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Candace Havens
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PUBLIC HEARING MEMORANDUM

Public Hearing Date: May 6, 2014
Land Use Action Date: May 27, 2014
Board of Aldermen Action Date: July 14, 2014
Action Expiration Date: August 11, 2014

DATE: May 6, 2014

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Daniel Sexton, Senior Planner

SUBJECT: **Petition #424-13**, UBC EQUITY PARTNERS, LLC/KS RETAIL MANAGE, LLC, for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow a future potential mixture of office, retail, services, restaurant, and storage uses, which will involve no proposed physical changes, in an existing building and to waive 37 parking stalls or to allow, if necessary, 40 off-site parking stalls in addition to the existing 185 parking stalls at 19-33 NEEDHAM STREET, Ward 5, Newton Upper Falls, on land known as SBL 51, 28, 25B, 25C, 25D, containing approximately 109,396 sf of land in a district zoned MIXED USE 1. Ref: Sec 30-24, 30-23, 30-13(b)(1), (3), (4), (5), 30-19(f)(1), (2) or 30-19(c)(3), and 30-19(m) of the City of Newton Rev Zoning Ord., 2012.

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.



19-33 Needham Street

EXECUTIVE SUMMARY

The property located at 19-33 Needham Street consists of a 109,396 square foot lot, which is improved with two attached buildings, located along Needham Street and Easy Street, and includes another smaller building in the west corner (rear) of the property. The site is currently occupied by an automotive retail store, authorized by Special Permit #141-91(2), and office uses. Currently, a significant portion of the commercial buildings are vacant. To allow for greater flexibility of leasing the other building, the petitioner is requesting a special permit to allow a mix of uses on this portion of the site including general retail, service, and warehouse. Consequently, the petitioner is seeking special permit approval to allow the leasing of off-site parking stalls, located within the Massachusetts Bay Transportation Authority (MBTA) right-of-way and Easy Street, a private right-of-way, and/or a waiver of parking stalls. Between the proposed parking stalls on-site, the leasing of off-site parking stalls, and a waiver of some parking stalls, the petitioner is looking to create an aggregate parking demand cap of parking stalls to accommodate the proposed mix of uses, with a built-in flexibility for future re-tenanting. The petitioner is also seeking a waiver of the dimensional and design controls for the parking facilities to legalize the existing noncompliant layout. The shape and topography of the subject property and its previous development patterns limit the petitioner's ability to provide the required number of parking stalls and a parking facility designed according to the Newton Zoning Ordinance.

The Planning Department has no real concerns with allowing the proposed mix of uses on the site, although the Department is concerned about the lack of consistent information provided by the petitioner. The *Newton Comprehensive Plan*, adopted on 2007, supports the development of a mix of uses along the Needham Street Corridor, "**as long as it is integrated with and helps produce transportation and other enhancements to make the impact of that development a positive one.**" The proposed parking and circulation configuration may lead to increased traffic congestion on and from the site at peak times in an area which studies have shown already has deficient traffic circulation. As such, the petitioner has been asked to consider ways to mitigate the potential off-site impacts of the project and integrate enhancements on-site that could improve pedestrian and vehicular interactions. The approvals granted under Special Permit #141-91(2) have been determined to be unclear, therefore it may be necessary to consider both the leasing of off-site stalls and an additional waiver of parking stalls to allow the proposed mix of uses. In turn, the reliefs being sought by the petitioner should allow for greater flexibility in re-tenanting the buildings and may eliminate the need for future tenants to request additional parking waivers as part of their permitting process.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The specific site is an appropriate location for the proposed general retail, service, and warehouse uses. (§30-13(b)(1), (3), (4), and §30-24(d)(1))
- The proposed uses can be operated so as not to adversely affect the

neighborhood. (§30-13(b)(1), (3), (4), and §30-24(d)(2))

- The requested use of off-site leased parking facilities, the waiving of required parking for the proposed mix of uses, and waivers to the dimensional and design controls for parking facilities will not result in the creation of a nuisance or hazard to vehicles or pedestrians on the site and in the surrounding neighborhood. (§30-19(f)(2), §30-19(c)(3), and §30-24(d)(3))
- The site, given the waivers to the dimensional and design controls for parking facilities, has adequate access for the types and numbers of vehicles for the current and proposed uses. (§30-20(m) and §30-24(d)(4))
- The requested waivers of the dimensional and design controls for parking facilities are appropriate because literal compliance with the dimensional parking requirements is impracticable due to the shape, grade, and the existing use and development patterns present on the subject property. (§30-19(m))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject site is located at the corner of Needham Street and Easy Street, which is at the northern end of the Needham Street Corridor and is near the village of Newton Highlands. The property is in a Mixed Use 1 zoning district (**ATTACHMENT A**), which extends along the west side of Needham Street. The properties located across Needham Street from the subject property are zoned Mixed Use 2. To the northwest of the subject property, across the MBTA right-of-way, the zoning transitions to Manufacturing and Public Use. The subject property is currently used for a mix of by-right and permitting commercial uses. The properties directly abutting the site contain a mix of commercial, industrial, residential (multi-family), and open space uses (**ATTACHMENT B**).

B. Site

The site consists of a 109,396 square foot lot and is improved with two attached commercial buildings, located along Needham Street and Easy Street, and another smaller commercial building in the west corner (rear) of the property. The buildings have been in existence on the site since the 1960s. Due to the unique topography and shape of the parcel, the property functions as two separate lots: the Upper Lot is accessed via Easy Street, and the Lower Lot is accessed from Needham Street. These unique characteristics of the subject property limit the circulation of vehicles on and from the site and the functionality of the buildings. The layout of the parking facility on the site, while not ideal, appears to have been dimensionally compliant in the approved site plan under Special Permit #141-91(2).

Since the approvals authorized under Special Permit #141-91(2), it appears that the parking facility layout has been restriped. The resulting parking and circulation

configuration is dimensionally noncompliant, including substandard maneuvering aisles, parking spaces, landscaping, and lighting. This type of situation is not uncommon among older commercially developed properties in the area. As businesses expand and change or property ownership changes, the knowledge of previous special permit approvals can be lost, which often results in parking facility changes that are noncompliant.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

As proposed, the current commercial uses, which includes a by-right office use and a permitted automotive retail use, will continue on the site. To allow the petitioner greater flexibility in re-tenanting the buildings on the site and to increase the mix of uses, the petitioner is seeking a special permit to allow general retail, service, and warehouse uses (herein referred to as “future potential uses”) on the site. The petitioner initially expressed interest in developing a restaurant use, but has since withdrawn this use from the special permit request. According to the Zoning Review Memorandum (**ATTACHMENT C**), many of the future potential uses have previously operated on the property when it was zoned Manufacturing.

The following charts indicate the square footages for the existing and proposed uses on the site:

<u>Existing Uses</u>		<u>Proposed Uses</u>	
Office	9,047 s.f.	Office	23,110 s.f.
Automotive Retail	16,000 s.f.	Automotive Retail	16,000 s.f.
Vacant-Allowed By-Right*	41,242 s.f.	Warehouse/Storage	9,699 s.f.
<hr/>		Retail/Service	9,117 s.f.
Total	66,289 s.f.	Medical Office **	8,363 s.f.
		<hr/>	
		Total	66,289 s.f.

* In the Mixed Use 1 zoning district, the allowed by-right uses include office, research and development facilities, laboratory or research facilities, manufacturing, assembly or fabrication of materials manufactured off-premises, and uses similar or accessory to those authorized by §30-13(a).

** Medical Offices are specified in this table as they have a greater parking requirement than general office uses. The use of a space for any office (medical or general) is allowed by-right.

The Planning Department has no concerns with the proposed mix of uses on the site. According to the *Newton Comprehensive Plan*, adopted in 2007, the Needham Street Corridor was identified as an area of the City where a mix of uses could and should be accommodated to contribute to the character and vitality of the community. However, the Planning Department is concerned that the total square footage as presented by the petitioner differs from the known square footage for the buildings on the site, which was identified as 74,860 square feet in

Special Permit #141-91(2). It is recommended that the petitioner speak to this issue before a working session, as it will affect the parking demand and requirements. In consideration of the proposed mix of uses on the site, the recently amended Notice of Activity and Use Limitation has identified that the current commercial uses are at no significant risk as long as the AUL Area is maintained (**ATTACHMENT D**).

B. Building and Site Design

The petitioner is proposing a redevelopment concept with a mix of uses located on a single site, which will not require any exterior alterations or enlargements of the current buildings. As such, the petition will not result in an increase of the gross floor area present on the site. Although the final configuration of the proposed mix of uses within the current buildings will be flexible, should this special permit be approved. The petitioner has indicated that these uses will be arranged so as to maintain the aggregate parking demand cap established under this special permit.

In accordance with the basis of the approvals granted under Special Permit #141-91(2), the petitioner is proposing to maintain the separation between the automotive retail use and other uses on the site. In Special Permit #141-91(2) the Board had concerns regarding the potential impacts of noise, fumes, and traffic that would be generated by the automotive retail use. The petitioner is proposing to maintain the separation and minimizing of conflicts between uses by relegating the activities of the other uses through the building entrances on the Lower Lot and the northern portion of the Upper Lot. This approach is further reinforced by the unique shape and topography of the site, and the orientation of the automotive retail use toward Easy Street.

The project does not include the installation of any new landscaping or screening enhancements. The petitioner is, however, proposing to grant an easement to the City to facilitate the legal transit of pedestrians and cyclists from the Newton Upper Falls Greenway (NUFG) across the subject property. The petitioner is also willing to install a way-finding sign at the terminus of the trail in the Upper Lot to guide users on their property.

The Planning Department has no particular concerns with the proposed functionality of the buildings. Based on the limitations of the site, the Planning Department encourages the petitioner to arrange tenants and manage the site in a manner that integrates the activities of the future potential uses into a single cohesive development to the extent possible. The petitioner is also encouraged to grant legal access to the City for pedestrians and cyclists to traverse their site to the NUGF via Easy Street and to work with the City's Traffic Division to erect additional way-finding signage near the intersection of Easy Street and Needham Street. Subsequent sections of this memorandum discuss elements of the site design with respect to the specific subject matter.

C. Parking and Circulation

The site is accessible via multiple modes of transportation from Needham Street, Easy Street, and the new NUFG. To facilitate accessibility of employees and patrons on and from the site, and to accommodate the parking requirements for the future potential uses, the petitioner has proposed a new layout for the parking facility. Per the pavement marking plan, the petitioner is proposing to provide 126 parking stalls on-site and to lease 31 off-site parking stalls (23 parking stalls are located on the MBTA right-of-way and 8 parking stalls are along Easy Street). These parking stalls have efficiently existed and serviced the site for many years, but have never been legalized. In addition, the petitioner is also requesting waivers from the dimensional and design controls for the on- and off-site parking facilities including the minimum dimensions of parking stalls, setback distance of parking stalls from a street, maneuvering aisles, landscaping, and lighting. If it is determined necessary, the petitioner has also sought an additional waiver of parking stalls to be able to bridge any gaps between the number of parking stalls available (on- and off-site), the number of parking stalls previously waived, and the new parking requirement. Through this parking management approach, the petitioner is looking to create an aggregate parking demand cap (i.e. available (on and off the site) + waived stalls + parking buffer) of parking stalls to accommodate the proposed mix of uses, with a built-in flexibility for future re-tenanting.

To establish a baseline for determining whether any additional parking stalls need to be waived, it is necessary to understand the number of parking stalls provided and waived under Special Permit #141-91(2). Per the approved site plan, 121 parking stalls were shown on the site. An additional 37 parking stalls off-site were also shown, but it does not appear that these spaces were formalized under the special permit approval (**ATTACHMENT E**). It is also unclear whether the dimensions and design of the parking facility shown on that site plan actually complied with the dimensional and design controls prescribed in the Newton Zoning Ordinance.

Parking Calculation Per Uses Approved Under Special Permit #141-91(2)

<u>Use Type</u>	<u>Parking Req.</u>	<u>Square Footage</u>	<u>Req. Parking Stalls</u>
Retail (NTB)	1 stall per 300 s.f.	16,000 s.f.	54
Office*	1 stall per 250 s.f. up to 20,000 s.f.	20,000 s.f.	80
	1 stall per 333 s.f. above 20,000 s.f.	29,100 s.f.	88
Warehouse**	1 stall per 2,500 s.f. + .25 stalls per employee	9,760 s.f.	4
Total		74,860 s.f.	226

* Based on the parking requirements for office required under 1974 Zoning Ord.

** Based on 4 employees

Based on the calculation of the parking requirements for the by-right and permitted uses (226) and the available parking stalls shown on-site (121), for Special Permit #141-91(2), it appears the parking stall waiver may have been as high as 105 parking stalls. If, however, the off-site parking stalls (37) shown on the approved site plan are included with the available parking stalls for the site, the number of waived parking spaces could have been reduced to 68. The determination of the previous waiver is further complicated, because the approved board order is silent on the number of waived parking stalls, and that the petitioner was required to remove approximately 15 parking spaces shown on the approved plan between the building and Needham Street (**ATTACHMENT E**). As a result, and after speaking with the City's Law Department, staff can only conclude that the previous parking waiver, granted under Special Permit #141-91(2), was for between 37 and 68 parking stalls.

Parking Calculation for Future Potential Uses Requested Under Special Permit #424-13

<u>Use Type</u>	<u>Parking Req.</u>	<u>Square Footage</u>	<u>Req. Parking Stalls</u>
Retail (NTB)	1 stall per 300 s.f. plus .33 stalls per employee	16,000 s.f. (<i>employees unknown</i>)	54 + employees
Retail/Service	1 stall per 300 plus .33 stalls per employee	9,117 s.f. w/9 employees	34
Office*	1 stall per 250 s.f. up to 20,000 s.f.	20,000 s.f.	80
	1 stall per 333 s.f. above 20,000 s.f.	3,110 s.f.	10
Medical Offices**	1 per 200 s.f.	8,363 s.f.	42
Warehouse	1 stall per 2,500 s.f. plus .25 stalls per employee	9,699 s.f. w/4 employees	5
Total		66,289 s.f.	225, plus parking for retail employees

* Based on the parking requirements for office uses required under the 1974 Zoning Ordinance.

** The proposed medical office uses will not include a laboratory or pharmacy in the building.

In essence, the parking requirement for NTB and the general office uses has not changed, but the proposed 9,117 square feet of retail/service, 8,363 square feet of medical office, and 9,699 square feet of warehouse off-set the number of parking stalls required for the existing uses. Per the calculation of the parking requirements for the proposed future potential uses (225), the available parking stalls identified on and off the site (157), and, if, the maximum number of parking stalls waived (68) under Special Permit #141-91(2) is used, the current special permit request does not appear to need an additional waiver of parking. To accommodate a buffer of parking stalls for flexibility in re-tenanting, an additional five parking stalls should be added to the aggregate parking demand cap, which

will necessitate a waiver of parking stalls. It is also important to recognize that the total square footage as presented by the petitioner differs from previous applications and this should be expanded. Furthermore, all the available parking stalls identified on and off the site, except for the handicap parking spaces, are dimensionally noncompliant.

The petitioner has submitted a parking evaluation study developed by MDM Transportation Consultants, Inc. The study offers an analysis of the peak parking demand for the future potential uses with respect to the Institute of Traffic Engineers parking generation modeling. According to the parking rates used in the study, the existing tenants (35) and the vacant building space (143), re-tenanted with an allowed by-right office use, would have a total estimated peak parking demand of 178 parking stalls. Under the proposed uses scenario, the combination of the existing tenant uses (35) and the future potential uses (122) would have a total estimated peak parking demand of 157 parking stalls, below the calculated parking requirements of the Newton Zoning Ordinance. While the study indicates that not all the uses are expected to exhibit peak parking demand concurrently, there is not data to support this statement.

In terms of circulation, the parking facilities on the site are separated into the Upper Lot, which is accessed via Easy Street, and the Lower Lot, which is accessible directly from Needham Street. The proposed parking facility configuration, which deviates from the previously approved site plan and is not a reflection of the current pavement markings on the site, attempts to balance the maneuvering needs of vehicles and to minimize pedestrian conflicts. However, since the two parking areas are not connected, internal movement options are expensive and limited. The City's Transportation Division of the Public Works Department did provide input to the petitioner concerning the proposed circulation plan (**ATTACHMENT F**). To ensure the development will minimize off-site impacts, the petitioner has incorporated some of the enhancements suggested by staff, as well as eliminating certain inefficient features of the proposed layout. Specifically, the petitioner has removed certain parking stalls from the layout to improve vehicle maneuverability. The current submitted pavement marking plan, dated March 26, 2014, reflects staff input and appears to be the best possible payout for the site.

According to correspondences with the City's Chief Long Range Planner, the Needham Street Corridor has been identified in various studies as a pivotal roadway for the future prosperity of Newton and the region. As a result, the roadway has been identified as a roadway in need of certain improvements and upgrades, which may include traffic control measures near the subject property. If these traffic control measures are developed, the turning movements from the site may be restricted. In light of the potential roadway improvements, the Department has encouraged the petitioner to consider developing a common

access driveway with the adjacent Avalon Development to facilitate more efficient and safer pedestrian and traffic movements from the subject property. The petitioner has indicated that this type of improvement is a non-starter for the subject property.

The Planning Department understands how the unique shape and topography and previous development patterns of the subject property limit the petitioner's ability to provide a parking facility designed in accordance with the Newton Zoning Ordinance. Thus the Planning Department is supportive of the proposed pavement marking plan and the requested waivers related to the dimensional and design controls. However, the Planning Department has the following concerns with the petition as proposed:

- Traffic generated from the future potential uses may lead to increased traffic congestion on and from the site.
- The variation of the total building square footage will impact the requested relief being sought, specifically the waiver of parking stalls.
- The petitioner is encouraged to either remove the portion of the Upper Lot that will not long be used for the parking of vehicles (northwest corner of the lot) or use this area as snow storage. Regardless of the selected option, the edge of this area should be re-vegetated with all season plantings to screen the activities of the site and discourage the unwanted trespass of vehicles on to the NUFG.
- How will snow storage be handled throughout the site?
- The petitioner should consider additional pavement striping or signage to identify areas where the interactions between pedestrians, cyclists and motor vehicles.
- The petitioner is encouraged to work with the Transportation Division of the Public Works Department to have additional way-finding signage for the NUFG installed near the intersection of Easy Street and Needham Street.
- The petitioner's transportation consultants should examine whether the future potential uses have different utilization peaks, which may support the granting of an additional waiver of parking stalls if needed.
- The petitioner should respond to all of the concerns raised by the Transportation Division of Public Works Department regarding the parking evaluation and the proposed pavement marking plan.
- The petitioner should consider additional site improvements that facilitate access to other transportation modes and will integration the subject property into the surrounding neighborhood.

- Finally, the number of waivers affecting Special Permit #141-91(2) should be determined so as to clarify the number of waivers that need to be sought by this special permit, if any.

D. Landscape Screening

No landscaping plan was submitted for this petition. Based on the potential off-site impacts that may be generated by the future potential uses, especially near the NUFG, the Planning Department encourages the petitioner to consider plantings that would reinforce the existing vegetative buffer along the NUFG as a public enhancement for the immediate area.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (**ATTACHMENT A**) provides a complete analysis with respect to zoning. The petitioner is seeking a special permit to allow general retail, service, and warehouse type uses, in addition to the allowed by-right office use and the permitted automotive retail use. In order to accommodate the future potential uses, the petitioner is also seeking a special permit to allow the leasing of off-site parking spaces to be counted towards meeting the parking requirements for these uses and, if necessary, the waiving of additional parking stalls. The petitioner is also seeking waivers from the dimensional and design controls proscribed in Section 30-19(h) of the Newton Zoning Ordinance for parking facilities with more than five parking stalls, which differs from the Zoning Review Memorandum. This requested relief is due to dimensional and technical deficiencies that were found in the layout and design of the parking facilities on the submitted site plan.

B. Engineering Review:

This project does not require review by the Engineering Division of Public Works as the petition is not increasing the impervious surfaces on the lot by more than 400 square feet or 4%.

V. ZONING RELIEFS SOUGHT

Based on the Zoning Review Memorandum, the petitioner is seeking a Special Permit for the following reliefs:

- Section 30-13(b)(1) to allow a retail use in the Mixed Use 1 District.
- Section 30-13(b)(3) to allow a warehouse use in the Mixed Use 1 District.
- Section 30-13(b)(4) to allow a service use in the Mixed Use 1 District.
- Section 30-19(f)(1) and (f)(2) to allow for the leasing of off-site parking stalls **AND/OR** Section 30-19(c)(3) to waive parking stalls.

- Section 30-19(m) to allow exceptions to the provisions of Section 30-19(h).

VI. PETITIONERS' RESPONSIBILITIES

The petitioner should provide the following documents prior to being scheduled for a working session:

- Clarification of the total square footage for the buildings on the site;
- Updated parking calculations for the site taking into consideration the total square footage correction;
- A revised pavement marking plan reflecting staff input;
- A landscaping plan incorporating the enhancements suggested by staff; and
- A final site plan reflecting any and all changes proposed for the subject property.

ATTACHMENTS:

Attachment A: Zoning Map

Attachment B: Land Use Map

Attachment C: Zoning Review Memorandum

Attachment D: Notice of Activity and Use Limitation, recording date of December 17, 2013

Attachment E: Board Order #141-91(2), dated December 26, 1991

Attachment F: Transportation Division of Public Works Memorandum, dated May 6, 2014

424-13 Zoning Map

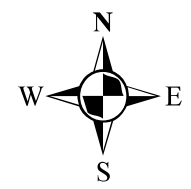
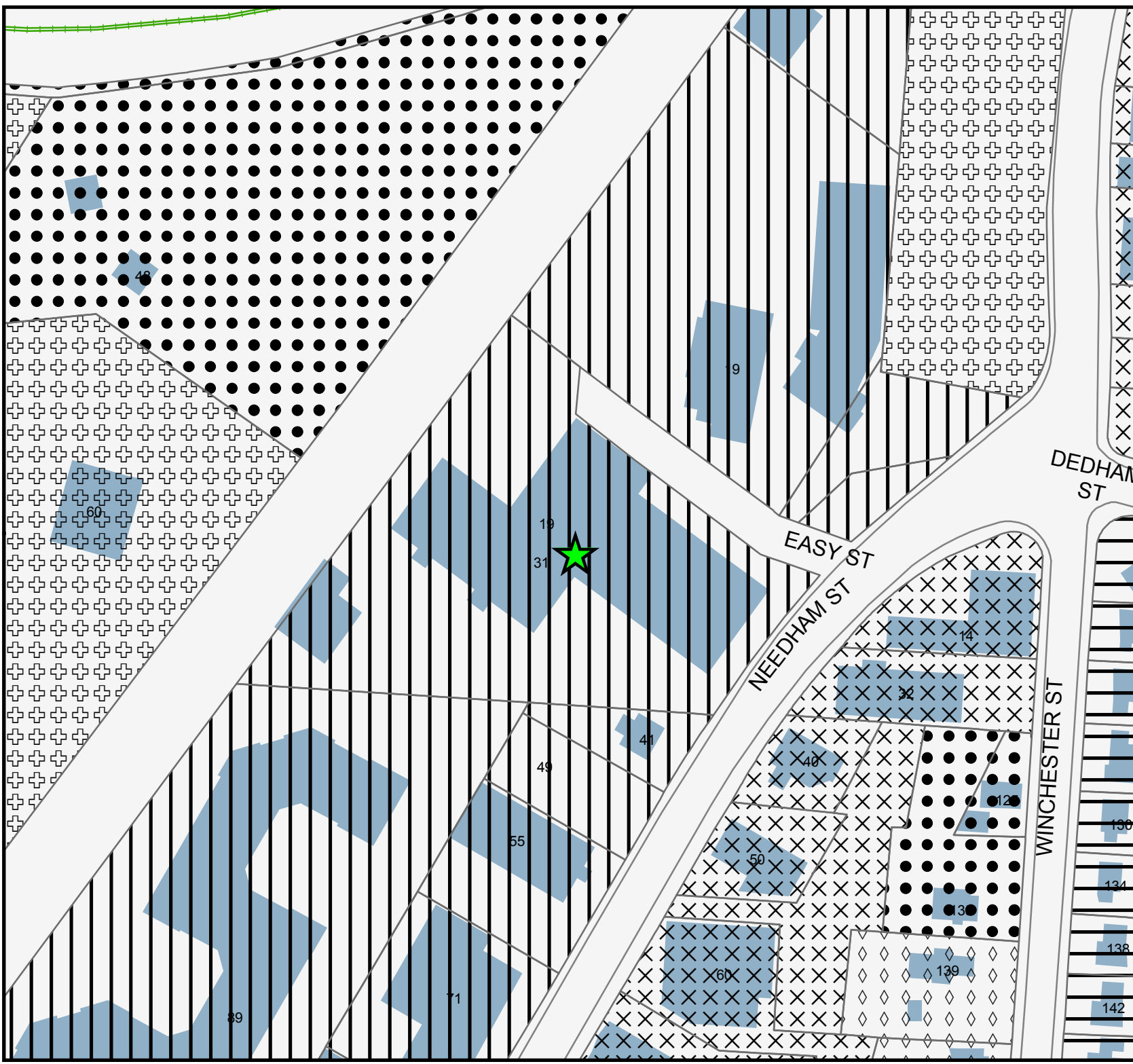
19-33 Needham Street

*City of Newton,
Massachusetts*

ATTACHMENT A

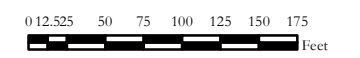
Legend

- Street Names
- Single Residence 3
- Multi-Residence 1
- Manufacturing
- Mixed Use 1
- Mixed Use 2
- Public Use
- Property Boundaries
- Building Outlines



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



424-13 Land Use Map 19-33 Needham Street

*City of Newton,
Massachusetts*

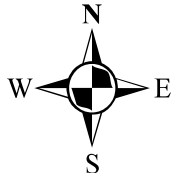
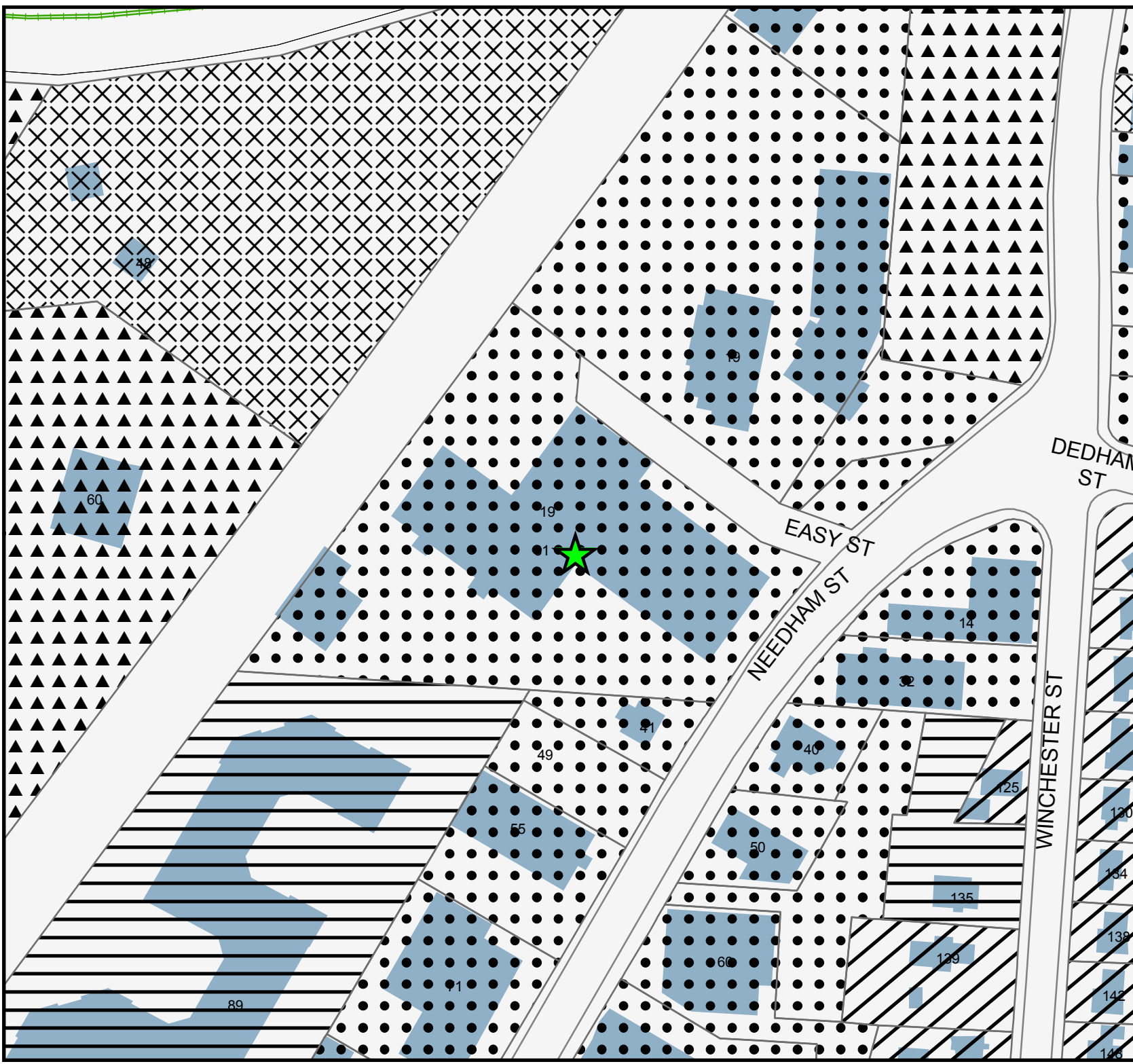
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Street Names

Land Use

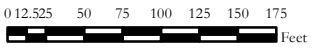
- Single Family Residential
- Multi-Family Residential
- Commercial
- Industrial
- Open Space
- Property Boundaries
- Building Outlines

ATTACHMENT B



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





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Mayor

Attachment C

City of Newton, Massachusetts

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Candace Havens
Director

ZONING REVIEW MEMORANDUM

Date: December 4, 2013

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Alan Schlessinger, Attorney for the applicant
Candace Havens, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to allow service, retail and warehouse uses in the MU1 zone, and to waive 37 parking stalls.

Applicant: KSKIM UBC Equity Partners LLC	
Site: 19-33 Needham Street	SBL: 51 28 25 25D
Zoning: MU1	Lot Area: 109,396 square feet
Current use: Retail/office	Proposed use: Mixed use

BACKGROUND:

The property at 19-33 Needham Street consists of a 109,396 square foot lot improved with two attached buildings at the street-front, and another smaller building to the rear of the property. Early building permits for the site show the existence of a gasoline service station in the 1920's. By 1941, an office and service station had been erected on the site as well. It is unclear from the permits on file whether these buildings were razed or modified in 1960 to make way for a much larger building for office and warehouse use, which created the present configuration. At that time, the property was zoned "Manufacturing", and retail, office and storage were allowed uses in the district. The property received a special permit in 1991 for retail use as a tire store and an associated parking waiver of fifteen stalls, based on the practice that many of the cars at the tire store would be inside the building being serviced. The waiver allowed the property owner to reconfigure the front of the property with landscaping so vehicles were no longer backing out directly onto Needham Street. The site is currently occupied by the retail use and offices, with a portion of the buildings vacant.

The survey shows that the property has 145 on-site parking stalls. In total, it has access to 185 parking stalls with 40 of the stalls located off the property; 29 parking spaces are available under a License

Agreement with the MBTA adjacent to the MBTA rail right of way, and 11 spaces are located on Easy Street, a private way. Parking for the as-of-right uses of retail and office require 182 stalls, thus creating a deficit of 37 on-site stalls. The applicant seeks to maintain the existing on-site stalls, as well as legitimize the 40 off-site stalls currently used by tenants. The applicant is proposing a mix of uses which will not increase the demand for parking stalls beyond that which is available, already waived by the 1991 special permit, and permitted through the proposed waiver.

The as-of-right zoning for the district allows the office use, and a special permit (BO # 141-91) was issued in 1991 allowing for the retail use of the property for NTW. The applicant is requesting a special permit for the property to allow for a mix of uses, including the as-of-right offices, as well as more retail and service uses under the zoning ordinance section 30-13(b). The exact square footages of the proposed uses and configurations are flexible at this point, but will be capped by the aggregate parking waiver required, and will not exceed the existing number of spaces (145 existing stalls, 29 MBTA property stalls, 11 stalls on Easy Street and 15 waived stalls for a total of 200 stalls).

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

- Zoning Review Application, prepared Alan Schlesinger, Attorney, dated 10/23/13
- Site Plan, prepared by Precision Land Surveying, dated 6/5/13
- Parking Evaluation, prepared by MDM Transportation Consultants, dated 10/15/13
- Floor Plans, prepared by KS Partners, dated 6/19/13
- Special Permit Board Order #1-76, dated 2/18/1976
- Special Permit Board Order #153-81, dated 6/15/1981
- Special Permit Board Order #141-91, dated 12/26/91
- Building Permit #852, dated 11/23/1939
- Building Permit #333, dated 3/31/1941
- Building Permit #530, dated 9/20/1960
- Photos

ADMINISTRATIVE DETERMINATIONS:

1. The applicant is proposing office, retail, service and warehouse use for the property. According to Section 30-13(b), a special permit is required to locate these uses in the Mixed Use 1 District.
2. The property has 145 parking stalls, as well as 29 stalls located off-premises on the adjacent MBTA property, and 11 on a private way, Easy Street for a total of 185 stalls, plus 15 stalls waived by the 1991 special permit. The as-of-right and permitted uses on site require 182 stalls. The applicant proposes a mix of uses which will not increase the parking requirement for the site beyond that which is available on-site and through the proposed waiver of 37 stalls. A special permit per Section 30-19(f)(1) and 30-19(f)(2) is required to utilize parking stalls on a different property (those stalls located on MBTA property and Easy Street). Conversely, the applicant may seek a special permit to waive the number of on-site parking stalls required for the site's uses per Section 30-19(c)(3). The proposed mix of uses should not exceed the parking demand of 200 parking stalls.

3. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-13(b)(1)	To allow retail use in the Mixed Use 1 District	S.P. per §30-24
§30-13(b)(3)	To allow warehouse use in the Mixed Use 1 District	S.P. per §30-24
§30-13(b)(4)	To allow service use in the Mixed Use 1 District	S.P. per §30-24
§30-19(f)(1), (2) <u>OR</u> §30-19(c)(3)	To allow for 40 off-site parking stalls <u>OR</u> To waive 37 parking stalls	S.P. per §30-24

26 + #

Attachment D



2013 00257233

Bk: 63073 Pg: 234 Doc: AMEND
Page: 1 of 267 12/17/2013 03:05 PM

Form 1082B

SECOND AMENDMENT TO NOTICE OF ACTIVITY AND USE LIMITATION

M.G.L. c. 21E, § 6 and 310 CMR 40.0000

Disposal Site Name: 19-33 Needham Street, Newton, MA 02461
DEP Release Tracking No.(s): 3-12525; 3-17576; 3-12967

WHEREAS, a Notice of Activity and Use Limitation has been recorded with the Middlesex South Land Court Registry District on November 16, 1995 as Document No. 987747 and as noted on Certificate No. 183522, in Book 1047, Page 172; [Said Notice of Activity and Use Limitation was previously amended by an Amendment to a Notice of Activity and Use Limitation dated October 11, 2001 and registered with the Land Registration Office of the Middlesex South Registry District as Document No. 1185630 and as noted on Certificate No. 0205688, in Book 1158, Page 138] (said Notice of Activity and Use Limitation and any amendments thereto are collectively referred to herein as "Notice");

WHEREAS, said Notice sets forth limitations on use and activities, conditions and obligations affecting certain parcel(s) of land situated at 19-33 Needham Street in Newton, Massachusetts 02461, Middlesex County, Massachusetts with the buildings and improvements thereon, said land being more particularly bounded and described in Exhibit A attached hereto and made a part hereof ("Property"). Said limitations on use and activities are consistent with the terms of an Activity and Use Limitation Opinion ("AUL Opinion") dated December 11, 2013, signed and sealed by Bruce Hoskins, holder of a valid license issued by the Board of Registration of Waste Site Cleanup Professionals, pursuant to Massachusetts General Laws Chapter 21A, Sections 19-19J (the holder being referred to as "LSP") attached to the Notice of Activity and Use Limitation as Exhibit C and made a part thereof, in order to maintain at the Property a condition of No Significant Risk (such conditions and terms being defined in 310 CMR 40.0000); and

WHEREAS, the undersigned LSP, in accordance with Chapter 21E and the MCP, has issued and signed an AUL Opinion, dated December 11, 2013, and filed with DEP at its Northeast Regional Office under Release Tracking No.(s). 3-12525, 3-17576, 3-12967, attached hereto as Exhibit B and made a part hereof. Said AUL Opinion explains that the implementation of the following proposed changes in Site Activities and Uses at the Property will maintain a condition of No Significant Risk;

and

NOW THEREFORE, in accordance with M.G.L. c. 21E and the MCP, the undersigned UBC Equity Partners, LLC, of 130 New Boston Street, Woburn, Massachusetts, Middlesex County, being the owner of the Property pursuant to a deed recorded with the Middlesex South Registry of Deeds in Book 48484, Page 508, 520 and 522 hereby amends said Notice as follows:

1. Activities and Uses Inconsistent with the AUL Opinion. The following activities and uses, if implemented within the AUL Area, may result in a Significant Risk of harm to health, safety, public welfare, or the environment:

Return to:

Frederick S. Lebow
FSL Associates, Inc.
358 Chestnut Hill Avenue

* Deregistered
Doc 1439773

5
M

- (i) Use of the property as a residence;
 - (ii) Use of the property to grow fruits and/or vegetables for human consumption;
 - (iii) Changes to, or destruction of, the floor or foundations of the two buildings which would render underlying soil accessible (except as described below for supervised excavation);
 - (iv) Excavation of soil from beneath the paved areas of the property and building footprints and in landscaped areas at depths greater than three feet, unless it is performed under the supervision of individuals who are qualified to manage impacted soil in accordance with applicable regulations and policies that may be in effect, so as to limit human exposure potential; and
 - (v) Land uses that are inconsistent with the above criteria.
2. Permitted Activities and Uses. A condition of No Significant Risk to health, safety, public welfare, or the environment exists for any foreseeable period of time so long as any of the following activities and uses occur within the AUL Area:
- (i) Activities associated with the property's current commercial uses that do not involve the disturbances of site pavement, landscaped areas at depths greater than three feet or the existing foundations or floors of the two buildings which would render the underlying soil accessible;
 - (ii) Use of the property as a school and daycare facility;
 - (iii) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities and uses set forth in this paragraph.
3. Obligations and Conditions. The following obligations and/or conditions must be maintained within the AUL Area in order to maintain a condition of No Significant Risk:
- (i) The property pavement, landscaped areas to a depth of three feet and the two buildings' concrete floors and foundations shall be maintained in good repair so as to render the underlying soil inaccessible, and
 - (ii) If excavation of soil beneath the pavement or building footprints, or landscaped areas at depths greater than three feet is to occur, any potentially contaminated soil and debris removed from excavations will be managed in accordance with applicable regulations and guidelines that may be in effect, so as to limit human exposure potential.


In all other respects the provisions of said Notice remain unchanged.

UBC Equity Partners, LLC ("Owner") authorizes and consents to the filing and recordation/and or registration of this Confirmatory Second Amendment to Notice of Activity and Use Limitation, said Confirmatory Second Amendment to become effective when executed under seal by the undersigned LSP and recorded and/or registered with the appropriate Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this 9th day of December, 2013.

UBC EQUITY PARTNERS, LLC, a
Delaware limited liability company

By: KS Retail Manager, LLC, a
Massachusetts limited liability company,
its Manager

By: 
Kambiz Shahbazi, Manager

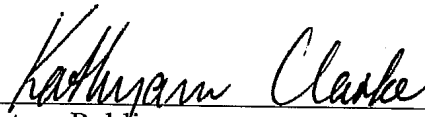
COMMONWEALTH OF MASSACHUSETTS

NEW YORK, ss

December 9th, 2013

On this 9th day of December, 2013, before me, the undersigned notary public, personally appeared Kambiz Shahbazi, proved to me through satisfactory evidence of identification, which was a drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as the Manager of KS Retail Manager, LLC, in its capacity as the Manager of UBC Equity Partners, LLC

[SEAL]

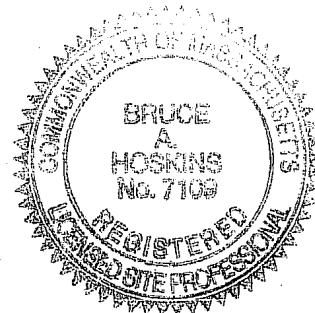

Notary Public:
My commission expires:

Kathyann Clarke
Notary Public-State of New York
No. 01CL6068060
Qualified in Kings County
Commission Expires December 24, 2013

The undersigned LSP hereby certifies that he executed the AUL Opinion dated December 11, 2013, filed with DEP at its Northeast Regional Office under Release Tracking No.(s) 3-12525, 3-17576, 3-12967 attached hereto as Exhibit B and made a part hereof, and that, in his Opinion, this Second Amendment to Notice of Activity and Use Limitation is consistent therewith.

Date: 12/12/13

B a 780
Bruce Hoskins
[LSP SEAL]



Rockingham, ss

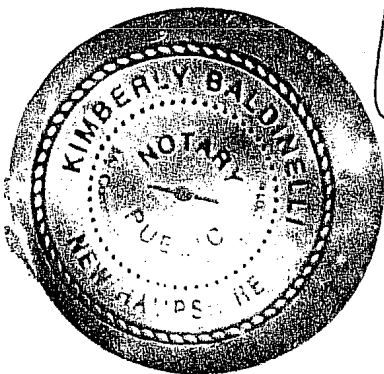
STATE OF NEW HAMPSHIRE

December 12, 2013

On this 12th day of December, 2013, before me, the undersigned notary public, personally appeared Bruce A. Hoskins (name of document signer), proved to me through satisfactory evidence of identification, which were Proved with NH Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

as the Licensed Site Professional for the property.

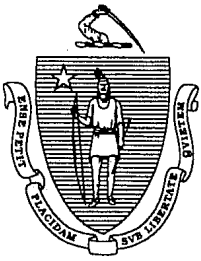
Kimberly Baldinelli (official signature and seal of notary)
Kimberly Baldinelli



Kimberly Baldinelli
Notary Public, State of New Hampshire
My Commission Expires Apr. 13, 2016

Upon recording, return to:

(Name and Address of Owner)



424-13

The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

December 13, 2013

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of registration of a Foreign Limited Liability Company was filed in this office by

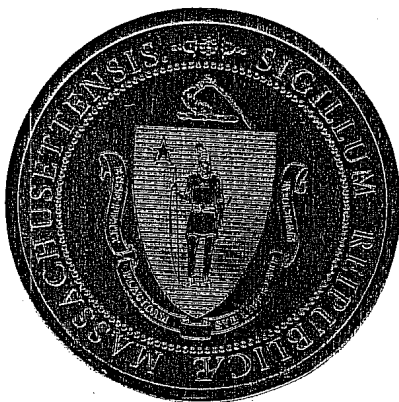
UBC EQUITY PARTNERS, LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **March 7, 2006**.

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; and that, said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **KS RETAIL MANAGER, LLC**

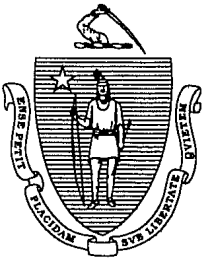
I further certify that the name of persons authorized to act with respect to real property instruments listed in the most recent filings are: **KS RETAIL MANAGER, LLC**



In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin

Secretary of the Commonwealth



424-13

The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

December 13, 2013

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

KS RETAIL MANAGER, LLC

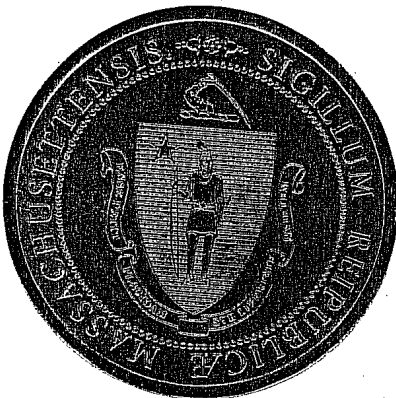
in accordance with the provisions of Massachusetts General Laws Chapter 156C on **March 6, 2006.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation or withdrawal; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **KAMBIZ SHAHBAZI**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **KAMBIZ SHAHBAZI**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **KAMBIZ SHAHBAZI**



In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin
Secretary of the Commonwealth

Attachment E

#141-91(2)

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 26, 1991

ORDERED:

That the Board finding that the public convenience and welfare will be substantially served by its action 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, the following SPECIAL PERMIT/SITE PLAN APPROVAL is hereby granted in accordance with the recommendation of the Land Use Committee and based upon the following specific findings, facts and conclusions, and the reasons given by the Committee therefor through its Chairman, Susan M. Basham:

1. The Board finds that the proposed automotive use will occupy vacant commercial space.
2. The Board finds that by removing 15 parking spaces at the front of the building, which require the motorists to back out onto Needham Street, the proposed development will improve vehicular safety.
3. The Board finds that pedestrian safety will be improved by the installation of a sidewalk and curbing.
4. The Board finds that the proposed development will improve the streetscape by the planting of additional trees and landscaping.
5. The Board finds that the parking waiver will not result in congestion of the site.

Petition number: 141-91(2)

Petitioner: NTW, Inc./Sally Starr & Carol Donovan,
Trustees

Location: 21 Needham Street, Ward 6, Section 51,
Block 28, Lot 25, containing
approximately 109,399 square feet of land

Owner: Sally Starr & Carol Donovan, Trustees

6. That the Petitioner shall remove fifteen (15) parking spaces in front of the site and replace them with a landscaped area, a sidewalk for pedestrians and granite curbing along the Needham Street frontage.
7. That a landscape plan which includes street trees along the front of the premises be submitted for review and approval by the Director of Planning and Development.
8. That employees shall park in an area designated at the rear of the site.
9. That there shall be no outside staging or storage of tires or display of other products to be sold.
10. That there shall be no outside storage of used tires or other refuse material, and that all such materials be disposed of in accordance with applicable laws.
11. That the location and screening of any new dumpster shall be reviewed and approved by the Director of Planning and Development.
12. That the free-standing sign and planter at the corner of Easy Street may be relocated for greater site distance for motorists and better visibility of the property.
13. That no building permit shall be issued in pursuance of the SPECIAL PERMIT/SITE PLAN APPROVAL until:
 - a. A final landscape plan including lighting and fixture design, and indicating the location, number, size and type of landscaping and landscape materials to be installed shall have been submitted to and approved by the Director of Planning and Development and a statement certifying such approval shall have been filed with the City Clerk and the Inspectional Services Department.
 - b. The City Engineer has reviewed and approved plans for the installation of sidewalks and curbing.
 - c. The Petitioner shall have recorded with the Registry of Deeds for the Southern District of Middlesex County a certified copy of this Board Order granting this SPECIAL PERMIT/SITE PLAN APPROVAL with appropriate reference to the book and page of the recording of the Petitioner's title deed or notice of lease endorsed thereon.
 - d. A certified copy of such recorded notice shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development.

14. That no building or structure or portion therefore subject to this SPECIAL PERMIT/SITE PLAN APPROVAL shall be occupied until:
- a. The Petitioner shall have filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by a registered architect or registered engineer certifying that condition 1 has been complied with.
 - b. There shall have been filed with the City Clerk, the Inspectional Services Department and the Department of Planning and Development a statement by the City Engineer certifying that the final construction details of the sidewalks and curbing installation have been constructed to standards of the City of Newton Engineering Department.
 - c. There shall have been filed with the City Clerk, the Commissioner of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials and final landscape features, parking areas, and lighting installation.
 - d. Notwithstanding the provisions of section 14c., hereof, the Commissioner of Inspectional Services may issue one or more certificates for temporary occupancy of all or portions of the building prior to installation of final landscaping provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining landscaping to secure installation of such landscaping.

Under Suspension of Rules

Readings Waived and Approved

18 yeas 5 nays (Ald. Bauckman,


Bryson, Kraus, Mansfield and Taglienti)

1 absent (Ald. Balser)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT and SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 26, 1991. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT and

SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the Planning and Development Board and the City Clerk.

ATTEST:


(SGD) EDWARD G. ENGLISH, City Clerk
Clerk of the Board of Aldermen

I, Edward G. English as the Clerk of the Board of Aldermen and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON hereby certifies that Twenty days have elapsed since the filing of the foregoing decision of the Board of Aldermen in the Office of the City Clerk on December 26, 1991 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST 
EDWARD G. ENGLISH, City Clerk

Attachment F

Memorandum

To: Daniel Sexton
Senior Planner

CC: Bill Paille
Director of Transportation

From: Zach Bosch
Transportation Engineer

Date: 5/6/2014

Re: 19-33 Needham Street Parking and Pavement Marking Plan

The Transportation Department for the City of Newton has received and reviewed the parking and pavement marking plan for the 19-33 Needham Street special permit application as prepared for KS Partners by MDM Transportation Consultants Inc and has the following recommendations.

Pavement Marking Plan

- The three new proposed parking spaces at the northern end of Easy Street should be eliminated due the number of trucks entering and exiting the adjacent property whose turning radius would interfere with those spaces. This area should be striped or signed no parking instead.
- The parallel parking spaces along the northern side of Easy Street shall be shown on the plans to have a better understanding of the accessible width on Easy Street which would be closer to 19' rather than the shown 27'.

Parking Study

- The parking study is unclear as to what the basis is of the complete available parking shall be. It lists multiple times that the total parking supply is 185 spaces yet the number of striped parking spaces on the marking plan is shown to be 163.
- It should be more clear as to where all the spaces for the “185 **MARKED** spaces” (Line 15 of Page 1) are located. Before the Transportation Department would approve the plans we would need to see a better representation of how the total parking supply of 185 spaces is calculated and if that number is accurate of the number of spaces available. Does this number include the parallel parking? If so the spaces should be marked on the plan as well as striped with markings on Easy Street

May 6, 2014

as to help motorists maximize the parking density and to help alleviate any potential conflicts.

- Parking study references ITE LUC 710 for projected office tenets but attachments show ITE LUC 701 as the suburban office building peak parking demand. Applicant should correct to reference proper ITE parking generation data.

General

- The applicant shall be aware that the end of the trail line occurs perpendicular to Easy Street and that the Transportation Department expects a large number of bicyclist and pedestrians to use Easy Street as an access point and that anything the applicant can do to facilitate safe access like signage or striping would be helpful.
- The portion of sidewalk that has asphalt in front of the applicants building shall be repaired and replaced with concrete.
- The ramps for the driveway on Needham Street shall be removed and replaced to meet ADA requirements that include detectable warnings.