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Mayor

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Candace Havens  
Director

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**MEMORANDUM**

Public Hearing Date: August 14, 2012  
Land Use Action Date: October 16, 2012  
Board of Aldermen Action Date: November 5, 2012  
90-Day Expiration Date: November 12, 2012

DATE: August 10, 2012

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning <sup>ET</sup>  
Alexandra Ananth, Senior Planner

SUBJECT: Petition **#189-12**, Rox Diner/Norman Cubell, Trustee, petition for a special permit/site plan approval for a restaurant with greater than 50 seats (an increase from 38 seats to 61 seats) and for a waiver from the eight parking stalls required for such expansion at **335 WALNUT STREET**, Newtonville, Ward 2, on land known as SBL 24, 9, 20 in a district zoned Business 1. Ref: Sec 30-24, 30-23, 30-11(d)(9), 30-19(c)(3), 30-19(d)(13), 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.

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## EXECUTIVE SUMMARY

The petitioner's property consists of 15,855 square feet of land in a Business 1 zone. It is improved with a multi-tenant commercial building with store fronts on Walnut Street in Newtonville. The Rox Diner currently operates a 38-seat restaurant at 335 Walnut Street and is proposing to increase the number of seats to 61 without providing additional on-site parking. The petitioner is seeking a special permit for a restaurant with greater than 50 seats and to waive eight required parking stalls.

The *2007 Comprehensive Plan* encourages vibrant, attractive village centers with a mix of small businesses that are responsive to resident's needs within these centers. This expansion proposal will enhance a thriving, locally-oriented business within a village center and will bring patrons to Newtonville throughout the day including when many other businesses are closed in the evening.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this petition, the Board shall consider whether the following findings apply:

- The site is an appropriate location for a restaurant with greater than 50 seats because it will increase the vitality of a village center in accordance with the recommendations of the *2007 Comprehensive Plan*.
- There will be no nuisance or serious hazard to vehicles or pedestrians as a result of the operation of the restaurant, as expanded.
- Literal compliance with parking requirements is impracticable because the site cannot accommodate additional parking on-site.
- A waiver for eight required parking stalls is appropriate given the site's location in a village center, the availability of parking within the village at the peak hours of operation for the business, and proximity to public transportation.

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The subject site is located in the Newtonville village center at the corner of Highland Avenue and Walnut Street. There are a variety of commercial store fronts along this portion of Walnut Street and other tenants within the subject property include a jewelry store, a laundromat, a day spa, and a bank. Currently one of the building's store fronts is vacant. In addition to commercial uses, other surrounding uses include the Newton Senior Center, a church, multi-unit residential structures as well as one- and two- family residences along the streets off of Walnut Street.

B. Site

The site consists of 15,855 square feet of land improved with a one-story multi-tenant commercial building. The subject of this special permit is located in the southernmost tenant space of the building, at the corner of Highland Avenue and Walnut Street. The property contains a 20-stall parking area immediately behind the building which is used as employee and patron parking for the businesses located within the subject property. A dumpster enclosed by a painted concrete wall is also located in the site's parking area.

The building maintains virtually no setback from the Walnut Street or Highland Avenue frontages.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The existing restaurant use will be expanded from 38 seats to up to 61 seats, representing an increase in the intensity of the use of the site.

B. Building and Site Design

No changes are being proposed to either the exterior or interior of the site, the petitioners are simply proposing to add additional seats within the existing restaurant.

C. Parking and Circulation

The site currently contains parking for 20 cars behind the building, with access off of Philip Bram Way. This parking is used by both employees and patrons of businesses in the building. The 38-seat restaurant has a 17-stall parking requirement and the proposed 61-seat restaurant has a 25-stall requirement (including up to 11 employees), representing an eight stall increase. As the petitioners are not able to provide additional parking on site, they are requesting a waiver of the additional eight stall parking requirement.

The petitioners submitted a parking study (**ATTACHMENT "A"**), of the neighborhood, including Highland Avenue, Walnut Street, Washington Park, Madison Avenue, Newtonville Avenue, Austin Street, and the municipal lot on Austin Street, all within a three minute walk to the Diner. Parking counts were taken at various points in the day to correspond with the peak hours of the diner (breakfast, lunch, dinner) on a number of days in July. Although the parking study shows an abundance of available parking in the municipal lot on Austin Street, it also demonstrates sufficient available parking in the area without reliance on this lot.

The petitioner has also indicated that a significant portion of their peak lunchtime traffic arrives by foot from residences, businesses, and schools in the neighborhood. The Planning Department suggests that the petitioner consider making a contribution to the Newtonville Parking and Pedestrian Improvements Fund in order to help mitigate parking impacts and improve pedestrian circulation in the area. Once enough contributions are made to such a fund the Public Works Department can use this fund to pay for more

significant parking and pedestrian improvements in the immediate village center.

D. Landscape Screening

The Planning Department did not require a landscape plan as part of this petition.

IV. COMPREHENSIVE PLAN

The *2007 Comprehensive Plan* encourages vibrant, attractive village centers with a mix of small businesses that are responsive to residents' needs. This proposal will result in the expansion of a thriving, locally-oriented business within a village center and will bring patrons to Newtonville throughout the day including when many other businesses are closed in the evening.

V. TECHNICAL REVIEW

A. Technical Considerations

The Zoning Review Memorandum (**ATTACHMENT "B"**) provides a complete analysis with respect to zoning. The petitioners are seeking a special permit for a restaurant with greater than 50 seats and to waive eight required parking stalls.

B. Other Reviews

No construction is proposed, the proposed changes are cosmetic only and no other reviews were required.

VI. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum (ATTACHMENT C), the petitioner is seeking the following reliefs:

- Section 30-11(d)(9), to permit a 61-seat restaurant in a Business 1 district
- Section 30-19(c), 30-19(d)(13), and 30-19(m), to waive eight required parking stalls

VII. PETITIONERS' RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

**ATTACHMENT A:** PETITIONER'S PARKING STUDY

**ATTACHMENT B:** ZONING REVIEW MEMO

**ATTACHMENT C:** ZONING MAP

**ATTACHMENT D:** LAND USE MAP



**335 Walnut St  
Newton MA 02460**

**Parking Study  
for  
Seating Increase Special Permit**

**July 23, 2012**

**Owners:**

**Paul Louderback  
John Fortin**

July 22, 2012  
 Rox Diner  
 335 Walnut St  
 Newton MA 02460

Dear City of Newton Board of Alderman,

Rox Diner has performed a parking study of Newtonville between the dates of Sunday, July 13 and Saturday, July 21 2012. Streets included are Highland Avenue, Walnut Street, Washington Park, Madison Avenue, Newtonville Avenue, Austin Street, The Austin Street parking lot, and the customer parking lot behind the Rox Diner. All parking spaces studied were within a three-minute walk to the Rox Diner.

The following is a summary of the study:

<b>Day</b>	<b>Service</b>	<b>Empty spaces</b>	<b>Empty Austin St. Lot Spaces</b>
Friday, July 13th	Breakfast (8:30am)	17	94
Friday, July 13th	Lunch (12:45pm)	18	92
Sunday, July 15th	Breakfast (9:45am)	28	109
Sunday, July 15th	Lunch (1:30pm)	24	105
Tuesday, July 17th	Mid-morning (10:45am)	23	97
Thursday, July 19th	Breakfast (9:30am)	16	94
Thursday, July 19th	Lunch (12:00pm)	14	83
Thursday, July 19th	Dinner (7:30pm)	21	112
Saturday, July 21st	Breakfast (9:30)	18	106
Saturday, July 21st	Lunch (1:15pm)	20	110
Saturday, July 21st	Dinner (7:30pm)	47	139

Per the the Zoning Review Memorandum dated June 15, 2012 from Chief Zoning Code Official Seth Zeren, an increase of eight parking stalls was determined to be needed by Rox Diner's request to increase seating from 38 to 61 seats. Per Zoning Ordinance §30-19(m) Rox Diner is asking for a special permit to waive the addition of eight parking stalls.

As the parking study shows, not including the Austin Street Parking Lot, there is a significantly greater number of empty parking spaces than the eight required during Rox Diner's peak operating hours in Newtonville.

Please see attached site plan showing streets studied and parking count charts for further information. Also attached Zoning Review Memorandum from Zeth Zeren.

Sincerely,

Paul Louderback, Owner  
 Rox Diner





## Parking Study

Note: See attached site plan for parking location **Day: Friday July 13**

**Time: 8:30am BREAKFAST**

**Notes:**

**Full restaurant**

Location	Total Spaces	empty spaces	Notes
Highland Ave	10	2	
Walnut St NB	18	2	Washington Pk to Newtonville Ave.
Walnut St SB	17	4	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	2	
Austin St	14	4	
Newtonville Ave	5	3	
Austin St Lot	149	94	includes far bottom corner
Back lot	20	0	Customer & employee only lot behind Rox Diner
Total:	241	111	

**Day: Friday July 13**

**Time: 12:45pm LUNCH**

**Notes:**

**Full restaurant with 8 people waiting**

Location	Total Spaces	empty spaces	Notes
Highland Ave	10	3	
Walnut St NB	18	2	Washington Pk to Newtonville Ave.
Walnut St SB	17	4	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	3	
Austin St	14	4	
Newtonville Ave	5	2	
Austin St Lot	149	92	includes far bottom corner
Back lot	20	0	Customer & employee only lot behind Rox Diner
Total:	241	110	



**Parking Study**

Note: See attached site plan for parking location **Day: SUNDAY July 15**

**Time: 9:45am BREAKFAST**

**Notes:**

**Full restaurant with 15 people waiting**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	<b>10</b>	<b>3</b>	
Walnut St NB	<b>18</b>	<b>5</b>	Washington Pk to Newtonville Ave.
Walnut St SB	<b>17</b>	<b>1</b>	Austin St to Walnut PL
Washington PK	<b>X</b>	<b>X</b>	No Parking
Madison Ave	<b>8</b>	<b>0</b>	
Austin St	<b>14</b>	<b>7</b>	
Newtonville Ave	<b>5</b>	<b>3</b>	
Austin St Lot	<b>149</b>	<b>109</b>	includes far bottom corner
Back lot	<b>20</b>	<b>9</b>	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>137</b>	

**Day: SUNDAY July 15**

**Time: 1:30pm LUNCH**

**Notes:**

**Full restaurant with 10 people waiting**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	<b>10</b>	<b>2</b>	
Walnut St NB	<b>18</b>	<b>2</b>	Washington Pk to Newtonville Ave.
Walnut St SB	<b>17</b>	<b>1</b>	Austin St to Walnut PL
Washington PK	<b>X</b>	<b>X</b>	No Parking
Madison Ave	<b>8</b>	<b>0</b>	
Austin St	<b>14</b>	<b>5</b>	
Newtonville Ave	<b>5</b>	<b>3</b>	
Austin St Lot	<b>149</b>	<b>105</b>	includes far bottom corner
Back lot	<b>20</b>	<b>11</b>	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>129</b>	

**Parking Study**

Note: See attached site plan for parking location **Day: TUESDAY July 17**

**Time: 10:45am**

**Notes:**

**1 empty table**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	10	2	
Walnut St NB	18	3	Washington Pk to Newtonville Ave.
Walnut St SB	17	5	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	1	
Austin St	14	9	
Newtonville Ave	5	0	
Austin St Lot	149	74	includes far bottom corner
Back lot	20	3	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>97</b>	

**Day: THURSDAY July 19**

**Time: 9:30am BREAKFAST**

**Notes:**

**Full restaurant. 8 people waiting.**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	10	1	
Walnut St NB	18	2	Washington Pk to Newtonville Ave.
Walnut St SB	17	5	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	1	
Austin St	14	6	
Newtonville Ave	5	1	
Austin St Lot	149	94	includes far bottom corner
Back lot	20	0	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>110</b>	

**Parking Study**

Note: See attached site plan for parking location **Day: THURSDAY July 19**

**Time: 12:00pm LUNCH**

**Notes:**

**Full restaurant. 12 people waiting**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	10	2	
Walnut St NB	18	2	Washington Pk to Newtonville Ave.
Walnut St SB	17	1	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	0	
Austin St	14	7	
Newtonville Ave	5	1	
Austin St Lot	149	83	includes far bottom corner
Back lot	20	1	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>97</b>	

**Day: THURSDAY July 19**

**Time: 7:30pm DINNER.**

**Notes:**

**Full restaurant. 3 people waiting.**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	10	2	
Walnut St NB	18	3	Washington Pk to Newtonville Ave.
Walnut St SB	17	2	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	1	
Austin St	14	8	
Newtonville Ave	5	1	
Austin St Lot	149	112	includes far bottom corner
Back lot	20	4	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>133</b>	



## Parking Study

Note: See attached site plan for parking location **Day: saturday July 21**

**Time: 9:30am BREAKFAST**

**Notes:**

**Full restaurant. 20 people waiting**

Location	Total Spaces	empty spaces	Notes
Highland Ave	10	2	
Walnut St NB	18	2	Washington Pk to Newtonville Ave.
Walnut St SB	17	2	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	1	
Austin St	14	6	
Newtonville Ave	5	2	
Austin St Lot	149	106	includes far bottom corner
Back lot	20	3	Customer & employee only lot behind Rox Diner
Total:	241	124	

**Day: SATURDAY July 21**

**Time: 1:15pm LUNCH**

**Notes:**

**Full restaurant. 15 people waiting.**

Location	Total Spaces	empty spaces	Notes
Highland Ave	10	3	
Walnut St NB	18	3	Washington Pk to Newtonville Ave.
Walnut St SB	17	2	Austin St to Walnut PL
Washington PK	X	X	No Parking
Madison Ave	8	2	
Austin St	14	7	
Newtonville Ave	5	1	
Austin St Lot	149	110	includes far bottom corner
Back lot	20	2	Customer & employee only lot behind Rox Diner
Total:	241	130	



## Parking Study

Note: See attached site plan for parking location **Day: SATURDAY July 21**

**Time: 7:30pm DINNER**

**Notes:**

**Full restaurant. 5 people waiting**

<b>Location</b>	<b>Total Spaces</b>	<b>empty spaces</b>	<b>Notes</b>
Highland Ave	<b>10</b>	<b>4</b>	
Walnut St NB	<b>18</b>	<b>6</b>	Washington Pk to Newtonville Ave.
Walnut St SB	<b>17</b>	<b>5</b>	Austin St to Walnut PL
Washington PK	<b>X</b>	<b>X</b>	No Parking
Madison Ave	<b>8</b>	<b>8</b>	
Austin St	<b>14</b>	<b>11</b>	
Newtonville Ave	<b>5</b>	<b>4</b>	
Austin St Lot	<b>149</b>	<b>139</b>	includes far bottom corner
Back lot	<b>20</b>	<b>9</b>	Customer & employee only lot behind Rox Diner
<b>Total:</b>	<b>241</b>	<b>186</b>	



Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

189-12  
ATTACHMENT "B"

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Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: June 15, 2012

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning ET

Cc: Paul Louderback, applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: Request to permit a restaurant with greater than 50 seats and waive required parking stalls associated with an increase in seats

Applicant: Rox Diner	
Site: 323-335 Walnut Street	SBL: 24009 0020
Zoning: BU1	Lot Area: 15,855 square feet
Current use: Restaurant with 38 Seats	Proposed use: Restaurant with 61 seats

### BACKGROUND:

The property at 323-335 Walnut Street consists of a 15,855-square foot lot improved with a multi-tenant commercial building. The applicant, the Rox Diner, currently operates a 38-seat restaurant at 335 Walnut Street. The applicant proposes to increase the number of seats to 61 without providing additional on-site parking.

The following review is based on plans and materials submitted to date as noted below.

- Existing floor plan, unsigned, unstamped, dated 5/10/12
- Proposed floor plan, unsigned, unstamped, dated 5/10/12
- Site plan, unsigned, unstamped, dated 5/10/12
- Area plan, unsigned, unstamped, dated 5/10/12

### ADMINISTRATIVE DETERMINATIONS:

1. The property is located in a Business 1 district. The existing use, a 38-seat restaurant, is permitted by right. Per Section 30-11(d)(9), restaurants with greater than 50 seats are permitted by special

permit only. To expand the use to 61 seats, the applicant must obtain a special permit from the Board of Aldermen, per Section 30-11(d)(9).

2. The proposed use must also satisfy the parking regulations of Section 30-19. The applicant's site plan shows a pre-existing, nonconforming parking facility containing 20 parking stalls located to the rear of the shops. The applicant does not propose to provide additional off-street parking or to alter the existing parking facility in any way. Per Section 30-19(d)(13), one off-street parking stall is required for every three seats in a restaurant and one stall for every three employees on the largest shift. Therefore, the existing use has a parking requirement of 17 stalls ( $38/3 = 13$ ; and  $11/3 = 4$ ). The proposed use has a parking requirement of 25 stalls ( $61/3 = 21$ ; and  $11/3 = 4$ ), an increase of eight stalls. As the applicant does not propose to provide additional off-street parking, the applicant must obtain a special permit from the Board of Aldermen per Sections 30-19(c)(3), 30-19(d)(13) and 30-19(m) to waive eight stalls.
3. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Use</i>	<i>Action Required</i>
§30-11(d)(9)	Permit a restaurant with greater than 50 seats	S.P. per §30-24
<i>Ordinance</i>	<i>Parking</i>	<i>Action Required</i>
§30-19(c)(3); §30-19(d)(13); §30-19(m);	Waive eight required parking stalls	S.P. per §30-24

189-12

# Zoning Map 335 Walnut St.

*City of Newton,  
Massachusetts*



**Legend**

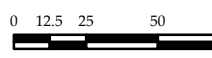
- Single Residence 1
- Multi-Residence 1
- Business 1
- Public Use
- Building Outlines
- Surface Water



**Attachment "C"**

The information on this map is derived from a Geographic Information System. The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for their intended purpose. City departments will not approve applications based solely on this map.

CITY OF NEWTON, MASSACHUSETTS  
 Mayor - Setti D. Warren  
 GIS Administrator - Douglas...



Map Date: August 08, 2012



189-12

# Land Use Map 335 Walnut St.

*City of Newton,  
Massachusetts*

**Legend**

**Land Use**

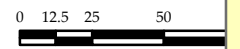
- Single Family Residential
- Multi-Family Residential
- Commercial
- Mixed Use
- Open Space
- Nonprofit Organizations
- Building Outlines
- Surface Water



**Attachment "D"**

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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Setti D. Warren  
GIS Administrator - Douglas...



Map Date: August 08, 2012

