



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**Barney S. Heath**  
Director

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## PUBLIC HEARING/WORKING SESSION MEMORANDUM

**DATE:** June 7, 2019  
**MEETING DATE:** June 10, 2019  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner  
**CC:** Petitioner

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

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### **PETITION #564-18 and #564-18(2)**

**17-31 and 39 Herrick Road**

Special Permit/Site Plan Approval to allow a three-story, multi-family structure, 35.5 feet in height containing nine dwelling units, to allow a reduction in the parking requirement to one stall per unit, to allow a retaining wall greater than four feet within the setback, to allow off-site parking, and to allow waivers to the requirements of parking facilities containing more than five stalls.

The Land Use Committee (the "Committee") opened the public hearing on this petition on Tuesday, January 8, 2019 due to statutory requirements. The Committee listened to public comment but did not hear a presentation from either the Planning Department or from the petitioner. The Committee later held a working session on January 8, 2019 and continued the public hearing. This memo reflects as revised materials submitted by the petitioner as of June 6, 2019.

### **Summary of Petition**

The petitioner proposes to construct a three-story, 35.5-foot tall multi-family dwelling containing nine residential units and an associated nine-stall surface parking facility. The petitioner will implement a deed restriction limiting the future residents to those of 55 years of age and older. A portion of the driveway providing access to the site from Herrick Road is on the adjacent property at 17-31 Herrick Road; a parcel that is also owned by the petitioner. The plans further indicate that a retaining wall supporting the driveway is also on the adjacent property. The initial application did not include this abutting lot (17-31 Herrick Road). As such, a supplemental application was submitted, and the item was docketed and advertised again.

In the Working Session Memorandum, the Planning Department outlined a scenario where the petitioner would not construct the driveway from Herrick Road, but would instead require the petitioner to provide two-way access to and from the site over the Cypress Street Municipal Lot (**Attachment A**). This would remove a large amount of impervious surface from the site, increasing open space. In this scenario, the petitioner would be required to amend the license prior to the issuance of a building permit. The amended license would state how the site would be improved and under what conditions the petitioner would construct the driveway, should the access over the Cypress Street Municipal Lot be revoked. Such an agreement would improve the site design and afford the City with flexibility should the need to terminate the license arise.

### **Transportation Demand Management**

The Planning Department asked the petitioner to consider a stronger Transportation Demand Management (the "TDM") Plan to reinforce the transit options in the area and to make the plan available to residents at 17-31 Herrick Road who would lose the ability to park on site. The petitioner submitted a TDM Plan that would reimburse 50% of the cost of a Monthly LinkPass, valued at \$84.50 per month, for residents at 17-31 Herrick, and a 20% reimbursement would be available for tenants of the proposed nine-unit structure at 39 Herrick Road (**Attachment B**). The LinkPass allows for unlimited travel on the subway and the bus and the TDM Plan would run for two years. The Plan also designates the building superintendent of 17-31 Herrick Road as the Transportation Coordinator for both dwellings to provide materials to residents regarding initiatives in the area. The Planning Department believes the reimbursement is appropriate for the residents of 17-31 Herrick Road, and believes the duration is appropriate as well. To date, Transportation Planning Staff has not had a chance to review the TDM Plan; staff will provide the Committee with an update at the Working Session.

### **Inclusionary Zoning**

The petitioner submitted a preliminary Inclusionary Housing Plan (the "IHP") and an Affirmative Fair Marketing and Resident Selection Plan. The petitioner is required to provide 15%, or one, of the units as an Inclusionary Unit. The Inclusionary Unit will be restricted to households earning up to 65 percent of Area Median Income (AMI) and will be a 1,395 square-foot, two-bedroom, two-bathroom unit on the second floor of the structure; staff has approved the preliminary IHP. The petitioner will be required to submit a final IHP to the Director of Planning and Development for review and approval prior to the issuance of any building permit, should this petition be approved.

### **Landscaping**

The petitioner provided a caliper inch analysis stating that approximately 183 caliper inches will be removed to construct the multi-family dwelling and that the petitioner will install 66 caliper inches resulting in a deficit of 117 caliper inches. As a result, the petitioner will be required to make a payment to the City's tree fund for \$19,656 (117 inches \* \$168 per caliper inch). The Planning Department believes the level of landscaping is appropriate given the challenges inherent in developing the site.

**Fire Prevention Review**

The City of Newton Fire Prevention Office approved the site plan provided that the petitioner provides two hydrants on site and that the proposed nine-unit structure would be equipped with a fire suppression system. The Office of Fire Prevention will review the plans again prior to the issuance of a building permit, should this petition be approved.

**Site Improvements**

The petition includes several site improvements including utility extensions and reconstructing the public footpath at the southern boundary with landscaping and lighting, which must be coordinated with the Department of Public Works. The petitioner is aware of these improvements and has committed to them, but questions remain pertaining to ownership and future maintenance. The Planning Department will provide an update at the Working Session after speaking with the Engineering Division of Public Works.

- Attachment A:** Working Session Memorandum, dated February 23, 2019
- Attachment B:** Transportation Demand Management Plan, dated May 17, 2019
- Attachment C:** DRAFT Council Order



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Attachment A

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**Barney S. Heath**  
Director

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**PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** February 22, 2019  
**MEETING DATE:** February 26, 2019  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner  
**CC:** Petitioner

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

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**PETITION #564-18**

**39 Herrick Road**

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Special Permit/Site Plan Approval to allow a three-story, multi-family structure, 35.5' in height containing nine dwelling units, to allow a reduction in the parking requirement to one stall per unit, to allow a retaining wall greater than four feet within the setback, to allow off-site parking, and to allow waivers to the requirements of parking facilities containing more than five stalls.

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The Land Use Committee (The "Committee") opened the public hearing on this petition on Tuesday, January 8, 2019 due to statutory requirements. The Committee listened to public comment but did not hear a presentation from either the Planning Department or from the petitioner. This memo reflects revised materials submitted by the petitioner as of February 21, 2019, but staff believes the Working Session should include analysis from the Public Hearing Memorandum, dated January 4, 2019.

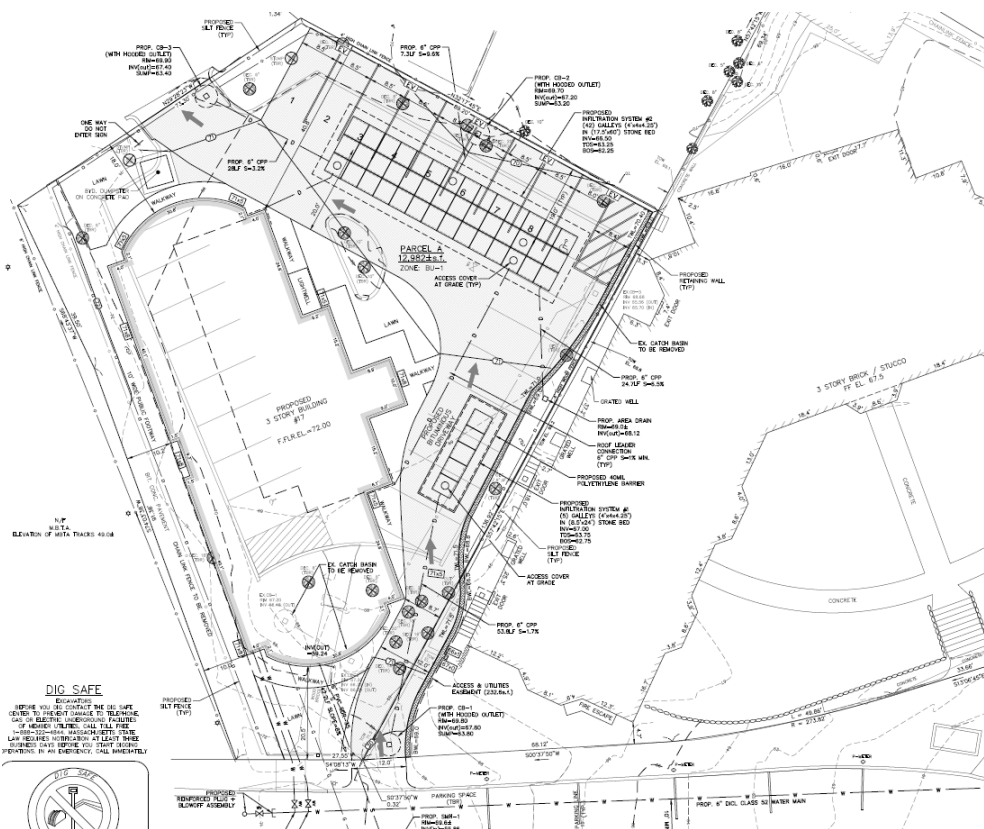
The submitted plans indicate a portion of the driveway providing access from Herrick Road is on the adjacent property at 17-31 Herrick Road, and the plans show a retaining wall in excess of four feet within the setback of the adjacent property to allow for the driveway. The application did not include this lot (17-31 Herrick Road). As such, a supplemental application was submitted, and the item was docketed again. The petition will be both noticed and advertised again.

**Plan Modifications**

In the Public Hearing Memorandum, the Planning Department expressed concern over the orientation of the building because the structure presents towards the MBTA tracks and to the surface parking lot,

but not Herrick Road. Also, the plan includes a twelve-foot wide curb cut from Herrick Road that provides access to the nine-stall surface parking facility. The report noted that the site has a unique shape due to the site's limited frontage on Herrick Road, the public foot-path at its southern boundary, and the Cypress Street Municipal Lot at the rear boundary. The structure's orientation is the result of these restrictions. The report also noted that earlier, approved, petitions concerning this site included a front door from Herrick Road for pedestrians. Given these concerns, the petitioner appeared before the Urban Design Commission (UDC) on January 16<sup>th</sup>, as suggested by staff. UDC commented that the orientation of the structure was unique but given the site's constraints the orientation was appropriate. The petitioner also presented a change in the plans which indicated a canopy on the driveway side of the structure, akin to the canopy at the nearby Newton Centre MBTA Station, which improved the facade. UDC also suggested the petitioner install a three-foot wide corridor to allow for residents and for guests to access the elevator from each entrance. At the time of this writing, the petitioner has not supplied the Planning Department with revised plans incorporating these changes. Lastly, UDC noted that although the structure does not have a front door from Herrick Road, the reconstructed public footpath along the eastern boundary would provide the necessary traffic to provide the presence of a front door. UDC suggested the petitioner create an inviting entrance to encourage foot traffic on the footpath to do so.

In the Public Hearing Memorandum, staff noted that much of the site was impervious surface resulting from the curb cut from Herrick Road, the driveway, and the surface parking facility. This curb cut provides a one-way circulation as drivers enter the site from Herrick Road and exit the site onto Cypress Street via the Cypress Street Municipal Lot. Should the City choose to terminate the license, the curb cut from Herrick Road would be required to provide both ingress and egress, but with a signal to ensure the driveway is clear, per the petitioner.



Staff approached the petitioner to alleviate the lack of green space and the Herrick Road curb cut by asking the petitioner to consider maintaining the license with the City to access the site and the nine parking stalls over the Cypress Street Municipal Lot for two-way traffic. This would allow the petitioner to install landscaping in place of the driveway, increasing open space. The petitioner will be required to update the license to cross over the Cypress Street Municipal Lot whether the Herrick Road curb cut is installed. In this scenario the updated license would include language requiring the petitioner to install the curb cut and the driveway from Herrick Road, should the City terminate the license. Such an agreement would improve the site design, but also afford the City flexibility should the need to terminate the license arise.

### **Public Footpath**

The southern portion of the site was subject to a taking from the City in 1951 to allow for the creation of a ten-foot wide public footpath connecting the Cypress Street Municipal Lot to Herrick Road, and ultimately to the MBTA station. The property gains its frontage along this footpath, and as a result, the structure should have a ten-foot setback from the footpath. The proposed structure has a zero setback from the footpath, requiring a variance from the Zoning Board of Appeals.

In the Engineering Memorandum dated September 17, 2018, John Daghlian, Associate City Engineer, suggested that the public footpath be reconstructed out of stamped concrete, rather than pavers, and that the Engineering Division retain final review and approval of the lighting plan and the landscape plan for the footpath due to public safety concerns. Furthermore, should this petition be approved, the petitioner shall submit a Construction Management Plan (CMP) stating how the footpath will remain open to pedestrians during construction, and show an alternative, accessible route from the Cypress Street Municipal Lot to Herrick Road when the footpath is under construction.

### **Fair Housing & Housing for Seniors**

The petitioner is proposing to reserve all nine units as age-restricted units, which runs counter to the Fair Housing Act. The Act does allow for exemptions, provided that the development meets certain criteria. Because this portion of the petition is unique, the Planning Department suggests that the petitioner appear before the City's Fair Housing Commission. The petitioner is working with Housing Division staff to appear before the Commission in the first week of March.

The Planning Department spoke with a representative from the Newton Council on Aging, who stated that senior housing should be located proximate to amenities, located within a walkable environment, and located within a building served by an elevator. The units should also be constructed to comply with universal design to allow for those with mobility issues. The Planning Department believes this petition satisfies those criteria, as the units will be served by an elevator and are located within a walkable, transit accessible neighborhood. The petitioner should provide more information as to how the units will be designed for seniors.

### **Utilities**

The petitioner proposes to tie into the water and sewer lines within Herrick Road as part of the project. However, the petitioner requires approval from the City Council, specifically its Public Facilities Committee, to extend both lines to the site. The petitioner appeared before Public Facilities in 2003

to gain approval of the extensions, but the Order was neither signed nor recorded. As such, the petitioner shall apply to Public Facilities again to gain approval of the extensions.

In the Engineering Memorandum dated September 17, 2018, John Daghlian, Associate City Engineer, suggested the petitioner “loop” the water line from Herrick Road through the petitioner’s property and into the City’s water line in the Cypress Street Municipal Lot to “improve water quality and improve pressure in the system”. The petitioner has agreed to this, which will require the City accepting an easement from the petitioner to maintain the water line, once installed. This easement will also be subject to the review from the Public Facilities Committee.

### **Inclusionary Zoning**

The petitioner submitted an Inclusionary Housing Plan and an Affirmative Fair Marketing and Resident Selection Plan. The petitioner is required to provide 15%, or one, of the units as an Inclusionary Unit. The Inclusionary Unit will be restricted to households earning up to 65 percent of Area Median Income (AMI) and will be a 1,304 square-foot, two-bedroom, two-bathroom unit. Staff has not yet completed review of the proposed Inclusionary Housing Plan and expect to provide an update at the Public Hearing.

### **Parking**

The petitioner is seeking a reduction in the number of parking stalls required from two stalls per unit, to one stall per unit. Given the site’s location within Newton Centre, the proximity to the MBTA station, and the proposed use of the building, the Planning Department believes this is an appropriate amount of parking. However, staff suggests the petitioner implement a stronger Transportation Demand Management (TDM) Plan to disincentivize car ownership and encourage alternative transportation strategies to align with the transit oriented, walkable nature of the area.

The site is currently improved with an 18-stall surface parking facility that serves the multi-family dwelling located on the adjacent parcel at 17-31 Herrick Road. In the Public Hearing Memorandum, staff stated that because this parking would be removed, the petitioner also required a special permit to waive these stalls. However, the Commissioner of Inspectional Services has determined that these stalls are an amenity to the residents of 17-31 Herrick Road, and are not regulated by zoning. Therefore, a waiver is not required.

*From the Law Office of Terrence P. Morris, Esq.*

## Memorandum

**To:** Neil Cronin Senior Planner  
Planning & Community Development

**From:** Terrence P. Morris, Esquire

**Cc:** Nadia Khan, Committee Clerk

**Date:** May 17, 2019

**Re:** 17-31 & 39 Herrick Road: TDM Plan

### ***Background***

The site (39 Herrick Road) is a 12,979+/- sq. ft., currently undeveloped lot used for parking that can accommodate up to 18 spaces. It is located immediately behind and adjacent to another lot containing a 26-unit apartment building with a street address of 17-31 Herrick Road. The apartment building was constructed circa 1930 prior to there being any accessory parking requirements. It has been a legal nonconforming use without the provision of parking. The Locus provides some accessory parking for the apartment building with access through the municipal-owned parking lot on Cypress Street by virtue of a license granted by the city. Less than one half of the spaces are currently leased to tenants in the apartment building under tenancy-at-will agreements, which are terminable upon 30-day notice. The spaces are leased independently of the rental of the apartments.

### ***Current Proposal***

The petitioner proposes to construct a 9-unit multifamily dwelling with surface parking for nine (9) cars. The development, which is intended for over 55+ residents, would need a waiver of nine (9) spaces under the ordinance. One of the concerns that has arisen during the permitting process is how the development of the locus will impact the transportation needs of the residents of the apartment building. Of the 26 apartments fewer than one third of the tenants have availed themselves of the accessory parking at any one time. Given the projected occupancy of the new building as an over 55+ development, the main focus of the transportation demand management plan is on the more diverse tenants of the apartment building.

### ***Transportation Demand Management***

Parking management affects vehicle travel demand. Given the over 55+ target market there is increased likelihood that we would be attracting residence with only one car. The goal of a Transportation Demand Management (TDM) plan is the implementation of measures that are aimed at minimizing the use of single occupancy vehicles and maximizing the use of the available spaces at all times each day. The 1<sup>st</sup> such measure is for the parking is to be “unbundled”, i.e., not designated for any unit, which allows use of the spaces to be maximized on an “as-needed” basis for visitors and other short-term use. The practice of leasing parking spaces separately from rental units is a recognized Transportation Demand Management strategy that helps tenants balance the costs and benefits of alternative transit. By unbundling parking from unit rentals, this project will attract residents with fewer cars (if any), who prefer to get around on foot, bike, or public transit. Unbundled parking provides a financial incentive for the tenants to drive less or own fewer cars. The petitioner will not be leasing a parking space or spaces with each individual apartment unit.

Beyond unbundling, the project will implement several Transportation Demand Management strategies to educate building residents about alternative transportation modes, reduce private vehicular use, and coordinate programs such as ridesharing. As part of the TDM program, the build superintendent who services the apartment building will function as the de facto transportation coordinator (TC). He will be



responsible for overseeing the TDM program. All carpool and TDM information will be posted in common areas and on an information board within the management office. The TC will circulate a Carpool sign-up sheet to residents which will identify the resident's approximate schedule and work location. This will allow the TC to find potential matches for commuters.

### **Public Transportation**

To encourage the use of transit by the 17-31 Herrick apartment tenants, the petitioner proposes a two-tiered reimbursement program for the MBTA monthly LINK Pass (value \$84.50/mo.). For those tenants whose parking may be displaced by the proposed development the owner agrees to provide 50% reimbursement of his/her monthly LINK pass. For the remaining tenants of the building, the subsidy would be 20%. These subsidies would be in place for a period of 2 years and require proof of purchase.

In addition the MBTA transit schedule and route information will be provided to the tenants. The current MBTA schedules, routes, and fare information is provided at <http://www.mbta.com>. One of the most prominent public transportation services provided by the MBTA is located directly across the street from the locus, which is serviced by the Highland branch of the Green Line. The site is directly served by Bus Route 52 which runs from the Dedham Mall through Newton Centre on Centre Street with several stops located within walking distance from the site, to Newton Corner and then the express bus to Downtown Boston.

### **Ridesharing/Zip Car**

The Petitioner will promote ridesharing to its residents by way of carpools and vanpools. Information regarding carpooling and its benefits will be distributed to all interested carpoolers. The TC will have and post data related to MassDOT's MassRIDES Program. This information will be posted in common areas and provided by the property manager. In addition there is a convenient Zipcar location at the intersection of Langley and Beacon Streets, a 3 minute walk from the locus.

### **Bicycle Facilities**

Major deterrents to bicycle transportation include inadequate parking facilities and fear of theft. Providing secure bicycle racks provides the cyclist with a degree of comfort, knowing their bicycle is safe, and as such more likely to be used as a means of travel to/from work or for recreation. Within the site, secure bike racks and on-site bicycle storage will be provided.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a three-story, 35.5 foot tall, multi-family dwelling containing nine units, including ground floor units, to waive nine parking stalls, to allow off-site parking facilities, to allow a retaining wall greater than four feet in the setback, and to waive the requirements of parking facilities containing more than five stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed multi-family dwelling because the site is located within a village center and is proximate to transit. (§7.3.3.1)
2. The multi-family dwelling as developed and operated will not adversely affect the neighborhood given the presence of a multi-family dwelling on the adjacent parcel. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because access will be provided over the Cypress Street Municipal Lot. (§7.3.3.3)
4. Access to the site is appropriate for the types and numbers of vehicles involved. (§7.3.3.4)
5. Exceptions to the parking requirements, including, waive nine parking stalls, allowing parking stalls within the side setback, waiving the drive aisle width, allowing off-site parking facilities, and waiving the dimensional and design controls for parking facilities containing more than five stalls are in the public interest for the following reasons:
  - a. Waiving nine parking stalls increases the amount of open space on site .
  - b. Allowing parking with the side setback, reducing the minimum width of maneuvering aisles, while locating parking stalls off site makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.

c. Fencing and landscaping will be installed to screen the facility. Additionally, lighting will be minimized to mitigate trespass onto neighboring properties while still lighting the facility to ensure safety.

(§5.1.4, §5.1.6.A, §5.1.6.B, §5.1.8.A, §5.1.8.B.5, §5.1.8.C.2, §5.1.9.A, §5.1.10 and §5.1.13

6. The construction of retaining walls within the side setback of 17-31 Herrick Road will not adversely affect immediate abutters. (§5.4.2)

PETITION NUMBER: #564-18 and #564-18(2)

PETITIONER: Herrick Road Realty Trust

LOCATION: 17-31 Herrick Road Section 61, Block 35, Lot 06 and 39 Herrick Road, Section 61, Block 35, Lots 07 containing approximately 34,618 square feet of land

OWNER: Rothman George & Stuart J. Trust and Herrick Road Realty Trust

ADDRESS OF OWNER: 907 Massachusetts Avenue, Cambridge, MA 02139

TO BE USED FOR: A three-story, 35-foot tall multi-family dwelling containing nine units, including ground floor units on 39 Herrick Road and a driveway and a retaining wall exceeding four feet within the setback at 17-31 Herrick Road (together the "Project").

CONSTRUCTION: Brick

EXPLANATORY NOTES: §4.4.1, §4.1.2.B.3, and §7.3.3 to allow a multi-family dwelling with ground floor units of three stories and 35.5 feet in height; §5.4.2 to allow for a retaining wall greater than four feet within the setback; §5.1.4 and §5.1.13 to waive nine parking stalls; §5.1.6.A, §5.1.6.B, and §5.1.13 to allow off-site parking facilities; §5.4.2. to allow a retaining wall in excess of four feet within the setback; §5.1.8.B.5 and §5.1.13 to waive the maneuvering space required of end stalls; §5.1.8.C.2 and §5.1.13 to reduce the drive aisle width; §5.1.9.A and §5.1.13 to waive the perimeter screening requirements; and §5.1.10 and §5.1.13 to waive the lighting and surfacing requirements.

ZONING: Business Use 1

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 following plans:
  - a. Set of plans for 39 Herrick Road, prepared by VTP Associates, 132 Adams Street, West Newton, MA 02458, stamped and signed by Marc Besio, Professional Engineer, and Joseph R. Porter, Professional Land Surveyor. The plan set includes the following five (5) sheets:
    - i. "Topographic Site Plan Showing Proposed Conditions" dated January 4, 2017 revised through April 26, 2019
    - ii. "Detail Sheet 1 Showing Proposed Conditions at Herrick Road" dated January 4, 2017.
    - iii. "Detail Sheet 2 Showing Proposed Conditions at Herrick Road" dated January 4, 2017 revised June 15, 2018.
  - b. Set of plans for 39 Herrick Road, prepared by Khalsa Design, Inc., 17 Ivaloo Street, Suite 400, Somerville, MA 02143, stamped and signed by Jai Singh Khalsa, Registered Architect, dated August 8, 2018, revised through March 19, 2019, consisting of twelve (12) sheets.
  - c. Landscape Plans for 39 Herrick Road, prepared by Verdant Landscape Architecture stamped and signed by Blair C. Hines, Registered Landscape Architect, dated march 14, 2019 consisting of two (2) sheets.
  - d. Lighting Plans for 39 Herrick Road, prepared by RAB Lighting, unstamped and unsigned, dated September 24, 2018, consisting of nine (9) sheets.
2. This site plan approved in Condition #1.a above includes a driveway providing access to the site from Herrick Road. This driveway will not be constructed concurrently with the multi-family dwelling because the Petitioner will amend its license with the City to access the site over the Cypress Street Municipal Lot. A certificate of occupancy will not be withheld because the driveway wasn't built. Similarly the Petitioner shall not be required to seek an amendment to this Special Permit/Site Plan Approval to construct the driveway, unless the driveway is inconsistent with the plan refenced in Condition #1.a
3. The Petitioner shall amend its license with the City to access the multi-family dwelling over the Cypress Street Municipal Lot. Such amendment shall include condition(s) outlining the process by which the site will be improved and the process by which the Petitioner will construct the driveway from Herrick Road, including seeking approval from

the Traffic Council for the removal of an on-street, metered parking stall, and whether the Petitioner shall relocate the City of Newton light pole along the site's frontage. Such amendment shall be agreed upon prior to the issuance of any building permit for the Project.

4. This Special Permit/Site Plan Approval governs both 17-31 Herrick Road and 39 Herrick Road. As such, this Special Permit/Site Plan Approval shall be recorded against both lots at the Middlesex South Registry of Deeds. 17-31 Herrick Road contains a legal nonconforming multi-family dwelling. This Special permit/Site Plan Approval shall not prevent the Petitioner or his successors and assigns from pursuing as of right improvements to 17-31 Herrick Road.
5. Prior to the issuance of any building permits for the Project, the Petitioner shall obtain a variance from the Zoning Board of Appeals to reduce the front setback along the public footpath from ten feet to zero feet.
6. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), one of the dwellings units shall be made available to households earning at or below 65% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA. Monthly housing costs (inclusive of heat, hot water, electricity, domestic water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).

The Inclusionary Units shall comply with the provisions of the City's Inclusionary Zoning Ordinance (§5.11.4).

7. The inclusionary unit shall be a two-bedroom, two-bathroom unit, located on the second floor of the multi-family dwelling, as proposed in the Preliminary Inclusionary Housing Plan dated February 22, 2019, that is on file with the City Clerk, and approved by the Director of Planning and Development.
8. To the extent permitted by applicable regulations of DHCD, the Inclusionary Unit shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Unit through DHCD's Local Initiative Program. Prior to the issuance of any occupancy certificates (temporary or final), the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Inclusionary Unit in perpetuity.
9. Prior to the issuance of any building permits for the construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.9. of the Newton

Zoning Ordinance. In accordance with DHCD's current guidelines, the Inclusionary Unit will be affirmatively marketed and leased through a lottery.

10. No dwelling unit shall be constructed to contain, and/or marketed and/or sold to contain more bedrooms than the number of bedrooms indicated for said unit in the plans referenced in Condition #1(b).
11. The cost of parking stall(s) shall be rented separately from the cost of rent for a unit, provided, however that the cost of one parking stall shall be included in the rent for the Inclusionary Unit. Prior to the issuance of any certificate of occupancy for a market rate unit (temporary or final), the Petitioner shall provide a sample lease that includes said language.
12. The Petitioner shall implement the Transportation Demand Management Plan dated May 17, 2019, a copy of which is on file in the office of the City Clerk.
13. The Petitioner shall provide space for not less than ten bicycles within the multi-family dwelling. Additionally, the petitioner shall provide not less than five electric vehicle (EV) charging stations on site.
14. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance.
15. The Petitioner shall remove all snow from site, but shall not be required to remove snow from the public footpath.
16. The Petitioner shall comply with the City's Tree Preservation Ordinance.
17. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
18. At the Petitioner's sole expense, the petitioner shall locate all utility service lines on site underground from the right of way into the site.
19. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
20. Prior to the issuance of any building permit for the Project, the Petitioner shall receive approval from the City Council, through its Public Facilities Committee, to extend the sewer and water lines in Herrick Road to the site. The Petitioner shall also gain approval to connect the water line to the existing municipal water line located within the Cypress Street Municipal Lot. Any required easements shall be approved by the City Council, recorded at the Middlesex South Registry of Deeds, shall be provided to the Engineering Division of Public Works, and the Department of Planning and Development.
21. Prior to the issuance of any building permit for the Project, the Petitioner shall submit a final photometric plan detailing the lighting level as well as the location and the height of the poles to light the public footpath along the Project's frontage to the Commissioner of

Public Works and the Department of Planning and Development for review and approval. The petitioner shall be responsible for operating and maintaining the poles and fixtures in perpetuity unless stated otherwise by the Commissioner of Public Works.

22. Prior to the issuance of any building permit for the Project, the Petitioner shall submit a final landscape plan detailing the number, type, and maturity size of any planting proposed along the public footpath to the Commissioner of Public Works and the Department of Planning and Development for review and approval.
23. Prior to the issuance of any building permit for the Project the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor of the project.
  - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor.
  - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
  - e. Proposed methods for ensuring the public walkway will be open during construction and proposed temporary detour paths for when the walkway will be closed. The construction timeline in Condition #23.c above should indicate when this walkway will be open and closed.
  - f. 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.
  - g. 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.
  - h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - i. A plan for rodent control prior to demolition, during demolition, and during construction.
  - j. The CMP shall also address the following:

- safety precautions;
  - anticipated dewatering during construction;
  - site safety and stability;
  - impacts on abutting properties.
24. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the Petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
25. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall mill and overlay Herrick Road from curb line to curb line beginning from the Project's frontage on Herrick Road to the bridge abutment or a similar location approved by the Commissioner of Public Works after a site visit.
26. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall reconstruct the public footpath out of stamped concrete, or a similar material approved by the Commissioner of Public Works. The walkway shall comply with Massachusetts Architectural Access Board (MAAB) regulations. All other walkways on site shall also comply with MAAB regulations but shall not be required to be constructed of stamped concrete.
27. The dumpster on the subject property will be appropriately screened with fencing to be approved by the Director of Planning and Development and shall be maintained free of debris and odors.
28. In the event that 17-31 Herrick Road and 39 Herrick Road are not in common ownership, the Petitioner or his successor in interest shall record easements that allow driveway access over 17-31 Herrick Road to 39 Herrick Road. Copies of the recorded easements shall be filed with the City Clerk, the Director of Planning and Development, and the Commissioner of Inspectional Services.
29. No building permit shall be issued pursuant to this special permit/site plan approval until the Petitioner has:
- a. Recorded a certified copy of this council order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County for both parcels.
  - b. Filed a copy of such recorded council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Amended its license with the City in accordance with Condition #3 above.
  - d. Obtained a variance from the Zoning Board of Appeals to reduce the front setback in accordance with Condition #5 above.



- e. Obtained approval from the Director of Planning and Development for the Final Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan in accordance with Condition #9 above.
  - f. Obtained approval from the City Council to extend the water and sewer lines in Herrick Road to the Project site, recorded all necessary easements, and provided evidence of such recordation to the Engineering Division of Public Works and the Department of Planning and Development in accordance with Condition #19 above.
  - g. Received approval from the Commissioner of Public Works and the Director of Planning and Development for the photometric and landscape plans for the public footpath in accordance with Conditions #20 and #21 above.
  - h. Received approval for the Construction Management Plan in accordance with Condition #22 above.
  - i. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
30. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the Petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
  - c. Provided the City Engineer, Department of Inspectional Services, and the Department of Planning and Development with a recorded copy of the Operation and Maintenance (O & M) plan for Stormwater Management in accordance with Condition #24 above.
  - d. Received approval from the City Engineer for milling Herrick Road along the Project's frontage from curb line to curb line in accordance with Condition #25 above.
  - e. Received approval from the City Engineer for the reconstruction of the public footpath accordance with Condition #26 above.
  - f. 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 for the project site have been constructed to standards of the City of Newton Public Works Department.
  - g. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features, fencing, and parking areas.
  - h. Provided evidence confirming the marketing, lottery, and resident selection for the Inclusionary Unit has been completed to the Director of Planning and Development for review and approval.

- i. Entered into, and recorded at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants for the Inclusionary Unit with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Unit in perpetuity.
  - j. The Inclusionary Unit shall be constructed and available for occupancy coincident with market rate units such that no more than four market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
31. Notwithstanding the provisions of Condition #30 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, and/or benches provided that the Petitioner 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 work to secure installation of such landscaping, fencing, signage and parking areas. This condition shall not apply to the public footpath.