lot and helps to

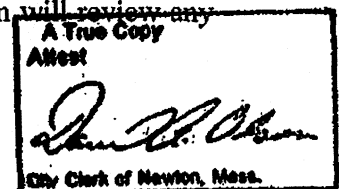


maximize the number of stalls that will be available in the municipal parking lot;

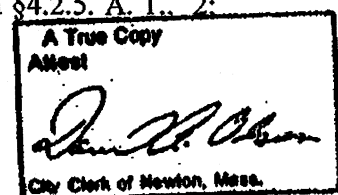
- e) The allowance for reduced size of parking stalls will not create a nuisance or hazard to vehicles because the stalls will be well marked as intended for use by smaller vehicles, will be uniform in size to the extent possible, and larger stalls are available to accommodate larger vehicles. A turning template has been presented that provides evidence that maneuvering aisles and the parking spaces in the municipal parking lot are substantially consistent with many other parking facilities in Newton, and many surrounding communities allow for similarly sized parking stalls;
- f) With respect to the screening of the parking lot and interior landscaping, the Board finds that the waiver helps maximize the number of parking stalls that will be available to the public, and that a sufficient number of trees will be added to the site in more perimeter locations so as to improve the streetscape, perimeter screening, and public plaza area;
- g) The waiver for off-street loading facilities is justified as only 5,000 square feet are dedicated to commercial uses and turning templates show that the building can be serviced by larger vehicles. Adequate provision is made for deliveries and trash and recycling pick-up through a service corridor at the rear of the building, and deliveries to the portion of the properties to be used for office will be minimal.

With regard to the site plan approval criteria under §30-23(2)(a)-(h) Revised §7.4.5. B. 1.-8.:

- 20. The Board finds that the Project has been designed to ensure the safety of vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements for the following reasons:
 - a) The Project includes certain safety design features and cues to alert vehicles to the shared pedestrian nature of portions of Philip Bram Way such as a raised roadway that is flush with the sidewalk, pavers that are different than the surrounding streets, and the parking lot, bollards to separate the roadway from the public sidewalk and pedestrian plaza, tactile cues, and appropriate signage;
 - b) Other access driveways have been designed with pedestrian safety and vehicular sight lines in mind including stop signs, open viewing and low planters, and generous sidewalks;
 - c) A sufficient number of handicap stalls are provided in both the municipal parking lot and the garage. The final location of such spaces may be adjusted slightly based on projected demand and state and local requirements.
- 21. The Board finds the methods for disposal of waste and methods of regulating surface water drainage are adequate for the following reasons:
 - a) The City Engineering Division has reviewed submitted plans and raised no major concerns with respect to this Project. The Engineering Division will review any



- plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any permits;
- b) ASP will be making a \$750,000 contribution to the City of Newton for public infrastructure improvements;
- c) The City will be upgrading water and sewer utility lines on Austin Street from Walnut Street to Lowell Avenue as part of routine infrastructure upgrades budgeted for in the City's current five-year Capital Improvements Plan. This City work is undertaken as part of the existing Capital Improvements program and is scheduled for 2016 independent of and prior to the construction of the Project.
22. The Board finds that the provision for off-street loading facilities is sufficient for the servicing of the building. Adequate provision is made for deliveries through a service corridor at the rear of the building, and deliveries to the portion of the properties to be used for office will be minimal.
23. The Board finds that parking is sufficiently screened so as to not detract from the streetscape and public plaza environment, but will through initial signing, or additional signing if needed after construction, be sufficiently visible so as to make wayfinding easy for visitors.
24. The Board finds that the Project has avoided unnecessary topographical changes, and that the installation of the building foundation/garage should not negatively impact abutters. Additionally, proposed landscaping will enhance the Site and streetscape.
25. The Board finds that the Project utility lines will be undergrounded from the street to the building, ASP will make a contribution towards the undergrounding of utility lines along the Site's Austin Street frontage subject to the conditions of Condition #17 and such utility lines will be undergrounded and the poles eliminated as a result of this Board Order.
26. The Board finds that the proposed site design is appropriate in the context of the neighborhood and will serve to connect the site to the village by designing a building with an active pedestrian level that will be enticing to Newtonville residents and fill a void in the streetscape. ASP has incorporated a number of building treatments and design elements that enhance the appearance of the structure including articulating the façade and setting the fourth story back from the street. The height of the structure is in keeping with surrounding buildings including the Masonic Hall and the Swedenborgian Church.
27. The Board finds that no historical resources currently exist on the Site.
28. In light of the findings set forth above and the following conditions imposed by this Board Order, the Board of Aldermen finds that the public convenience and welfare of the City will be served, and the criteria of §30-13(h)(1) and (2), Table B, Revised §4.2.5. A. 7.; §30-13(j), Revised §4.2.2. B. 1., 2.; §30-15(w)(2), Table 3, Revised §4.2.5. A. 1., 2;



§30-19(d)(2) and (10)-(13), Revised §5.1.4. A.; §30-19(e) Revised §5.1.5. A.; §30-19(h)(1), Revised §5.1.8. A.; §30-19(h)(2)a) and b), Revised §5.1.8. B. 1., 2.; §30-19(i)(1)and (2), Revised §5.1.9. A. and B.; §30-19(j)(1), Revised §5.1.10. A.; §30-19, Table of Off-Street Loading, Revised §5.1.12.; and §30-19(m), Revised §5.1.13.; §30-24(d)(1)-(5), Revised §7.3.3. C. 1.-5.; and §30-23(2)(a)-(h), Revised §7.4.5. B. 1.-8. for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #119-15

PETITIONERS: Austin Street Partners, LLC
("ASP" and use of the term "ASP" shall include Austin Street Partners's successors and assigns) and the City of Newton (the "City") (collectively the "Petitioners")

LOCATION: 28 Austin Street, Newtonville, on land known as SBL 24/9/15, containing ±74,480 sq. ft.

OWNER: City of Newton

ADDRESS OF OWNER: 1000 Commonwealth Avenue, Newton, MA 02465

TO BE USED FOR: A 124 space municipal parking lot with a mixed-use residential building providing 68 units of housing (and one guest suite restricted to tenant use) and approximately 5,000 square feet of commercial space and 90 associated underground parking spaces, and a public plaza

CONSTRUCTION: Wood-frame structure over a structural steel and concrete base

EXPLANATORY NOTES: References to the Zoning Ordinance above and those that follow include both the citation to sections in effect at the time the petition was filed and as renumbered in the Zoning Ordinance taking effect on November 1, 2015. §30-13(h)(1) and (2), Table B, Revised 4.2.5.A.7., to allow street-level office uses; §30-13(h)(2), Table B, Revised §4.4.1., to allow a restaurant with more than 50 seats; §30-13(j), Revised §4.2.2. B. 1., 2., to allow a building in excess of 20,000 square feet of gross floor area; §30-15(w)(2), Revised §4.2.5. A. 1., to allow a building height of 48 feet and four stories; §30-19(m), Revised §5.1.13., for exceptions to the parking requirements; §30-19(d)(2) and (10-13), Revised §5.1.4. A., to waive 80 parking stalls; §30-19(e), Revised §5.1.5. A., to waive the requirement for a parking plan; §30-19(h)(1), Revised §5.1.8. A., to locate parking within a setback and within 5 feet of a residential structure; §30-19(h)(2)a) and b), Revised §5.1.8. B., to

A True Copy
Attest
[Signature]
City Clerk of Newton, Mass.

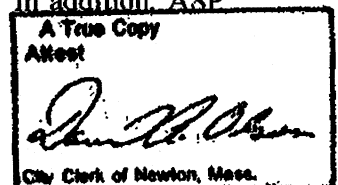
waive the dimensional requirements for parking stalls; §30-19(i)(1), Revised §5.1.9. A. 1., to waive the screening requirements for parking lots; §30-13(i)(2), Revised §5.1.9. B, to waive the interior landscaping requirements for parking lots; §30-19, Table of Off-Street Loading, Revised §5.1.12., to waive the off-street loading requirements; §30-23 Revised §7.4.5. B. 1.-8.; and §30-24 c. Revised §7.3.3. C. 1.-5.

ZONING:

Mixed-Use 4

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 the Plan Set entitled "28 Austin Street Special Permit Application" dated October 22, 2015, with Sheet C.00 Site Plan revised 11/30/15; Sheet C.10 Striping Plan revised 11/30/15; and Sheet L.1.01 Layout Plan revised 12/2/15, which plans are identified in Exhibit A and are hereby incorporated by reference.
2. ASP shall at the time of obtaining a building permit for construction of the building make a payment of \$750,000 to the City for municipal infrastructure improvements. This amount shall be deemed to be in satisfaction of the request of the Engineering Division for funding for infrastructure improvements, including inflow and infiltration (I&I) improvements. The amount of \$750,000 is calculated based on 110 gallons of sewer flow per bedroom per day, at a ratio of 8:1, using \$8.40 per gallon for a transportation and treatment cost in accordance with the City's Inflow & Infiltration Reduction Program. If the Project's Actual Wastewater Flow per day per bedroom is less than 110 gallons when the Project has reached 95% occupancy, then the amount of the I&I contribution will be recalculated. If the recalculated I&I contribution is less than \$750,000, the City shall apply the difference to other infrastructure projects including the undergrounding of utilities along the Site's Austin Street frontage. The City shall be responsible for taking this measurement and the City Engineer will review and approve the methodology used to measure and calculate the Actual Wastewater Flow per day per bedroom. ASP will cooperate with the City in measuring the Project's Actual Wastewater Flow, the cost of which may be paid for out the \$750,000. Regardless of the Actual Wastewater Flow measured, ASP shall not be required to make an additional I&I contribution, nor shall it be entitled to any refund of this amount.
3. To the extent permitted by applicable regulations of the Department of Housing and Community Development, all of the 68 residential units shall be eligible for listing on the State's Subsidized Housing Inventory.
4. The Project shall include 23 income restricted units (33%) that shall be made available to households earning up to 80% of Area Median Income, as designated by HUD, adjusted to family size. Monthly housing costs (inclusive of utilities) shall not exceed 30% of the applicable monthly income limit for that unit with adjustment for bedroom number, in accordance with DHCD requirements for eligibility on the SHI. The maximum local preference as permitted by DHCD and applicable law shall be provided. In addition, ASP

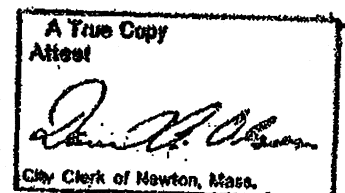


shall work with the City and DHCD in good faith to provide a preference for up to six (3 one bedroom units and 3 two bedroom units) of the 23 income restricted units for lower income households with rental assistance vouchers, including those under the Federal Section 8 program, which have a payment standard consistent with the maximum monthly rent that can be charged per DHCD SHI requirements. The mix of bedrooms for the income restricted units shall reflect the mix of units in the Project, with 10 one bedroom units, 1 one bedroom plus den unit, and 12 two bedroom units.

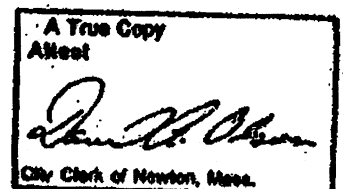
5. The marketing and resident selection process for the affordable units shall be consistent with the "Guidelines for Uniform Local Resident Preferences in Affordable Housing" prepared by the City's Fair Housing Committee (Revised March, 2012): That process shall be consistent with the provisions of Newton Zoning Ordinance §5.11.9., and is intended as a standard provision for all Newton housing programs.

Conditions related to construction

6. ASP shall operate a free shuttle bus service to satellite parking at the Aquinas School where 100 parking stalls will be allocated for medium and long term parkers, including construction workers. The satellite parking is intended to serve in order of priority: 1) the Project's construction workers; 2) visitors to the Senior Center; 3) employees in Newtonville; 4) residents of the Jackson road area; and 5) commuters. This order of priority shall be considered in terms of managing the utilization of the satellite parking. The Shuttle will operate approximately every 20 minutes from 6:30AM-7PM Monday through Friday, and from 9AM-3PM on Saturdays. ASP shall also be responsible for transporting all construction workers between the Aquinas School Parking Area and the Site regardless of the Shuttle's hours of operation. ASP shall provide free ridesharing or equivalent Newton-based taxi service for employees of Newtonville businesses who use the satellite parking at the Aquinas School and need transportation outside the normal hours of operation for the Shuttle. ASP shall make best efforts to coordinate with the Senior Center around its programming to provide additional or scheduled service so that seniors are not left waiting in the cold or heat for the Shuttle. Parking at Newton North High School and on Elm Street will also be available on weekends, during the summer and when not in use by the school and as permitted by Newton Public Schools. The Shuttle will service the High School on weekends. Additional parking at the Senior Center will be available on weekends when not in use by the Senior Center. Shuttle service will commence when ASP first closes portions of the current municipal parking lot to the public and will continue until the earlier of either: 1) a minimum of 100 parking spaces in the new municipal parking lot are open to the public or 2) the Liaison Committee agrees that the satellite parking and Shuttle are no longer necessary. Following termination of the Shuttle service, ASP shall require the Project's construction workers to park in the Project's basement parking and shall not permit the Project's construction workers to park in the new municipal parking lot or on the streets surrounding the Site.
7. All construction activity shall be limited to 7AM-8PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended by the Commissioner of Inspectional Services with any additional required approvals. Interior work may occur at other times when the building is fully enclosed.



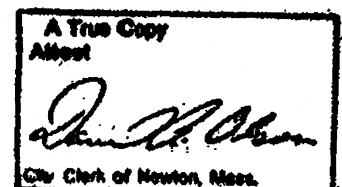
8. A Liaison Committee shall be established consisting of one (1) designee of ASP, one Alderman from Ward 2, one representative from the Newtonville Area Council, two representatives of Newtonville businesses, one representative from the Newtonville residential area, one representative from the Jackson Road area, one representative of the Mayor, one representative of the Newton Public Schools designated by the School Superintendent, and one Alderman from Ward 1. The President of the Board shall appoint the resident, business, and aldermanic members. The first meeting of the Liaison Committee shall be held not less than 90 days prior to the commencement of any site work and/or other construction activities related to the work approved through this Special Permit/Site Plan Approval, including the closing, in whole or in part, of the municipal parking lot. Meetings of the Liaison Committee will be open to the public and the Committee will establish such agenda and procedures as it sees fit. The purpose of the Committee will be:
- a. To enhance and ensure communications regarding the status and progress of construction and operation of the Project.
 - b. To provide a forum for initial presentation of a construction schedule, the Construction Management Plan, and any significant changes to the schedule or changes in plans for which public review is required.
 - c. To consult on construction issues including but without limitation, blasting, rock crushing, coordination of construction activity, implementation of the interim parking plan or any adjustments to the plan, and external events/community activities, and to give advance notice as to blasting times and areas.
 - d. To receive and discuss construction-specific issues such as blasting complaints, construction conditions including dust, noise, parking and traffic, parking, and to receive notices and communications from the Planning and Development Department, the Department of Public Works, the Fire Department, the Police Department and the Inspectional Services Department.
 - e. To review the final plans and building materials, including any façade changes, and preliminary parking management, lighting, and signing prior to the same being submitted to the Planning and Development Department in accordance with Condition #11 and #12 and to recommend to ASP, the Director of Planning and Development, and to the Commissioner of Inspectional Services when a ruling by the Commissioner as to consistency of any requirement of this Order is appropriate. The Director of Planning and Development, the Commissioner of Inspectional Services, and the Land Use Committee of the Board shall be advised by the Liaison Committee in any instance when the Committee has recommended that a consistency ruling be made by the Commissioner of Inspectional Services.
 - f. To review implementation of ASP's Business Engagement Plan.
 - g. To plan an appropriate allocation of parking spaces at Aquinas school for use by construction workers, seniors, employees, commuters and others and recommend means of monitoring and adjusting the Aquinas school parking as necessary to maximize use of this parking by the highest priority users.



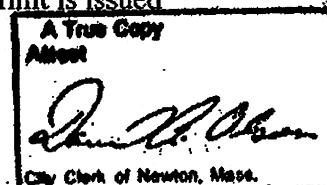
- h. To monitor the use of interim parking on the Site, at the Star Market (or on Austin Street if interim parking is provided at this location), on Bram Way, and at Aquinas school, to make suggestions for modifications to the interim parking plans at all four locations to improve the operation of such parking; to monitor traffic conditions on Jackson Road and make suggestions regarding improvements for such traffic conditions; and to make recommendations on the operation, safety and convenience of the Shuttle service, including any suggested modifications to the Shuttle schedule of operation.
- i. To discuss implementation of the final Construction Management Plan.
- j. Post construction, in conjunction with City staff, to study and make recommendations to the Traffic Council, the Board of Aldermen and the Mayor on the following traffic and parking issues: 1) Should traffic on Bram Way be one or two way, and in which direction; 2) should Bram Way adjacent to the public plaza be closed to vehicular traffic at certain times or on certain days; 3) should traffic on Austin Street be one or two way, and where should public parking on Austin Street be laid out; and 4) following review of the operation of the public parking lot with the assistance of City staff and such consultants as may be appropriate, should additional parking management systems, signage and/or lighting be installed by the City in the public parking lot to help motorists find and safely use available parking spaces. The Committee shall also review the results of the post occupancy traffic study to be conducted pursuant to Condition #28, and may make recommendations to the Director of Planning and Development and the Director of Transportation regarding ASP's Transportation Demand Management Plan ("TDM").

The Liaison Committee will meet on a monthly basis unless there is consensus within the Committee that no meeting is necessary or that the members agree to an alternative meeting schedule. The President of the Board of Aldermen shall designate the chair the Committee who shall convene the first meeting of the Committee. The Committee shall continue to meet until at least six months after initial occupancy of the building and until recommendations regarding additional signage or parking management systems, Bram Way and Austin Street have been forwarded to the Mayor, Traffic Council and the Board of Aldermen, as appropriate. The Committee shall work by consensus, but nothing in the establishment of the Committee shall prevent any member including ASP from engaging in any lawful activity even if such activity is inconsistent with the position of the Committee. ASP shall maintain and distribute minutes of the meetings of the Committee

ASP, at the request of the Chair, shall provide Committee members with written notice (which may be by email) at least seven days in advance of such meetings, except for such times when the Committee determines that a meeting on shorter notice is necessary, and such notice shall also be given to the City Clerk, the Commissioner of Inspectional Services, the Director of the Planning and Development, and to the businesses and residents surrounding the Project. Notices shall include the date, time and location of its meetings. The Committee shall be responsible for identifying to whom such notices shall be given. ASP shall pay for any cost associated with providing notice of the Committee's meetings.

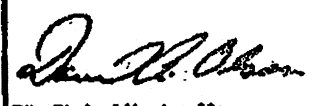


9. ASP shall designate a single individual to communicate with the neighbors via email. The designated individual shall send updates of any changes of the construction schedule to the established distribution list.
10. ASP shall comply in all material respects with the final Construction Management Plan to be submitted for review and approval to the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, City Engineer, Director of the Transportation Division of Public Works and the Commissioner of Public Buildings. The Final Construction Management Plan shall include but not be limited to, the following provisions:
- a. The proposed schedule of the project, including the general phasing of the construction activities.
 - b. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing, which plans shall show the retention of no less than 50 public parking spaces on Site and indicate any instance in which there may be any short term disruption (defined as one day or less) of the public parking which is required to be provided on Site due to construction activities. No long term disruption (defined as more than one day) shall be permitted.
 - c. Proposed truck route(s) that minimize travel on local streets.
 - d. Proposed methods for dust control including, but not limited to: 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.
 - e. Proposed methods of noise control, in accordance with the City of Newton's Ordinances. 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.
 - f. A plan for rodent control during construction.
 - g. A requirement that construction workers performing work at the Site park at Aquinas school (or in the Project's basement parking after the Shuttle service is ended) except for drop-off or pick-up of materials at the Site. ASP shall not permit the Project construction workers to park in the new municipal lot while working at the Project Site or on streets surrounding the Site.
 - h. 24-hour contact information for the general contractor of the Project. This contact information shall be provided to the Commissioner of Inspectional Services and to the Newton Police Department.
11. ASP shall submit final plans and building materials to the Liaison Committee for review pursuant to Condition #8(e) and to the Director of Planning and Development for review and approval prior to the issuance of a building permit. Any changes to the design of the façade of the building or to the building materials approved at the time the building permit is issued

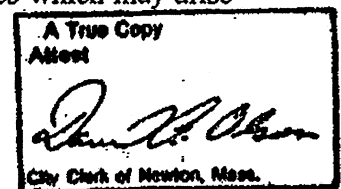


shall be reviewed as follows: 1) by the Liaison Committee for its recommendation regarding the need for a consistency ruling, and 2) for final review and approval by the Director of the Planning Department and the Commissioner of the Inspectional Services Department to ensure such changes are in keeping with the intent of the findings and conditions of this Board Order. If the proposed modifications are deemed significant by the Director of Planning and Development and/or the Commissioner, the Commissioner shall refer such changes to the Land Use Committee for discussion as to the consistency of the proposed modifications with the conditions of this Board Order.

12. A final Interim Construction Parking Plan shall be reviewed by the Liaison Committee, and then submitted to the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the Director of the Transportation Division of Public Works for review and approval. The Interim Parking Plan will accommodate no less than 50 short-term parking spaces on Site throughout the construction of the Project and 20 short-term parking spaces at Star Market if those spaces become available (or 20 short-term parking spaces along Austin Street if the Star Market spaces do not become available). In addition, three short-term parking spaces shall be provided on Bram Way during construction when Bram Way is restricted to one-way travel from Highland Avenue to Austin Street. The short-term parking spaces identified in this Condition shall be monitored by ASP and signed for a mixed duration of parking to be adjusted from time to time with the advice of the Liaison Committee established under Condition #8. ASP shall also provide a Construction Management Plan which shows no fewer than 50 public parking spaces on Site and indicate any instance in which there may be any short-term disruption (defined as one day or less) of the public parking which is required to be provided on Site due to construction activities. No other disruption shall be permitted. The Interim Construction Parking Plan will also specially set out how the interim parking on Site, at the Star Market if such spaces become available, and at Aquinas school shall be managed. The City in coordination with ASP shall also provide a preliminary parking management, signing and lighting plan for the public portions of the public parking, including aspects appropriate for inclusion prior to rather than after construction, to the Liaison Committee and then to be submitted to the Commissioner of Inspectional Services in consultation with the Director of Planning and Development and the Director of the Transportation Division of Public Works for review and approval.
13. ASP 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.
14. ASP shall be responsible for repairing any damage to public ways caused by any construction vehicles. All repair work shall be done prior to the issuance of final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case 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.
15. Prior to issuance of a final Certificate of Occupancy for the Project ASP shall submit a final TDM for review and approval to the Director of Planning and Development in consultation with the Commissioner of Public Works and Director of the Transportation Division of

A True Copy
Attest

City Clerk of Newton, Mass.

- Public Works. The TDM shall include a proposed shared parking plan for use of the underground parking lot.
16. The Project's utility service lines along the Project's frontage on Austin Street shall be located underground from existing poles, subject to necessary approvals from utility companies.
 17. The City shall underground the utilities along the Site's Austin Street frontage prior to the issuance of a certificate of occupancy for the Project. At the written request of the Director of Planning and Development, ASP shall submit funds in the amount of \$81,163.00 to be paid towards this undergrounding of utilities along the Site's Austin Street frontage when the City commences the undergrounding the utility lines along the Site's Austin Street frontage, but such payment shall not be due prior to the date ASP receives a building permit for the Project. These funds shall be used by the City for the purpose of undergrounding utilities along the Site's Austin Street frontage. Any funds collected under this condition and not spent by the City in undergrounding the utilities as required in this condition shall be returned to ASP or its successors or assigns.
 18. ASP shall make every effort to utilize building materials and systems that comply with US EPA "Energy Star" standards, and at a minimum, all new appliances installed shall meet the US EPA "Energy Star" standard.
 19. ASP shall initiate a design competition for the design of the garden area. ASP and the Planning Department shall evaluate the designs with input from the Ward 2 Aldermen and a representative from the Newtonville Area Council. The garden area will be designed and intended as a public amenity. ASP shall construct the garden area at a cost not to exceed \$25,000.00 and also maintain the garden area. The City, acting through its Commissioner of Public Works, may from time to time control or restrict access to the garden area should it, at any time, become a nuisance, in which event the garden area may be used as an amenity primarily for the residents of the Project. The City, through the Commissioner of Inspectional Services, and in consultation with ASP shall have the right to close the garden at certain days or hours or seasons should such closures become advisable regardless of whether the garden is a public amenity or an amenity primarily for the residents of the Project.
 20. Signs, landscaping and other features located within the westerly Austin Street driveway sight triangle areas shall be designed, installed and maintained so as not to exceed 2.5 feet in height as measured from the surface elevation of the Project site driveways. Street trees shall have a canopy that is a minimum of seven-feet in height as measured from the sidewalk surface. Snow plow piles located within the sight triangle areas that exceed 2.5 feet in height or that would otherwise inhibit sight lines shall be promptly removed. ASP shall be responsible for removing snow plow piles on the sidewalk, and the City shall be responsible for removing snow plow piles in the street.
 21. Recognizing that communications and planning for engagement of the business community are important particular during the construction period of the project ASP shall implement a Business Engagement Plan in order to predict, preempt and address issues which may arise



affecting the general community in furtherance of such plan:

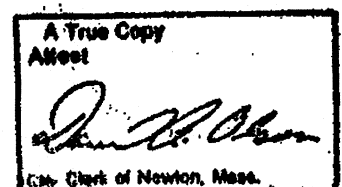
- a. ASP shall establish communications protocols for continuing two-way communications with the business community including information on the Interim Construction Parking Plan referred to in Condition #12;
- b. ASP shall establish the Shuttle bus service referred to in Condition #6 at an estimated cost of \$250,000;
- c. ASP shall, at the time of receipt of a building permit (other than a foundation permit) for the project establish a \$150,000 Construction Mitigation Fund to be administered in conjunction with a responsible third party approved by the Director of the Planning and Development and City Solicitor;
- d. ASP shall, during the course of construction of the Project establish a \$50,000 "Shop Newtonville" fund for the promotion of businesses in Newtonville during the construction period;
- e. ASP shall allocate the sum of \$25,000.00 as a contingency fund to pay additional costs accruing in ASP's judgment to fund shortfalls or additional needs in this Condition 21 (a)(b)(c)(d)
- f. ASP shall engage a business liaison facilitator to coordinate ASP's efforts for the Shuttle bus service referred to in this Condition #21, to supervise and implement the Interim Parking Plan referred to in Condition #12, to serve as a point of connection between ASP, the Liaison Committee referred to in Condition #8; and to coordinate a project website and 24 hour hotline, informational meetings and monthly merchant newsletter.

To the extent that the period in which the Shuttle bus is required to operate for more than 15 months from its start until it ceases then ASP will contribute an additional \$5,000.00 per week to the Construction Mitigation Fund established in furtherance of the Business Engagement Plan.

22. Given the time it will take for the City to complete the infrastructure work required in Austin Street which must occur prior to ASP commencing the construction of the Project, the Board grants an additional one year extension of time in accordance with the provisions of §7.3.2. E./ §7.4.5.D. and this special permit/site plan approval shall lapse two (2) years from the date of the grant of the special permit unless a substantial use of such special permit or construction required by such special permit has begun.

Conditions precedent to the issuance of any building permit

23. No building permit shall be issued pursuant to this Special Permit/Site Plan approval until the ASP has:
 - a. recorded a certified copy of this board order with the Registry of Deeds for the Southern District of Middlesex County.

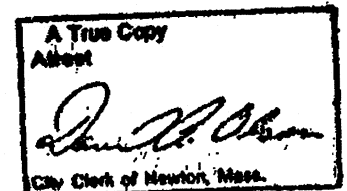


- b. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- c. obtained a written statement from the Planning Department that confirms the final building permit plans are consistent with plans approved in Condition #1.
- d. submitted to the Department of Inspectional Services and the Department of Planning and Development a fully-executed copy of the final Land Disposition Agreement and Ground Lease with the City of Newton.
- e. submitted an Inclusionary Housing Plan for review by the Newton Housing Authority and the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §30-(f)(8) Revised §5.11.9. of the Zoning Ordinance.
- f. submitted final engineering, utility and drainage plans, an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services and the Director of Planning and Development.
- g. submitted a final Construction Management Plan (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, City Engineer, Director of the Transportation Division of Public Works and the Commissioner of Public Buildings in accordance with Condition #10.
- h. submitted the Business Engagement Plan to the Director of Planning and Development for approval of its operational aspects.
- i. submitted the timing and program for the interim parking plan for parking during construction and the operating schedule of the Shuttle service to the Director of Planning and Development for approval.
- j. established the Liaison Committee referred to in Condition #8.

Conditions precedent to the issuance of any occupancy permits

24. No occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until ASP has:

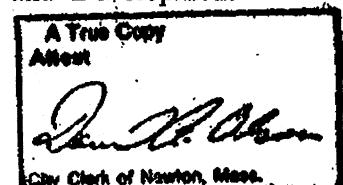
- a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and engineer certifying compliance with Condition #1.
- b. submitted to the Department of Inspectional Services, and the Department of Planning and Development, and the Engineering Division, a final as-built survey plan in digital format.
- c. submitted a final plan for the garden area.



- d. completed all landscaping in compliance with Condition #1.
- e. there shall have been filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details have been constructed to standards of the City of Newton Public Works Department.
- f. there shall have been 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, final landscape features, fencing and parking areas.
- g. the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building constructed subject to this special permit prior to installation of landscaping or exterior hardscape improvements required in condition 24 c & d, provided ASP shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining Site improvements to ensure their completion.
- h. The City has completed the undergrounding of utilities along the Site's Austin Street frontage in accordance with Condition #17.

Ongoing Conditions to be in effect for so long as this Special Permit/Site Plan Approval is exercised.

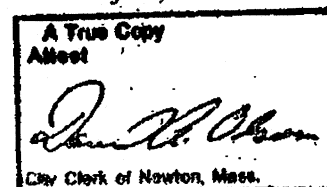
- 25. The cost of tenant parking in the basement garage shall be charged separately from tenant rents so as to minimize car ownership by tenants, provided however, that one parking space shall be provided for the household of each rent restricted unit which needs a parking space without charge to the tenant of such unit.
- 26. All landscaping associated with this Special Permit/Site Plan Approval, including the street trees to be provided by ASP and the garden area provided in Condition #19, shall be maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
- 27. ASP shall be responsible at its sole cost for trash and recycling disposal for the building. The trash and recycling disposal shall be scheduled at a time that will not block public parking stalls.
- 28. At its sole expense, ASP shall complete a post occupancy traffic study to document the actual traffic characteristics of the Project and to assess traffic volumes and operating conditions at the three access points to the site and at the intersection of Austin and Walnut Streets. The traffic study to update the studies provided by ASP prior to the approval of this Special Permit, with a scope of work for such update to be defined by the Planning and Development Department and the Director of the Transportation Division of Public Works, shall be conducted by a qualified professional firm selected by ASP and approved by the Director of Planning and Development. ASP shall coordinate with the Planning and Development



Department within three months after the site has reached full occupancy to determine the exact dates for conducting the traffic study. ASP shall also pay for a peer review of its traffic study. The results of the traffic study and peer review shall be provided to the Liaison Committee, the Director of Planning and Development, the Director of the Transportation Division of Public Works for review.

If the actual measured traffic volumes associated with the Project exceed the trip estimates presented in ASP's Transportation Impact Study by more than 10% of the projected trip generation other than through matters changing the "no-build" condition through unanticipated additional development ASP shall meet with the Director of the Planning and Development Department and the Director of Transportation for the Department of Public Works to discuss expansion or modification of the TDM in order to increase use of public transportation, or other alternatives to automobile travel.

29. ASP has agreed to not lease the commercial space in the Project to banks or nail salons for a period of five years from the date when such commercial spaces are first occupied, and the initial tenants solicited by ASP shall complement rather than compete with the retail businesses in Newtonville operating at that time.
30. The restaurant use authorized by this special permit shall not exceed 75 seats and the first floor office space authorized by this special permit shall not exceed 1500 square feet in size and the office use shall be limited to a "shared office" innovation center.
31. ASP shall make the "shared office" innovation center available for public meetings in the evenings from time to time, at no cost, to the extent not inconsistent with the primary use of such premises.
32. The public benefits to be achieved by providing a robust pedestrian oriented use of the Project's public plaza area and the area of Bram Way adjacent to the public plaza shall be considered a guiding principle in terms of the City's regulation of vehicular traffic on Bram Way. Ways of securing such public benefits including, but not limited to a "Complete Street" approach, while still providing access for the businesses that use Bram Way and for the public parking area, should be implemented by the City through Traffic Council and the Board of Aldermen regulations, and updated from time to time as appropriate.
33. The City should explore closing Bram Way adjacent to the public plaza for a three month trial period as soon as practicable after the public plaza is completed.
34. The width of all parking stalls in both the municipal and underground parking lots shall be designed to the extent possible to be consistent, and in no event, less than 8' 4". As shown in the plans referenced in Exhibit A, three parking stalls immediately adjacent to the plaza have been removed and replaced by public plaza space and landscaping. The City may put these three parking stalls back if the parking demand for spaces in that area of the Site warrants the removal of public plaza space.
35. In the event and only to the extent there are monies left unspent in the contingency fund identified in Condition #21(e) following the conclusion of construction of the Project, ASP



shall contribute up to \$10,000 annually (but not to exceed a total of \$20,000 in the aggregate) toward the programming of social or cultural activities to occur either on or adjacent to the public plaza. ASP shall consult with the Newtonville Area Council regarding such programming and may either spend the funds directly or donate the funds to the Newtonville Area Council to pay for the programming.

Under Suspension of Rules


Readings Waived and Approved

17 yeas 6 nays (Aldermen Blazar, Ciccone, Cote, Gentile, Harney, and Norton)

1 absent (Alderman Yates)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 11, 2015. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that within twenty days since the filing of the original decision on SPECIAL PERMIT/SITE PLAN APPROVAL #119-15 on December 11, 2015, in the Office of the City Clerk an APPEAL to said decision pursuant to M.G. L. Chapter 40, Section 17 was filed in the Superior Court, Civil Action No. 1581CV06945. By Order of said Court, the complaint of the plaintiffs was dismissed on May 1, 2017. The plaintiffs, pursuant to M.G.L. Chapter 231, Section 113, filed a further appeal from the May 1, 2017 judgement on May 26, 2017. The appeal was withdrawn and the plaintiffs waived all right of appeal on June 12, 2017.

ATTEST:



(SGD) DAVID A. OLSON, CITY CLERK
Clerk of the City Council

