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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: August 9, 2016
Land Use Action Date: September 12, 2016
City Council Action Date: September 19, 2016
90-Day Expiration Date: November 7, 2016

DATE: August 5, 2016

TO: City Council

FROM: Barney Heath, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Michael Gleba, Senior Planner 

SUBJECT: **Petition #215-16(2)**, for SPECIAL PERMIT/SITE PLAN APPROVAL to construct six parking stalls in a side setback, waive aisle width requirements, waive screening requirements, waive security lighting requirements and allow a retaining wall greater than 4', modifying special permit #501-94(2) at **342, 342A, 344-346 Elliot Street**, Ward 5, Newton Upper Falls, on land known as SBL 51041 0010, 51041 0011, 51041 0012, containing approximately 9,676 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4, 5.1.8.A.1, 5.1.13, 5.1.8.C.1, 5.1.9.A.1, 5.1.10.A, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



342, 342A, 344-346 Elliot Street

EXECUTIVE SUMMARY

The subject properties at 342 and 344-346 Elliot Street are improved with a 69-seat restaurant known as Dunn-Gaherin's and a ten-stall surface parking area on 6,725 square feet of land. Previously issued Orders #501-94 and #501-94(2), among others provisions, authorized the current seating capacity and waived six parking stalls and certain dimensional requirements for the parking area.

An additional subject property is a portion of a 6,058 square foot rear lot located at 342A Elliot Street, a lot that was recently rezoned to Business 1 (BU1). The application indicates that parcel will be subdivided into two lots, one containing 2,951 square feet, the other containing 3,107 square feet. It is proposed that the former will be combined with the abutting restaurant property at 342/344-346 Elliot Street described above, with the resulting property measuring 9,676 square feet. Six new parking stalls for use by the restaurant and accessed via the existing parking area would be constructed on the additional area, expanding the number of parking stalls available to restaurant patrons.

(The remaining approx. 3,107 square foot portion of the subdivided 342A Elliot Street parcel will be combined with the abutting lot at 1076 Chestnut Street with the resulting lot measuring approximately 19,016 square feet).

Pursuant to this plan, the petitioner is requesting a special permit to modify Order #501-94(2), for waivers to parking aisle width, screening and security lighting requirements, for a waiver to allow parking in a side setback and to allow a retaining wall higher than four feet in a setback.

As discussed below, while the Planning Department is generally not concerned about the overall project, it nevertheless does have some concerns about the specifics of the plan and has recommendations to address them, as discussed below.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- the site in a Business 1 (BU1) district adjacent to a Multiple Residence 1 (MR1) district is an appropriate location for the requested waivers of parking regulations and requirements (§7.3.3.C.1);
- the requested waivers of parking regulations and requirements will not adversely affect the neighborhood (§7.3.3.C.2);
- the requested waivers of parking regulations and requirements will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- literal compliance with said parking regulations and requirements is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features (§5.1.13);
- the site in a Business 1 (BU1) is an appropriate location for a retaining wall within a

- setback (§7.3.3.C.1);
- the retaining wall will not adversely affect the neighborhood. (§7.3.3.C.2);
- access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located in Newton Upper Falls on the south side of Elliot Street, between Hale and Chestnut streets. The area has a mix of zoning designations. The parcel on which the additional parking is proposed is a portion of 342A Elliot St. a rear lot that was recently rezoned to Business 1 (BU1). It is abutted by BU1 zoned lots to the north (including the present Dunn-Gaherin's restaurant site) and west. To the east and south the site is bordered by Multi-Residence 1 (MR1) zoned lots. Widening the scope, the block front directly across Elliot Street is zoned Multi-Residence 2 (MR2) with a mix of MR1 and MR2 zoned parcels to the north. There is a large Manufacturing-zoned parcel at the northwest corner of Elliot and Chestnut streets and a Multi-Residence 3 (MR3) parcel at the southwest corner of those streets (**Attachment A**). The surrounding area is occupied by a mix of one- and two- family and multi-family dwellings, as well as adjacent commercial uses along the south side of Elliot Street and at the northeast corner of Elliot and Chestnut streets. (**Attachment B**).

B. Site

As shown on the submitted site plan, the subject property is comprised of three separate lots, 342, 344-366 and a portion of 342A Elliot Street (the last parcel to be created pursuant to a yet-to-be executed subdivision). The property includes 9,676 square feet and is improved with an approx. 5,595 square foot, two-story, 69 seat restaurant. A ten foot wide passageway separates that structure from ten on-site parking spaces that are accessed via one curb cut on Elliot Street. Existing fences are located along the eastern boundary line as well as portions of the western boundary, in the general area of an existing dumpster. The property is generally level, and bounded along its southern boundary and portions of its western boundary toward Chestnut Street by an existing retaining wall of approximately 7-8 feet in height.

The Planning Department notes that to its knowledge, the proposed subdivision of 342A Elliot Street and its transfer to common ownership with that of 342 and 344-346 Elliot Street has not yet been executed. The Planning Department recommends that the status of the lot be clarified and, in consultation with the City's Law Department, that the effective date of any special permit issued pursuant to this petition be made conditional upon the completion of that process, including the

recording of relevant documents at the Registry of Deeds.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain as a restaurant and associated parking. No expansion of the restaurant is contemplated at this time.

B. Building and Site Design

No new structures are contemplated at this time and it is presumed the property at 342A Elliot Street will be divided as described above at a future date.

The petition requests approval of an already built retaining wall greater than four feet in height within the rear and western side setbacks. It will remain in place and is merely being “placed” into new setbacks that would be created by the subdivision of the parcel. However, the Department does note that the attached City Engineer’s report (**Attachment C**) indicates that a structural evaluation of the wall’s “stability against overturning, settling, and sliding resistance will be required as there is no evidence of the original design intent and limitations.”

C. Parking and Circulation

There would be no change in access to the expanded Dunn-Gaherin’s parking area from adjoining public ways as access to the existing parking spaces as well the proposed six additional spaces would continue be via the existing curb cut on Elliot Street.

The petitioner has requested a waiver to allow parking in the side setback along the eastern property line. (§5.1.8.A.1) The Planning Department is generally not concerned with this waiver to the extent it is considered in conjunction with the proposed landscaping and screening discussed below.

The petitioner is also requesting waiver of the maneuvering aisle width requirement for parking facilities. The Planning Department notes that although the width of the proposed maneuvering aisle, which varies from 18.5 feet to 21.0 feet, is narrower than the 24 feet required by NZO §5.1.8.C.1, it is considerably wider than the existing 10 foot wide passageway between the existing parking spaces and restaurant that was legitimized by previously issued special permits. As noted in the attached City Engineer’s report, a “turning template” indicating vehicle entrance and exiting movements will be required for that office’s final review as will an indication of the location of a snow storage area.

The Planning Department also notes that a previously issued special permit (#501-94(2)) granted a waiver of six parking stalls for the current restaurant use. The proposed increase in the number of stalls available to the restaurant obviates the need for that waiver and the Planning Department recommends that, in the event the

requested relief is granted, those waivers be extinguished and that this be made a provision of any approved Order.

D. Landscaping and Screening

The submitted plans show a six foot high privacy fence and new five foot wide landscaping area along the eastern property line shared with the abutting two-family dwelling at 9-11 Hale Street. This would largely replicate similar conditions along the east side of the adjacent existing parking spaces.

An approximately 10 foot by 17 foot "Proposed Landscape Area" is shown in the southeast corner of the proposed new parking area, along the new southern boundary shared with 1076 Chestnut Street that would be created with the proposed subdivision of 342A Elliot Street.

No fencing is shown for this area, nor is any fencing or landscaping shown for the remainder of the southern boundary or along the various legs of the western side of the adjacent properties at 1064 and 1076 Chestnut Street. The Planning Department is generally not concerned with the absence of landscaping along the western side of the property, given the adjacent grade changes and uses. However, given said grade change, it nevertheless recommends, as stated in the attached City Engineer's report, that safety fencing be installed around the entire perimeter of the proposed new parking area, inclusive of its southern and western boundaries as well as the eastern boundary where the proposed parking area spaces are adjacent to the backyards of residential property.

Also, the submitted plans indicate the location of the above-referenced landscaped area, but no details are provided as to the type or number of proposed plantings. The Planning Department recommends that the petitioner be required to submit a Landscape Plan showing the number, location, type and size of proposed plantings as well as the location and type of the above-referenced safety fencing for review and approval by the Planning Department before any building permit is issued pursuant to this petition and that this be made a condition of any approved Order. The Planning Department further recommends that the Landscape Plan include several evergreen trees along the eastern boundary of the new parking area and within the "Proposed Landscape Area" that would be expected to reach a height at maturity above the height of the proposed fencing so as to provide additional year-round screening of the proposed parking spaces from adjacent residential properties.

E. Lighting

The petitioner has requested a waiver of the parking lot security lighting requirements under §5.1.10 of the NZO. Given the potential for lighting in this location to be disruptive for nearby residences, and the relatively small size of the parking area and the spaces' proximity to the restaurant, the Planning Department

is generally not concerned about this waiver.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Special Permit per §7.3.3:
 - a. Modify Special Permit Council Order #501-94(2);
 - b. To allow parking in a side setback (§5.1.8.A.1, §5.1.13);
 - c. To waive aisle width requirements (§5.1.8.C.1, §5.1.8.C.2, §5.1.13);
 - d. To waive certain parking lot screening requirements (§5.1.9.A, §5.1.13);
 - e. To waive parking lot security lighting requirements (§5.1.10, §5.1.13);
 - f. Allow a retaining wall greater than 4 feet within a setback (§5.4.2.B).

B. Engineering Review:

The Associate City Engineer submitted an Engineering Review Memorandum (**Attachment C**), providing an analysis of the proposal with regard to engineering issues. The petitioner will be required to comply with all the recommendations put forth in the memorandum prior to issuance of a Building Permit.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** City Engineer's Report
- Attachment D:** Zoning Review Memorandum
- Attachment E:** Draft Order

ATTACHMENT A

Existing Land Use
342, 342A &
344-346 Elliot Street

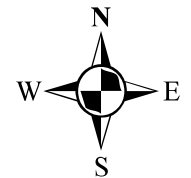
City of Newton,
Massachusetts

Legend

Land Use

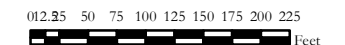
Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial

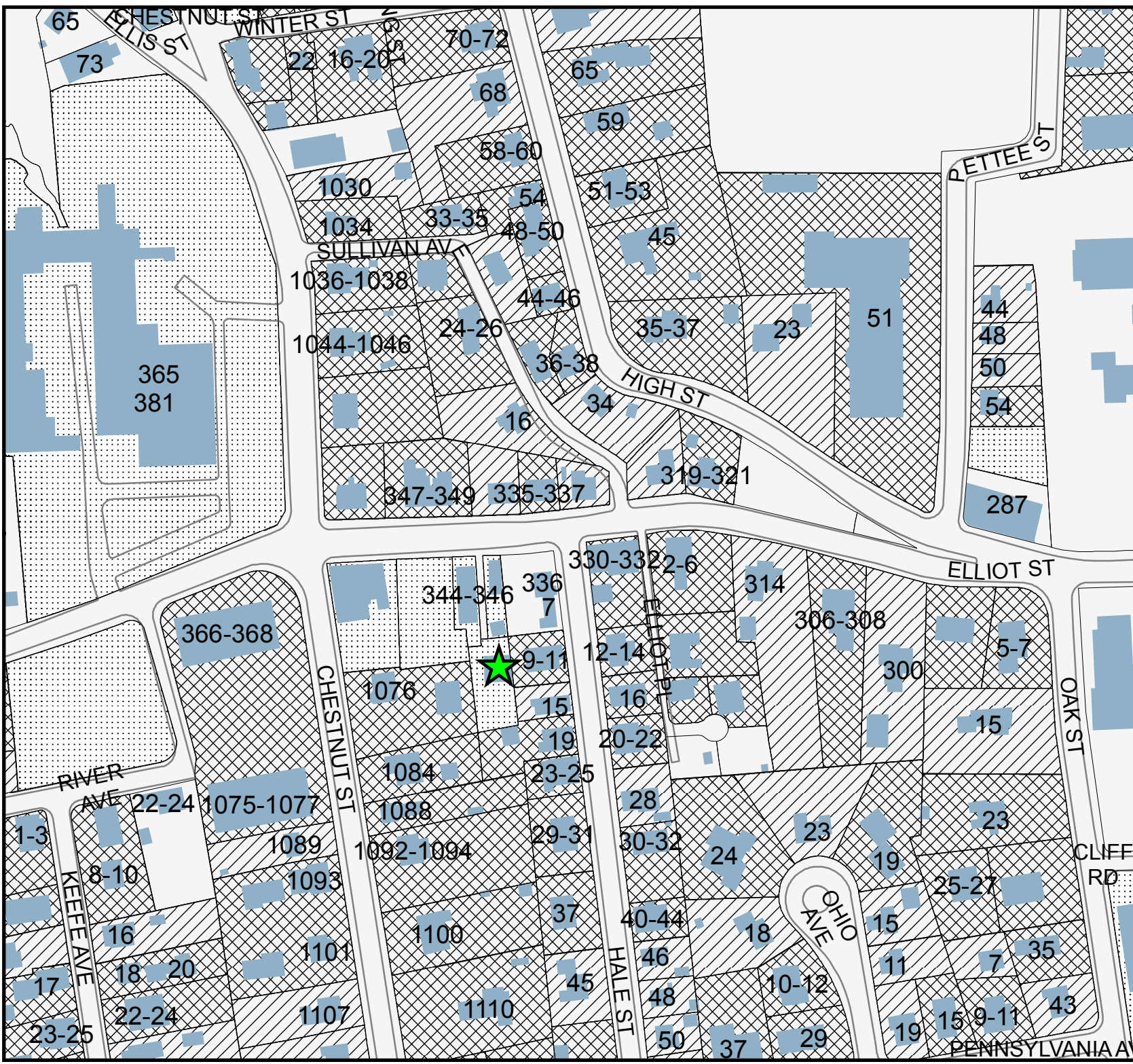


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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









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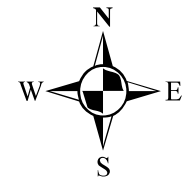


Zoning Map 342, 342A & 344-346 Elliot Street

*City of Newton,
Massachusetts*

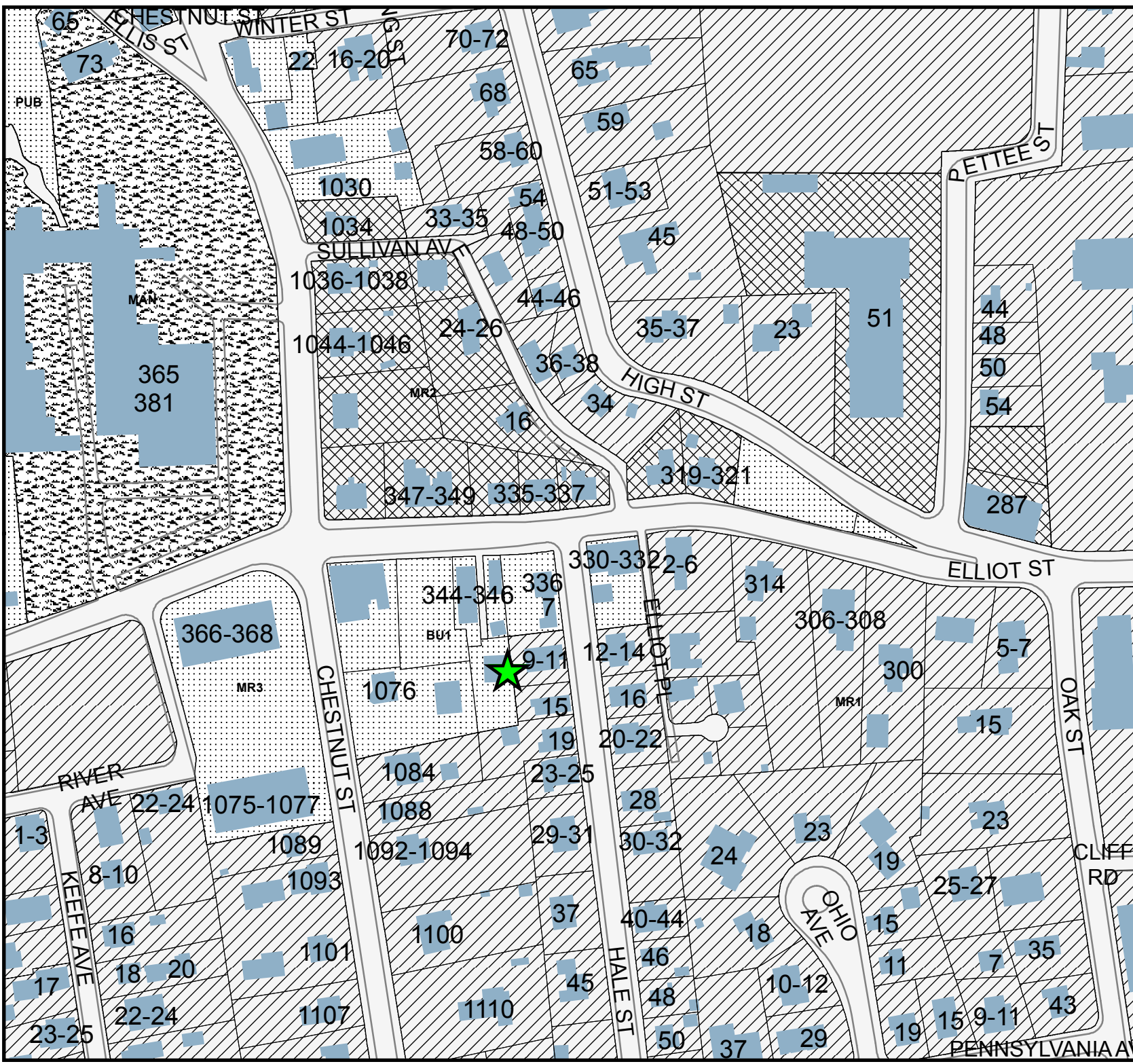
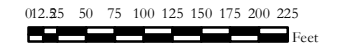
Legend

-  Multi-Residence 1
-  Multi-Residence 2
-  Multi-Residence 3
-  Business 1
-  Manufacturing
-  Public Use



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



ATTACHMENT C

CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

MEMORANDUM

To: Council Mark Laredo, Land Use Committee Chairman

From: John Daghljan, Associate City Engineer

Re: Special Permit – 342, 342A & 344 Elliot Street

Date: July 27, 2016

CC: Lou Taverna, PE City Engineer
Nadia Khan, Committee Clerk
Alexandria Ananth, Chief Planner
Michael Gleba, Sr. Planner

In reference to the above site, I have the following comments for a plan entitled:

*342, 342A & 344 Elliot Street
Proposed parking & Patio Location
Newton, MA
Prepared by: Verne T. Porter, Jr., PLS
Dated: May 18, 2015*

Executive Summary:

This application entails the expansion of a parking lot for 6 additional stalls, dumpster, and proposed patio area. The expansion will occur on a separate lot that is approximately 2,951 square feet; for the most part it will be entirely impervious surface and will require stormwater collection and infiltration system. The proposed parking lot will also utilize an existing concrete segmental large-block retaining wall that is approximately 7-8-feet high; a structural evaluation of the wall's stability against overturning, settling, and sliding resistance will be required since there is no evidence of the original design intent and limitations. A safety fence will also be required around the perimeter of the wall along its entire alignment. Snow storage areas need to be identified, since the new

parking lot is surrounded by residential homes, excessive melting snow may become an issue for the abutters. Turning template for vehicles entering and exiting the proposed stalls is needed to ensure proper and safe passage.

If the special permit is approved an Approval Not Required (ANR) plan will be needed in accordance to Massachusetts General Laws Chapter 41 Section 81P requiring the two separate lots be combined into one lot.

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton's 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site, for the project. The design of the proposed on site drainage system needs to comply with the MassDEP Stormwater Regulations and City Ordinances.
2. An on-site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V. This information must be submitted with the drainage study. The locations of these tests need to be shown on the site plan and must be performed within 25-feet of a proposed system.
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
4. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the property owner(s).

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted to the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if there has been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

General:

1. All trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of any water services, sewer service, and drainage system installation. The utility in question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for Drainage Installation permit with the Department of Public Works prior to any construction. *This note must be incorporated onto the site plan.*
5. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
6. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading, improvements and limits of restoration work. The plan shall also include profiles of the various new utilities, indicating rim & invert elevations, slopes of pipes, pipe material, and swing ties from permanent building corners. ***This note must be incorporated onto the final contract plans.***
7. All site work including trench restoration must be completed before a Certificate of Occupancy is issued. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.



Setti D. Warren
Mayor

ATTACHMENT D

City of Newton, Massachusetts
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: July 13, 2016

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Seana Gaherin, applicant
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to allow a retaining wall greater than four feet in height in the setback, various waivers to the parking requirements, and a modification to Special Permit Order #501-94(2)

Applicant: Seana Gaherin, Dunn-Gaherin's	
Site: 342, 342A, 344-346 Elliot Street	SBL: 51041 0010, 51041 0011, 51041 0012
Zoning: BU1	Lot Area: 9,676 square feet
Current use: Restaurant with 69 seats	Proposed use: No change

BACKGROUND:

The properties at 342 and 344-346 Elliot Street are improved with a 69-seat restaurant known as Dunn-Gaherin's and a ten-stall surface parking area on 6,725 square feet of land. Board Orders #501-94 and #501-94(2) have been issued for the site, authorizing the seating capacity and waiving six parking stalls and dimensional requirements for the parking area.

The rear lot located at 342A Elliot Street was recently rezoned to Business 1, and subdivided into two lots. The applicant owns the parcel containing 2,951 square feet abutting the restaurant property. The remaining parcel produced by the division is owned by the abutter at 1076 Chestnut Street. The applicant proposes to combine the lots and construct six parking stalls for use by the restaurant on the new rear parcel.

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

- Zoning Review Application, prepared by Seana Gaherin, applicant, dated 4/26/2016
- Existing Wall Location – Proposed Subdivision Line and Parking, prepared by Verne T. Porter, surveyor, dated 4/17/2015
- Proposed Parking and Patio plan, prepared by Verne T. Porter, surveyor, dated 5/18/2015

- Existing Conditions Plan – Proposed Fence Location, prepared by Verne T. Porter, surveyor, dated 6/18/2015
- Proposed Parking and Patio Location, prepared by Verne T. Porter, surveyor, dated 6/18/2015
- Subdivision Plan of Land, prepared by Verne T. Porter, surveyor, dated 6/18/2015

ADMINISTRATIVE DETERMINATIONS:

1. The nonconforming configuration and conditions of the existing parking area were legitimized by the site plan approved in connection with Board Order #501-94(2). This application proposes to maintain the relief and conditions of the existing parking, and legitimize the new parking area subject to the requirements found in Section 5.1 of the Ordinance. A single site plan should be approved with the previously approved conditions, and those proposed by this application.
2. Section 5.1.8.A.1 requires that no parking stalls locate within side lot setbacks. The applicant's required side setback is 13.6 feet (half the building height). The six proposed parking stalls are located five feet from the side lot line, requiring a waiver from Sections 5.1.8.A.1 and 5.1.13.
3. Section 5.1.8.C.1 requires a 24 foot wide maneuvering aisle for two-way traffic. The applicant's aisle width in the newly created parking area is 20 feet. Previous special permits legitimized the existing 10 foot wide aisle at the front of the property, and these conditions will continue as they exist after the six new stalls are constructed. A waiver from the aisle width requirement of Section 5.1.8.C.1 is required for the newly constructed stalls.
4. Section 5.1.9.A.1 requires that outdoor parking facilities with more than five stalls be screened from abutting streets and properties with vegetation and/or fencing. The applicant proposes a six foot privacy fence and landscape area along the eastern property line, meeting the requirement. There existing fencing between the applicant's property and the restaurant and parking at 1064 Chestnut Street on the abutting property along the western property line. Because the fencing is on the adjacent property, and may be removed at the will of the abutter, a waiver from the screening requirements of Section 5.1.9.A.1 is required.
5. No lighting is shown on plans depicting the new parking area. Section 5.1.10.A requires security lighting for parking areas used after dark. To the extent that the proposed parking area does not meet the lighting requirements of Section 5.1.10.A, an exception through Section 5.1.13 is required.
6. The applicant intends to maintain and/or replace the existing retaining wall on the rear lot. After the division of the lot into two parcels, the retaining wall is located on the lot lines. Some sections of the wall exceed four feet in height. Section 5.4.2.B requires a special permit for a retaining wall over four feet in height located within a setback.

7. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Modify Special Permit Council Order #501-94(2)	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13	To allow parking in a side setback	S.P. per §7.3.3
§5.1.8.C.1 §5.1.13	To waive aisle width requirements	S.P. per §7.3.3
§5.1.9.A.1 §5.1.13	To waive screening requirements on the western property line abutting 1064 Chestnut Street	S.P. per §7.3.3
§5.1.10.A §5.1.13	Waive security lighting requirements	S.P. per §7.3.3
§5.4.2.B	Allow a retaining wall greater than 4 feet within a setback	S.P. per §7.3.3

ATTACHMENT E

DRAFT - #215-16(2)
342, 342A, 344-346 Elliot Street

CITY OF NEWTON

IN CITY COUNCIL

September 6, 2016

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to modify Special Permit #501-94(2), construct six parking stalls in a side setback, waive aisle width requirements, waive screening requirements, waive security lighting requirements and allow a retaining wall greater than 4 feet in height within the side and rear setbacks, as per the provisions of this Order; as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site in a Business 1 (BU1) district is an appropriate location for the proposed six additional parking stalls within a side setback and the requested waivers of parking regulations related to aisle width, screening and lighting requirements, as such approvals and waivers are granted subject to conditions included herein that address site-specific issues, including the site's adjacency to both residences and businesses, and the topography of the site in relation to abutting properties (§7.3.3.C.1).
2. The construction of the proposed six parking stalls and the granting of the requested waivers of parking regulations and requirements will not adversely affect the neighborhood as they are granted subject to conditions included herein that address site-specific issues, including the site's adjacency to both residences and businesses and the topography of the site in relation to abutting properties (§7.3.3.C.2).
3. The construction of the proposed six parking stalls and the granting of the requested waivers of parking regulations and requirements will not create a nuisance or serious hazard to vehicles or pedestrians as they will not require or create any new access point or overburden the existing curb cut on Elliot Street (§7.3.3.C.3).
4. The requested waivers and exceptions to the above-referenced parking regulations and requirements are appropriate because literal compliance with them is impracticable due to the size of the lot, and granting them is in the public interest as they will facilitate the creation of six additional off-street parking spaces for the

- associated restaurant, reducing demand for on-street parking in the adjoining neighborhood (§5.1.13).
5. The site in a Business 1 (BU1) is an appropriate location for a retaining wall within a setback as it serves to maintain the current, existing grades (§7.3.3.C.1).
 6. The retaining wall will not adversely affect the neighborhood as it is currently in place and will only become located within a setback upon the proposed subdivision of an existing lot that will create two new lots, the shared boundaries of which will generally reflect the location of this already existent wall (§7.3.3.C.2).
 7. The retaining wall will not create a nuisance or serious hazard to vehicles or pedestrians as conditions included herein require its inspection and testing for the projected use and the installation of safety fencing along its entire alignment (§7.3.3.C.3).
 8. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

PETITION NUMBER: #215-16(2)

PETITIONER: Seana R. Gaherin

LOCATION: 342, 342A, 344-346 Elliot Street, Newton Upper Falls, on land known as Section 51 Block 41 Lots 10, 11 and 12

OWNER: **Dunn Gaherins Realty Trust**

ADDRESS OF OWNER: **344 Elliot Street, Newton, MA 02464**

TO BE USED FOR: Parking and associated restaurant/pub

CONSTRUCTION: Paving and installation of related fencing and landscaping

EXPLANATORY NOTES: Special Permits per §7.3.3:

- modify Special Permit Council Order #501-94(2);
- to allow parking in a side setback (§5.1.8.A.1, §5.1.13);
- to waive aisle width requirements (§5.1.8.C.1, §5.1.8.C.2, §5.1.13);
- to waive certain parking lot screening requirements (§5.1.9.A, §5.1.13);
- to waive parking lot security lighting requirements (§5.1.10, §5.1.13);

- allow a retaining wall greater than 4 feet within a setback (§5.4.2.B).

ZONING: Business 1 (B1) District

This special permit supersedes, consolidates, and restates provisions of prior special permits for this location to the extent that those provisions are still in full force and effect. Any conditions in prior special permits for this location not set forth in this special permit #215-12(2) are null and void.

Approved subject to the following conditions:

1. Conditions Solely Associated with Special Permit/Site Plan Approval, Order # 215-16(2)

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:
 - a. a plan entitled “342, 342A and 344 Elliot Street, Proposed Parking and Dumpster Location, Newton, Massachusetts,” prepared by Verne T. Porter Jr., PLS, , dated November 16, 2015, as revised through August 3, 2016, signed and stamped by Verne T. Porter Jr., Professional Land Surveyor on August 3, 2016.
2. This special permit/site plan approval shall not become effective until or unless:
 - a. the proposed subdivision of the parcel at 342A Elliot Street (land presently known as Section 51 Block 41 Lot 11) to create the parcel indicated with the notation “2951 sf (Part of 342A Lot)” on the site plan referenced in Condition #1.a, is duly executed;
 - b. said parcel is conveyed into common ownership with the parcels located at 342 and 344-346 Elliot Street (land presently known as Section 51 Block 41 Lots 10 and 12);
 - c. all required documents evidencing such subdivision and conveyance are recorded with the Registry of Deeds for the Southern District of Middlesex County; and
 - d. certified copies of such recorded documents are filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
3. Unless otherwise amended by this special permit/site plan approval, all conditions of Board Order #501-94(2) previously issued for the parcels located at 342 and 344-346 Elliot Street (land known as Section 51 Block 41 Lots 10 and 12), shall remain in effect.
4. The waiver of six parking stalls granted under the provisions of Special Permit #501-94(2) is hereby terminated and extinguished.
5. The petitioner shall not operate the restaurant with more than 69 seats.
6. Prior to the issuance of any Building Permit, the petitioner shall provide a structural evaluation of the concrete block retaining wall’s stability against overturning, settling, and sliding resistance for review and approval by the Engineering Division of Public Works.

7. Prior to the issuance of any Building Permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for storm water management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
8. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
9. Prior to the issuance of any Building Permits, the petitioner shall provide a Final Landscape Plan for review and approval by the Director of Planning and Development. This plan shall include the location of safety fencing along the eastern, southern, and western boundaries of the new additional parking area and show the number, location and type of proposed plantings, including several evergreen trees along the eastern boundary of the new parking area, and within the "Proposed Landscape Area" indicated on the Site Plan, that would be expected to reach a height at maturity above the height of the proposed fencing so as to provide appropriate year-round screening of the proposed parking spaces from adjacent residential properties.
10. Prior to the issuance of any Building Permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should include at a minimum:
 - 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 5:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. 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.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for rodent control during construction.
 - f. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.

11. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioner has:
 - a. Received final approval from the Director of Planning and Development for the Construction Management Plan.
 - b. Recorded a certified copy of this order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - c. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - d. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - e. Filed a Final Landscape Plan to the Director of Planning and Development for review and approval.
 - f. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
12. No Final Inspection and/or Occupancy Permit for the buildings and/or 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 a statement by a registered architect or engineer certifying compliance with Condition #1.
 - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Board Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services, final as-built plans in paper and digital format signed and stamped by a licensed land surveyor.
 - d. Filed with the City Clerk and 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 and fencing.
13. Notwithstanding the provisions of Condition #12 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings prior to installation of final landscaping provide that the petitioner shall first have filed 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 landscaping to secure installation of such landscaping.
14. The landscaping shown on the approved Final Landscaping Plan shall be maintained in good condition by the petitioner and any plant material that becomes diseased or dies shall be replaced with similar material annually.

II. Conditions Solely Associated with Special Permit/Site Plan Approval, Board Order # 501-94(2)

Notwithstanding any of the foregoing conditions which may be in conflict, the following conditions imposed by Board Order #501-94(2) shall apply solely to Restaurant/Pub Use on the parcels located at 342 and 344-346 Elliot Street (land presently known as Section 51 Block 41 Lots 10 and 12), and to the entire site to the extent applicable:

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 plans entitled:

Dunn Gaherin's, Alterations and Additions, 344 Elliot Street, Newton, MA 02464 all bearing the stamp and signature of Registered Architect Donald Lang and all dated 6/20/08:

- Sheet EX-1 - "Existing Basement & First Floor Plans"
- Sheet EX-2 - "Existing Second Floor Plan, Existing North & South Elevations"
- Sheet EX-3 - "Existing East and West Elevations"
- Sheet A-1 - "Proposed Basement Floor Plan"
- Sheet A-2 - "Proposed First and Second Floor Plan"
- Sheet A-3 - "Proposed North and South Elevations"
- Sheet A-4 - "Proposed East and West Elevations"
- "Partial Site Plan" dated October 15, 2008 by Donald Lang Architects, Inc.

344 Elliot Street, Newton, Massachusetts all bearing the stamp and signature of Verne T. Porter, Jr P.L.S. and dated as noted:

- Sheet 1 of 5 - "Proposed Additional Plan -Existing Parking," dated May 19, 2008
- Sheet 2 of 5 - "Existing Parking and Building Location," dated March 4, 2008
- Sheet 3 of 5 - "Area Plan," dated March 4, 2008
- Sheet 4 of 5 - "Area Plan," dated March 4, 2008
- Sheet 5 of 5 - "Zoning District Plan," dated March 4, 2008
- "Plot Plan of Existing Parking, Elliot St., Chestnut St., and Hale Street" dated June 10, 2008
- "Proposed Conditions Plan" dated May 19, 2008, revised October 21, 2008.

3. The petitioner shall not operate the business with more than 69 seats.
4. Parking spaces shall be striped and maintained at 9.5 feet in width.
5. Appropriate signage will be maintained near the entrance to the parking lot that directs drivers to back into the parking spaces and to the location of the handicapped parking stall at the rear of the parking lot.

6. The petitioner will make every effort to renew their parking lease for off-site parking and shall make every effort to find a nearby alternative location for staff parking should the Mary Immaculate Lourdes Church choose not to continue its lease with Dunn Gaherin's.
(Note: The Council may want to revisit this condition)
7. Notwithstanding the provisions of Condition #8.f. above, the Commissioner of inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of landscaping 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.

III. Conditions Solely Associated with Special Permit/Site Plan Approval, Board Order # 501-94

Notwithstanding any of the foregoing conditions which may be in conflict, the following conditions imposed by Board Order #501-94 shall apply solely to the Parking Use on the parcel located at 342 Elliot Street (land presently known as Section 51 Block 41 Lot 12), and to the entire site to the extent applicable:

1. That for the purpose of showing potential parking space layouts for both four vehicles and ten vehicles, plans entitled "Site Plan of Land, Newton, Mass. to Accompany the Petition of Robert Dunn & Seana Gaherin - 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing four parking spaces and "Site Plan of Land in Newton, Mass to Accompany the Petition of Robert Dunn & Seana Gaherin 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing parking spaces have been submitted. and for purposes of showing landscaping only, a "Site Plan of Land, Newton Mass." dated December 12, 1994 and revised through January 31, 1995 shall be followed.
2. That the petitioner shall continue use best efforts to assist and encourage restaurant customers to comply with all parking and other traffic safety regulations, especially on Elliot Street and Hale Street, and not to obstruct driveways.
3. That all deliveries to the restaurant occur from the parking area and at off-peak hours during the day.
4. That the addition of the parking area shall not allow additional seating in the restaurant.
5. That the Petitioners shall utilize a managed parking plan when the facility is to be utilized in conformity with the ten space parking plan referenced in Condition #1 above. **(Note: The Council may want to revisit this condition as the "managed parking plan" included valet parking service)**
6. That, to the extent necessary to implement the parking layout shown on plans cited in Condition #1 above, all other dimensional and design requirements of Section 30-19 not specifically referred herein are hereby waived.

7. That, after consultation with the Department of Planning and Development as to location, the Petitioner shall install a bike rack in a suitable location on the site or on the adjacent restaurant site.

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