

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

December 9, 2014 and February 10, March 3, and March 10, 2015

#272-09(4) HERRICK ROAD REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to erect at 39 HERRICK ROAD, Ward 6, NEWTON CENTRE a 3-story mixed-use building containing 4 dwelling units and ground floor commercial space ~~with a restaurant~~, with underground parking and associated parking waivers unit; ~~to allow off-street parking facilities to be located on a separate lot; waive 9 parking spaces;~~ waive 3 bicycle parking spaces; allow frontage to be measured along a public footway) and to construct a retaining wall greater than 4 feet within the rear/side setbacks and waive 18 existing parking spaces on Lot 7 Herrick Road, Ward 6, Newton Centre, on land known as Sec 61, Blk 35, Lots 6 and 7, in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, ~~30-19(d)(2), (8), (9), 30-19(f)(1), (2), 30-19(k), 30-19(m), 30-15(b)(2), 30-15 Table 3, 30-5(b)(4), 30-11(d)(9)~~ of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED AS AMENDED 7-0 (Alderman Harney not voting) on MARCH 10, 2015

NOTE: The public hearing opened on December 9. Present were Aldermen Laredo (Chairman), Albright, Cote, Lipof, Lennon, Crossley, Schwartz, and Harney. Alderman Danberg was also present.

Attorney Terrence Morris represented the petition to build a new mixed-use commercial/residential building immediately adjacent to the MBTA Green Line station and the Cypress Street municipal parking lot. The same petition was approved in 2009; however, the special permit was never exercised because of ongoing discussions with various stakeholders in Newton Centre about constructing a multi-story parking garage over the MBTA tracks on the site of the Cypress Street municipal lot, the future of the adjacent city-owned former Newton Centre library, and a possible land swap involving the petitioner. Mr. Morris noted that the petitioner has shown good faith over the past six years and will continue to meet with the city and other stakeholders but with plans still in infancy for a garage that may never be built, the petitioner wishes to move forward.

The proposal is the same: A three-story building with a 75-seat restaurant occupying the first floor and four residential units on the second and third floors. A portion of the parking requirements will be provided by a one-level underground garage below the building and much of the site. The proposed driveway providing the only access to the underground garage traverses under the former library site. A "lease" of an underground easement was approved by the Board of Aldermen on April 6, 2009; however, the Law Department has informed the committee that the reuse board order has created a legal conundrum: an easement cannot be leased. If this special permit is approved, the petitioner will have to seek a license from the city. On February 23, 2010 the Zoning Board of Appeals approved a variance from the front yard setback requirement to measure the frontage of the property along the public footpath that

connects Herrick Road with the Cypress Street lot. The petitioner will reconstruct the existing footpath to the MBTA with a rehabilitated MBTA fence (constructed and maintained by the petitioner), new lighting, and landscaping separating the path from the building. The public footpath will be made handicapped accessible at the southwest corner of the site.

Currently there are 18 surface parking stalls on the subject site. The stalls are used by the residents of the adjacent 29-unit apartment building owned by the petitioner and by other businesses during the day. The petitioner is asking for relief to reduce the required number of stalls per residential unit from two stalls to 1¼ per unit for a total of five parking stalls, where eight stalls are required for the proposed new residential units. The anticipated parking requirement for the restaurant use is 29 parking stalls, which when combined with the five stalls, is a combined total of 34 parking stalls. The petitioner is requesting a waiver of nine parking stalls. The garage contains 20 stalls. A small utility building will be demolished. Because a portion of the garage access road, which runs between the subject property and the Piccadilly Square building of Herrick Road, is too narrow for 2-way traffic, the petitioner is proposing an automatic traffic light system to provide safe traffic flow. The other access to the site, which will be used by patrons of the restaurant, will also require an easement over the other lot owned by the petitioner and may require the removal of one metered parking stall adjacent to the MBTA bridge. If the space is removed, the petitioner has agreed to replace it, at the option of the City.

Additional relief is also necessary to allow the height of the building to exceed 24 feet and two stories, as the 3-story building proposed is 30.2 feet in height, to allow for a retaining wall greater than 4 feet in height in the side and rear setbacks to provide access to the garage, to reduce the front setback requirement, to allow a restaurant of more 50 seats, and to allow a multi-family dwelling in a BU-1 zoning district.

Public comment:

- Lisa Gordon, 76 Elgin Street, is concerned about the future use of the library building. It is unique and she questioned the decision to surplus it.

February 10:

Present were Aldermen Laredo (Chairman), Albright, Cote, Crossley, Harney, Lennon, Lipof and Schwartz. Aldermen Danberg and Norton were also present.

The Planning Department reported that the city is in the process of commissioning another parking study for Newton Centre because it believes the scope of the last study was too narrow. Several members of the committee expressed reservations about whether the proposed parking garage over the MBTA property would ever become a reality. Several other members expressed concerns about moving the existing surface parking underground and whether it would work. Alderman Danberg reiterated that the petitioner has been more than cooperative with the city; this petition is the same petition approved by the Board in 2009. Alderman Schwartz, however, pointed out that a number of parking waivers, mostly for restaurants, have been granted since then; a number of members agreed.

Public comment:

- Natasha Staller, 120 Herrick Road, said that parking in Newton Centre is a problem. There have been changes to Newton Centre since 2009.
- Carol Summers, 11 Marshall Street, believes this is too big a project and it will have a negative impact on Newton Centre.

March 3

Present were Aldermen. Laredo (Chairman), Cote, Crossley, Albright, Lipof, Schwartz, Lennon, and Harney

The petitioner no longer wishes to pursue the restaurant use, but has decided to substitute a *by-right* office use on the first floor of the building. There is no change proposed to either the site plan or the proposed building. Withdrawal of the restaurant use to a by-right office use *eliminates* the requested relief for:

- a restaurant with greater than 50 seats
- a waiver of nine stalls required for restaurant use
- a waiver to allow off-street parking facilities to be located on a separate lot
- a request for the lesser requirement of 1¼ space per unit for the four residential units

Attached is a letter dated February 25 from Mr. Morris in which he describes in further detail the results of the change in use. The committee had expressed concern about the loss of parking for the residents of the existing 29-unit apartment building which has no parking because it predates zoning. Although Mr. Morris said a number of residents of the existing 29-unit apartment building do not have cars because of the proximity to public transit and services and that only about half of the existing 18 surface spaces are rented by residents, this change will free 12 parking spaces for night and weekend use when the offices are closed. Although the Planning Department continues to believe that a waiver of 18 parking stalls is necessary for the elimination of the current surface parking lot as the lot for purposes of zoning is considered connected with the adjacent apartment building which lot is held in common ownership and because tenants have or continue to use the lot for parking, Mr. Morris disagrees with this determination. The petitioner will provide a parking management plan to designate the five surface spaces for regulated residential/office visitor use and will accept a condition to that effect.

In its working session memo dated February 27, the Planning Department said the impending parking study results are expected in June. However, it encourages the committee to consider this project on a stand-alone basis and whether it meets the criteria for a special permit.

Public comment:

- Ron Mauri, 35 Bradford Road, argued that this is a new permit that could set a precedent. It represents a loss of parking to Newton Centre, a neighborhood that has serious parking problems. Shifting cars in 20 spaces stretches credulity and common sense. The committee should reject the petition.
- Natasha Staller, 120 Herrick Road, said that stores and other businesses in Newton Centre need parking. It is cruel for the apartment tenants to lose their parking.

- Lisa Gordon of 76 Elgin Street and Carol Summers of 11 Marshall Street again voiced their opposition.

The committee closed the hearing and began to review a draft board order based on the original special permit; however, there were questions about several conditions and it held the item for March 10 to allow the Planning Department time to provide an updated draft.

March 10

Present were Aldermen Laredo (Chairman), Lennon, Cote, Crossley, Lipof, Albright, Schwartz, and Harney; also present: Aldermen Sangiolo, Gentile, and Brousal-Glaser

This evening the committee reviewed an updated draft board order reflecting the elimination of the restaurant use and its attendant relief. The committee made only one modification to, which added to condition #8 a one-year look back provision relative to the off-peak use of the below grade parking facility to residents of the multi-family residential building on Lot 6. Upon a motion to approve, the committee voted 7-0, with Alderman Harney not voting, to approve the special permit with the findings and conditions in the draft special permit dated March 16, 2015.

Respectively submitted,

Marc C. Laredo, Chairman

Terrence P. Morris, Esq.
Attorney at Law
57 Elm Road
Newton, MA 02460
617 202-9132

February 25, 2015

By electronic transmission

Ald. Mark Laredo, Chairman
Land Use Committee
Newton Board of Aldermen
1000 Commonwealth Avenue
Newton, MA 02459

Re: 19-31 Herrick Road
Petition #272-09(4)

Dear Mr. Chairman:

After having carefully considered the comments and concerns expressed by both members of the Land Use Committee as well as the general public, the petitioner has decided to amend the petition now before you to substitute a “by-right office use” for the proposed “special permit, 75-seat restaurant use” on the first floor of the building. There would be no other change to either the site plan or design/volume of the building. The amendment although in simple scope would favorably resolve several of the issues identified in the committee deliberations and significantly reduce the scope of zoning relief requested.

It has become apparent that, since 2009 when the special permits for restaurant use in this project were first granted, the “landscape” of the village center has changed with respect to the increase in restaurant usage and parking waivers associated therewith. Nonetheless the use of the subject site remains an important factor as a catalyst for positive change in the business district as a whole. For these reasons we believe that approval of a mixed-use development will further that objective.

To that end, resolution of the principle issues with the original plan include the following: (1) the impact of several parking waivers on the existing parking inventory within Newton Centre proper; (2) the elimination of the existing 18-space parking lot on site adjacent to the apartment building at 19 Herrick Road; (3) possible queuing of traffic in the evening seeking to enter/exit the parking garage for restaurant use; and (4) potential impact of the special permit on possible municipal plans for the Cypress Street parking lot.

Parking Waivers

The submitted plans show 25 spaces of which 20 are located in the below grade garage and 5 on grade. The residential component requires two spaces for each of the four dwelling units or 8 spaces total. While the commercial component (restaurant) requires one space for each three seats and one space for each three employees on the largest shift. The plans for a 75-seat restaurant and a 12-person staff would necessitate 25 spaces for seating plus four for staff or 29 total. With the substitution of office use for the restaurant use, the commercial component is reduced to 20 spaces based on the office use (at one space for each 250 sf) of the 3,000 sf on the first floor formerly dedicated to restaurant.

The change would eliminate the following requested relief:

- (1) for a restaurant with greater than 50 seats under §30-11(d)(9);
- (2) for waiver of the 9 spaces required for such use under §30-19(d) and §30-19(m);
- (3) to allow off-street parking facilities to be located on a separate lot under §30-19(f)(1)& (2);
- (4) a lesser requirement of 1¼ space/unit under §30-19(d)(2) for the residential component;

Parking Re-Allocation/Designation

In addition, although the Zoning Review and the Planning Department Public Hearing Memoranda cite the need for a waiver of parking spaces due to the removal of 18 existing spaces on the locus, a determination with which my client disagrees, that issue also goes away. With the change of use to office, which is essentially a “9-5” weekday operation, the 12 spaces allocated for such use become available for night-time and weekend use for the residents of the apartment building to the extent needed. At last count less than one half of the existing spaces were being utilized by residents of the building.

We believe that the change of use also provides the opportunity to maximize what otherwise would be a single-purpose parking facility in many other situations. To ensure that result, we propose a parking management plan to designate the five surface spaces for residential/office visitor use, regulated by time of day and day of the week, while assigning the garaged spaces for the occupants (residents and office tenants) and would accept a condition in the Board order to that effect.

Traffic Volume/Flow

With the change from restaurant to office use, the nature of the traffic generated to and from the site as a result, changes dramatically. With the garage occupied by a quantifiable number of users who would be entering and exiting at largely predictable times, both the volume and flow would be far more manageable than that generated by the happenstance of restaurant patronage serviced by valet parking. In particular the prospect/likelihood of queueing on to Herrick Road is significantly reduced if not eliminated. On a related matter, the petitioner accepts the condition for one-way traffic from the locus into the Cypress Street parking area with the installation of “Do Not Enter” signage facing the Cypress Street municipal lot. As a public benefit the petitioner will make the existing public footpath handicap accessible at the southwest corner of the site so as to provide accessibility near the midpoint of the public footpath.

Future Plans for the Cypress Street Lot

As he has been for the past five years, the petitioner remains committed to a working partnership with the city through his participation in the Cypress Block Group or any successor entity, to further mutually beneficial long-term objectives and facilitate the highest and best use of their respective properties. To the extent that may require a land swap or other creative mechanism to achieve those objectives, client has and will have an open mind. To that end he expects to have an exploratory meeting with the mayor and other interested parties sometime in the near future upon resolution of the special permit matter, which has been pending for more than five years.

In conclusion we have reviewed all of the conditions in the previously approved Board order. The petitioner remains amenable to all of those with the exception of the ones that are no longer applicable due to the elimination of the restaurant use and committed to working with the staff to resolve any issues that are more productively addressed at the building permit stage.

Thank you for your consideration.

Sincerely,

Terrence P. Morris

Terrence P. Morris

Attachments:

Cc: Land Use Committee

Ald. Vicki Danberg

Linda Finucane, Clerk of Committee

Alexandra Ananth, Chief Planner

Daniel Sexton, Sr. Planner