

November 13, 2015

N.B. Need to update references to Zoning Ordinance to reflect new section numbers per Phase I amendments to the Zoning Ordinance

DRAFT  
#119-15

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
November 16, 2015

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 and Austin Street Partners, LLC ("ASP") 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, and

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, 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, and 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 without limitation 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, City staff, consultants, and boards and commissions, as well as a 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 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) for those uses or dimensional waivers requiring special permits:

1. The Board finds that the proposed mix of commercial and residential uses will encourage an active, pedestrian-oriented streetscape throughout the day and week and that the redevelopment of the parking lot will allow for the development of a building with uses appropriate for Newtonville.
2. The Board finds that the proposed residential units fill a demonstrated and growing need for smaller, accessible, energy efficient residential units; that 25% of the units will be affordable to households earning up to 80% of Area Median Income; that ASP intends to solicit business uses as tenants in the commercial space that will complement and not compete with existing retailers in Newtonville; the public plaza is a beneficial amenity that will create an attractive public gathering place for Newtonville.

3. The Board finds that the proposed use is consistent with the purposes of the Mixed Use 4 district and 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 connect 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 close to public transit;
  - d. the Project will provide 68 mixed income rental housing units of a type not otherwise readily available in Newton with proximity to a variety of services and public transportation, increasing the 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.
4. The Board finds that the Project is an example of proactive municipal planning, that the Project will maintain and improve 124 municipal parking spaces which are vital to the village, and that the City will retain ownership of the Site.
5. 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 much 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.
6. The Board finds that the use as developed and operated will not adversely affect the neighborhood as the Site will retain 124 parking stalls, will enhance the long term economic stability and vitality of the village, and will create an attractive public gathering space.
7. 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.
8. 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.

9. 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 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.
10. The Board finds that 17 affordable dwelling units will be created by the Project, and that 51 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.
11. The Board finds that ASP had carefully studied and understands current and projected parking demand and that the future parking needs of Newtonville will continue to be met through the redevelopment of this Site.
12. 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 #X. Additionally, the creation of a Liaison Committee will help to address concerns that will arise during construction (Condition #X). ASP will provide a minimum of 50 parking stalls on the Site during construction and an additional 20 parking stalls either in the Star Market parking lot or on Austin Street as well as 3 stalls on Philip Bram Way during construction for the public. 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 #X).
13. The Board finds that ASP had developed a thorough 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 the Petitioner, and the City's Director of Economic Development will be available to offer assistance as well.
14. The Board finds that it is the City's intention and expectation that after the completion of the Project the City will make improvements to the village center of Newtonville and to the intersection of Walnut and Austin Streets.

15. 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.
16. 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:

17. The Board finds that the Site is an appropriate location for a small (~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)(1-3):

18. 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:

19. 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 Newton 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); §30-19(e); §30-19(h)(1); §30-19(h)(2)a and b); §30-19(i)(1)and (2); §30-19(j)(1); §30-19, Table of Off-Street Loading; and §30-19(m):

20. 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 stalls parking stalls (2 stalls per dwelling unit and 34 stalls for the commercial space) would be required without a waiver. The Petitioner is proposing 1.25 parking stalls per residential unit (a waiver of 51 stalls) and 5 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 at the Site without further parking waivers as those commercial uses which, in aggregate, do not require more than 34 parking spaces (5 actual and 29 waived parking 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 1 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 the Petitioner 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 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 compact 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 compact 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 critical 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 is 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):

- 21. 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.

22. 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 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.
23. 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.
24. The Board finds that parking is sufficiently screened so as to not detract from the streetscape and public plaza environment, yet is sufficiently visible through signage so as to make wayfinding easy for visitors.
25. 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.
26. The Board finds that the Project utility lines will be undergrounded from the street to the building, that ASP will make a contribution towards the undergrounding of utility lines along the Site's Austin Street frontage subject to the conditions of Condition #28 and that the utility lines will be undergrounded and the poles eliminated as a result of this Board Order .
27. 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.

28. The Board finds that no historical resources currently exist on the Site.
29. 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)(2), Table B, §30-13(j)(1-3), §30-15(w)(2), Table 3, §30-15(w)(4)(b), Table 3, §30-19(d)(2) and (10)-(13); §30-19(e); §30-19(h)(1); §30-19(h)(2)a and b); §30-19(i)(1)and (2); §30-19(j)(1); §30-19, Table of Off-Street Loading; and §30-19(m), §30-24(d)(1)-(5), and §30-23(2)(a)-(h) for granting special permits/site plan approval will be satisfied.

PETITION NUMBER: #119-15

PETITIONER: Austin Street Partners, LLC  
(hereinafter use of the term "Petitioner" shall include Austin Street Partners' successors and assigns) and the City of Newton

LOCATION: 28 Austin Street, Newtonville

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 1 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: §30-13(h)(2), Table B, to allow street-level office uses; §30-13(h)(2), Table B, to allow a restaurant with more than 50 seats; §30-13(j)(1-3), to allow a building in excess of 20,000 square feet of gross floor area; §30-15(w)(2), to allow a building height of 48 feet and four stories; §30-19(m), for exceptions to the parking requirements; §30-19(d)(2) and (10-13) to waive 80 parking stalls; §30-19(e), to waive the requirement for a parking plan; §30-19(h)(1), to locate parking within a setback and within 5 feet of a

residential structure; §30-19(h)(2)a) and b) to waive the dimensional requirements for parking stalls; §30-19(i)(1), to waive the screening requirements for parking lots; §30-13(i)(2), to waive the interior landscaping requirements for parking lots; §30-19, Table of Off-Street Loading, to waive the off-street loading requirements; §30-23 and §30-24.

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, which plans are identified in Exhibit A and are hereby incorporated by reference
2. The Petitioner 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 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 difference shall be applied 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. The Petitioner 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, the Petitioner 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 17 income restricted units (25%) 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 size, in accordance with Massachusetts Department of Housing and Community Development (DHCD) requirements for eligibility on the Subsidized Housing Inventory (SHI). The maximum local preference as permitted by DHCD and applicable law shall be provided. In addition, the Petitioner shall work with the City and DHCD in good faith to provide a preference for up to 6 (3 one bedroom units and 3 two bedroom units) of the 17 income restricted units for lower income households with rental assistance vouchers, including those under the Federal Section 8 program, which such vouchers 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 7 one bedroom units, 1 one bedroom plus den unit, and 9 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 Task Committee (Revised March, 2012). That process is consistent with the provisions of Newton Zoning Section 30-24(f), and is intended as a standard provision for all Newton housing programs.

**Conditions related to construction**

6. The Petitioner 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 Shuttle service 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 7AM-7PM Monday through Friday, and from 9AM-3PM on Saturdays. The Petitioner shall provide free UBER 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. The Petitioner shall make best efforts to coordinate with the Senior Center around their 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 the Petitioner first closes portions of the current municipal parking lot to the public and will continue until the earliest 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, the Petitioner 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 with the approval of the Commissioner of the Inspectional Services Department. 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 the Petitioner, one Alderman from Ward 2, one representative from the Newtonville Area Council, one representative for a Newtonville Businesses, one representative from the Newtonville residential area, one representative from the Jackson Road area, a representative of the Mayor, a representative of 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 to 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 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, prior to the same being submitted to the Planning Department in accordance with Condition #11 and to recommend to the Petitioner, 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 the Petitioner's Business Engagement Plan.
  - g. To plan an appropriate allocation of parking spaces at Aquinas for use by construction workers, seniors, employees, commuters and others and recommend means of monitoring and adjusting the Aquinas site 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, on Austin Street or at the Star Market if interim parking is provided at this location, and at Aquinas, to make suggestions for modifications to the interim parking plans at all three locations to improve the operation of such parking, and 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 and the Board of Aldermen on the following traffic 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; and 3) should traffic on Austin Street be one or two way, and where should public parking on Austin Street be laid out. The Committee shall also review the results of the post occupancy traffic study to be conducted pursuant to Condition #27, and may make recommendations to the Director of Planning and Development and the Director of Transportation regarding the Petitioner's 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 (6) months after initial occupancy of the building and until recommendations regarding Bram Way and Austin Street have been forwarded to Traffic Council and the Board of Aldermen. The Committee shall work by consensus, but nothing in the establishment of the Committee shall prevent any member including the Petitioner from engaging in any lawful activity even if such activity is inconsistent with the position of the Committee. The Petitioner shall maintain and distribute minutes of the meetings of the Committee

The Petitioner shall give the Committee written notice (which may be by email) at least seven (7) 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 Department and the Director of the Planning and Development Department 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. The Petitioner shall pay for any cost associated with providing notice of the Committee's meetings.

9. The Petitioner 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. The Petitioner 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 longer term disruption 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 the 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. The Petitioner 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. The Petitioner 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 or/and the Commissioner, the Commissioner may 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, 3 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 the Petitioner 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. The Petitioner shall also provide a Construction Management Plan which shows the 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 longer shall term disruption 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 shall be managed.
13. The Petitioner 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. The Petitioner 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 the Petitioner shall submit a final Transportation Demand Management Plan 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 Public Works.
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 applicant 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.
18. The Petitioner shall initiate a design competition for the design of the garden area. The Petitioner 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 and shall be constructed and maintained by the Petitioner. The City 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 an amenity primarily for the residents of the Project. The City in consultation with the Petitioner 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.
19. Signs, landscaping and other features located within 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 7-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. The Petitioner 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.
20. Recognizing that communications and planning for engagement of the business community are important particular during the construction period of the project the Petitioner 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. The Petitioner shall establish communications protocols for continuing two-way



communications with the business community including information on the Interim Parking Plan referred to in Condition #12;

- b. The Petitioner shall establish the shuttle bus service referred to in Condition #6 at an estimated cost of \$250,000;
- c. The Petitioner 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 Director and City Solicitor;
- d. The Petitioner 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. The Petitioner shall allocate the sum of \$50,000.00 as a contingency fund to pay additional costs accruing in the Petitioner's judgment to fund shortfalls or additional needs in this Condition 20 (a)(b)(c)(d)
- f. The Petitioner shall engage a business liaison facilitator to coordinate Petitioner's efforts for the shuttle service referred to in this Condition #20, to supervise and implement the Interim Parking Plan referred to in Condition #12, to serve as a point of connection between the Petitioner, 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 the Petitioner will contribute an additional \$5,000.00 per week to the Construction Mitigation Fund established in furtherance of the Business Engagement Plan.

- 21. Given the time it will take for the City to complete the infrastructure work required in Austin Street which much occur prior to the Petitioner commencing the construction of the Project, the Board grants an additional one year extension of time in accordance with the provisions of sec. 230-24(4) 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**

- 22. 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 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 Law Department a fully-executed copy of the final Land Disposition Agreement 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) 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 #12.
- 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 #7

**Conditions precedent to the issuance of any occupancy permits**

23. No occupancy permit for the use covered by this Special Permit/Site plan approval shall be issued until the petitioners have:

- 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. Completion of the undergrounding of utilities along the Site's Austin Street frontage in accordance with Condition #16.
- f. 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.
- g. 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.
- h. 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 12c, provided 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 improvements to ensure their completion.

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

- 24. 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.
- 25. All landscaping associated with this Special Permit/Site Plan Approval, including the street trees to be provided by the Petitioner, shall be maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
- 26. The Petitioner shall be responsible at its sole cost for trash and recycling disposal for the building.

27. At its sole expense, the Petitioner 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 the Petitioner 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 the petitioner and approved by the Director of Planning and Development. The Petitioner 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. The Petitioner 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 the Petitioner'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 the Petitioner 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.

28. At the written request of the Director of Planning and Development, the petitioner shall submit funds in the amount of \$81,163.00 to be paid towards undergrounding of utilities along Austin Street at such time as either the City of Newton or the Commonwealth commences a project of undergrounding the utility lines on Austin Street from Walnut Street to Lowell Avenue with sufficient funding in place or committed from governmental or private sources to undertake the project for inclusive of the section of Austin Street fronting the subject property at 28 Austin Street. This obligation shall run with the land for a period of 25 years from the date of this special permit. These funds shall be used by the City or the Commonwealth for the purpose of undergrounding utilities on Austin Street. Any funds collected under this condition and not spent in accordance with this condition at the end of this time period shall be returned to the Petitioner or its successors or assigns.

29. The Petitioner has agreed to not lease the commercial space in the Project to banks or nail salons for a period of five (5) years from the date when such commercial spaces are first occupied, and the initial tenants solicited by the Petitioner 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 1<sup>st</sup> floor office space authorized by this special permit shall not exceed 1500 square feet in size.

31. Whenever a portion of the commercial space in the Project shall be used as a common or shared office facility or so-called “innovation center,” the Petitioner will make the facility 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 width of all parking stalls shall be designed to the extent possible to be consistent, and in no event, less than 8’ 4”. Three parking stalls immediately adjacent to the plaza shall be removed and replace by public plaza space and landscaping, provided, that 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.