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PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: January 23, 2015
MEETING DATE January 27, 2015
TO: Land Use Committee of the Board of Aldermen
FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Stephen Pantalone, Senior Planner
CC: Petitioner

In response to questions raised at the Land Use Committee public hearings, and/or staff technical reviews, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

PETITION #272-09(4)

39 Herrick Road

Request for Special Permit/Site Plan Approval to allow a mixed-use building containing four dwelling units and a restaurant, waivers of parking stalls, bicycle parking stalls, and retaining walls exceeding four feet in height.

The Land Use Committee (Committee) held a public hearing on December 9, 2014. The Planning Department has received the following information in response to questions raised at the public hearing and in the previous Planning Department memorandum.

Potential Land Swap with the City. The potential of a land swap with the City for a portion of its land along Cypress Street was raised at the previous Public Hearing. At this point in time, the City does not have any concrete plans for the future use of the Cypress Street municipal parking lot. This lot may or may not be developed in the future. As such, the Committee should consider this project on a stand-alone basis and whether it meets the criteria for a special permit.

Compliance with the Inclusionary Housing Requirements. The petitioner will make a cash payment to the City in lieu of providing an affordable housing unit.

Parking Utilization on Lot 7. The petitioner did not provide an updated parking utilization study for Lot 7. The prior parking utilization study, which did not include counts after 7:00 pm, found that the

occupancy of the parking stalls in Lot 7 ranged from 30% and 60%. The petitioner's position from the previously approved special permit is that because existing tenants of the Bradford Court Apartments currently using Lot 7 are on one year leases, there will be no issue with removing those parking stalls for this project. Current tenants will have sufficient notice to find alternative parking or housing. The petitioner also argues that going forward tenants or prospective tenants of the Bradford Court apartment building will be aware that no parking is available on Lot 7, and will choose to be car-free or will find off-site parking.

Parking Management Plan. The petitioner did not provide a parking management plan. However, the petitioner has indicated that the proposed parking arrangement has not changed from the 2009 special permit. The four residential units will be given five spaces in the garage, while the remainder of the garage spaces will be used for customers (11) and employees (4) of the restaurant. The valet service for the restaurant will be free of charge and will park all cars in the garage or in off-site parking lots. The use of a valet will be particularly important for this project, as the turning radius into certain parking stalls in the proposed garage will be challenging. These measures were included as conditions of the previous special permit and should be carried forward.

Relocation of the Parking Meter and Crosswalk on Herrick Road. The petitioner indicated that they have been in contact with the Engineering Department in regards to the proposed curb cut off of Herrick Road and the impact on the existing utility pole, crosswalk and parking meter. As identified in the 2009 special permit, the removal of a metered parking stall would require a relocation of that stall within Newton Centre at the petitioner's expense. The Planning Department is comfortable that the petitioner can work with the City's Engineering Department and if necessary, the Traffic Council to ensure that the proposed curb cut does not adversely impact pedestrian access to the public path, or reduce the City's parking supply.

Updated Tree Removal Plan. The petitioner did not submit a tree removal plan. The petitioner should comply with the City's Tree Preservation Ordinance, which may require a payment into the tree replacement fund. These were conditions of the 2009 board order and should be carried forward.

Fencing and Retaining Wall Details. The petitioner did not provide additional details on the fencing and retaining walls. However, the 2009 special permit included conditions that these details would be provided prior to receiving a building permit. The Planning Department does not consider this to be a significant issue and suggests using the same condition in this board order.

Lighting Plan. The petitioner had submitted a lighting plan with the 2009 special permit which indicated four street lamps along the public footpath, which are existing, four building mounted lights and two flood lights adjacent to the above ground parking stalls. Based on the photometric plan there is more than adequate lighting along the footpath and the parking area. The petitioner may need to reduce the amount of lighting in order to comply with the lighting ordinance, which does not allow light trespass beyond the property line.

Comprehensive Sign Plan. The petitioner did not provide additional information on signage. The 2009 special permit included a condition that signage should comply with City standards and that an addition of a freestanding sign would require an amendment to the special permit. The Planning Department does not consider this to be a significant issue and suggests using the same condition in this board order.

Engineering Memorandum. The Associate City Engineer raised a number of issues in the Engineering Review Memorandum. Most of the issues can be addressed in the conditions and/or through the standard building permit review process by the Engineering Division, however there were two suggestions by the Associate City Engineer that the Committee should consider.

- Connectivity of the walkway along the northeast property line – Connect the proposed three foot walkway along the northeast property line to another walkway.
- ADA Accessibility of the public foot path. Improve the existing public footpath to provide handicap accessibility near the midpoint, which is located at the southwest corner of the petitioner's site.

The petitioner should consider these suggestions and how they can be addressed in the final plans submitted for the building permit.

Transportation Division Memorandum. The City's Transportation Division of Public Works raised a number of concerns in its memo, dated December 4, 2014. Those concerns and responses from the petitioner are provided below.

- The lack of parking for residents at 17-31 Herrick Road – The concern regarding the lack of parking for residents of the Bradford Court Apartments, and limited parking for this project was discussed during the 2009 special permit process. The petitioner believes that tenants of the buildings will choose not to have cars or will make other parking arrangements. They do not believe these tenants will own and park cars on the surrounding residential streets.
- Potential queuing on Herrick Road due to the red/green signal at the beginning of the driveway to the proposed parking garage – The petitioner should address this issue at the public hearing. This will likely be an operational issue and the responsibility of the valets operating the garage during peak times. The Planning Department suggests a condition to review the functionality of the proposed red/green light and the operation of the valet system after a certain period of time.
- Circulation in the at-grade parking lot – The petitioner has indicated that the traffic flow will be one-way in from Herrick Road and one-way out to the municipal parking lot. The use of one-way directional flow should address circulation issues. The proposed site plan continues to show two-way traffic from the Cypress Street lot. A condition for one-way traffic should be included in this board order, if the project is approved.

- Access to the at-grade dumpster – The at-grade dumpster will service this project and the Bradford Court Apartments. Based on discussions with the petitioner the dumpsters will be wheeled out of the area for pick-up such that a truck will not need to back into the space. Bradford Court tenants will have access to this area via stairs from the rear of their building.

Conditions. The petitioner has agreed to carry the same conditions forward that were included in the 2009 Board Order (**ATTACHMENT A**). The Planning Department recommends the following additional conditions:

- The at-grade parking area shall be one-way from Herrick Road to Cypress Street. The petitioner shall provide “Do Not Enter” signage facing the Cypress Street municipal lot.
- The petitioner shall connect the pedestrian walkway along the northeast property line, which will consist of a different material than the driveway, to the walkway/sidewalk in front of the proposed building.
- As a public benefit, the petitioner shall make the existing public footpath handicap accessible at the southwest corner of the site, so as to provide accessibility near the midpoint of the public footpath.
- The petitioner shall evaluate operational functionality of the red/green lights at the entrance of the below grade garage and the valet service after one year of operations, and shall provide recommendations for improvements to the Planning Department.

Recommendation

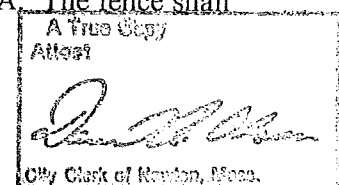
Based on the supplemental information provided by the petitioner and information gathered from the previous special permit, the Planning Department believes that the petition is complete, and that the issues raised by the Engineering/Transportation Divisions and the final details on landscaping/fencing/lighting can be addressed prior to building permit. The Planning Department therefore recommends approval with conditions.

ATTACHMENTS

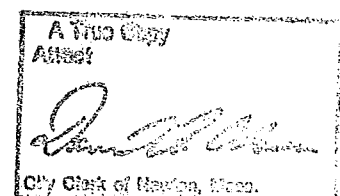
ATTACHMENT A – Conditions from the 2009 Board Order

Approved subject to the following conditions:

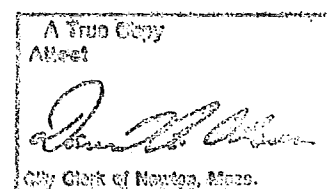
1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the following plans:
 - o Set of plans for 39 Herrick Road, prepared by VTP Associates, 132 Adams Street, West Newton, MA 02458, stamped and signed by Stephen E. Poole, Registered Professional Engineer, and Joseph R. Porter, Professional Land Surveyor:
 - "Topographic Site Plan Showing Proposed Conditions at Herrick Road, Sheet 1 of 3," dated November 12, 2008, and revised December 8, 2009
 - "Topographic Site Plan Showing Proposed Grading Plan at Herrick Road, Sheet 1A of 3," dated November 12, 2008, and revised December 8, 2009
 - "Detail Sheet Showing Proposed Conditions at Herrick Road, Sheet 2 of 3," dated November 3, 2008, and revised December 8, 2009
 - "Detail Sheet Showing Proposed Conditions at Herrick Road, Sheet 3 of 3" dated November 3, 2008, and revised December 8, 2009
 - "Cross-Section Showing Proposed Conditions at Herrick Road," dated December 8, 2009
 - o Set of plans for 39 Herrick Road, prepared by Khalsa Design, Inc., 17 Ivaloo Street, Suite 400, Somerville, MA 02143, stamped and signed by Jai Singh Khalsa, Registered Architect
 - Sheet A-1, "Architectural Site Plan," dated June 14, 2008 and revised September 8, 2009
 - Sheet A-2, "Garage and First Floor Plans," dated June 14, 2008, and revised December 18, 2009
 - Sheet A-3, "Second and Third Floor Plans and Bldg Elevations," dated June 14, 2008, and revised September 8, 2009
 - Sheet A-4, "Landscape Plan," dated June 14, 2008, and revised September 8, 2009
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2. An Operations and Maintenance plan for Stormwater Management Facilities shall be incorporated into the deed of the development for recording at the Middlesex Registry of Deeds.
3. The petitioner shall operate the restaurant with not more than 75 seats and will not open for business before 5 p.m. or after 11:30 p.m.
4. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
5. All overhead wires shall be placed underground.
6. The petitioner will remove snow from the site, including from the public footpath.
7. The petitioner will replace and/or repair and maintain the fence that borders the tracks to the approval of the Director of Planning and Development and the MBTA. The fence shall



- be a recessive color, preferably black. The petitioner shall provide the Director of Planning and Development with written permission from the MBTA to perform the work requested.
8. The petitioner will seek the approval of the Traffic Council for removal of one metered parking space and will propose an alternative location on Lot 7 adjacent to the City's Cypress Street lot for a metered space in Newton Centre, so as to maintain the existing number of parking spaces in the village center and the associated parking revenues.
 9. Signage shall conform to City standards and shall not be internally illuminated. If the restaurant desires a freestanding sign, an amendment to this special permit will be required. The Urban Design Commission and the Director of Planning and Development will review and approve all by-right signs.
 10. If use of the public footpath is needed in order to construct the proposed building, the petitioner shall seek a temporary construction easement from the City.
 11. The petitioner shall remove fencing along the north side of the footpath so that it may be reused by the City.
 12. The petitioner shall landscape and illuminate the entire length of the footpath and shall coordinate this work with the Department of Public Works to maintain pedestrian access throughout construction. The footpath shall be paved in concrete.
 13. Valet parking for the proposed restaurant shall be required in the lease of restaurant operator and shall include no fewer than two employees to receive and park cars. Valet parking will be offered free of charge unless off-site spaces are needed and for which a cost is incurred of the petitioner to secure such additional spaces. The valet parking shall not use on-street metered parking spaces or be located on residential streets. The petitioner shall seek permission from the City to use the Health Department's parking lot for valet parking at times when such lot is not needed to provide parking for City purposes.
 14. The petitioner shall obtain a variance from the Zoning Board of Appeals for a waiver of the setback along the public footpath.
 15. The dumpster on the subject property will be appropriately screened with fencing to be approved by the Director of Planning and Development and shall be maintained free of debris and odors.
 16. Restaurant deliveries and trash pick-up shall occur on-site between 7 a.m. and 7 p.m. so as not to disturb nearby residents at times and in such a manner as not to obstruct public parking spaces or the flow of traffic at peak times.
 17. In the event that Lots 6 and 7 are not in common ownership, the petitioner or his successor in interest shall record easements that allow driveway access over Lot 6 to Lot 7, and which allow the residents on Lot 6 to use the dumpster located on Lot 7 for their trash disposal. Copies of the recorded easements shall be filed with the City Clerk, the Director of Planning and Development, and the Commissioner of Inspectional Services.



18. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
- a. submitted a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. This plan shall include, at a minimum:
- The hours of construction; there shall be no construction on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - The proposed schedule of the project, including the general phasing of the construction activities.
 - Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for delivery vehicles, and location of any security fencing.
 - Proposed truck route(s) that minimize travel on local streets.
 - 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; use of tarps to cover piles of bulk building materials and soil; location of a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - Proposed methods of noise control, in accordance with the City of Newton's Ordinances. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
- b. filed for a tree removal permit and submitted a revised landscape plan to the Planning and Development Department with caliper inches for review and approval.
- c. obtained an easement for access to the underground parking garage from Herrick Road that is below grade under a portion of City-owned property at 1294 Centre Street.
- d. updated its license agreement to pass through the subject property via the adjacent Cypress Street municipal parking lot.
- e. made a cash contribution in-lieu of providing an affordable housing unit pursuant to Section 30-24(f) of the Zoning Ordinance.
- f. obtained approval from the Director of the Department of Planning and Development and Commissioner of Public Works of location and type of proposed off-site directional signage. The petitioner shall fabricate and pay for directional signs to the Cypress Street lot and public property and the City shall install them.



- g. obtained approval from the Director of Planning and Development of site lighting, including parking garage warning lights and low-key down lighting for driveway to parking garage.
 - h. recorded a certified copy of this board order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County.
 - i. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - j. obtained a determination from the Director of Planning and Development that building permit plans are consistent with Condition #1.
19. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
- a. submitted to the Department of Planning and Development for review and approval a parking management plan that indicates where off-site parking for overflow parking will be located, if needed, and an agreement with the owner of such property for shared use of such spaces. Such parking will not be located on residential streets or on metered spaces on the street.
 - b. filed with the City Clerk, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that final construction of the driveways, sidewalk, parking area, and drainage systems have been constructed to the standards of the Department of Public Works.
 - c. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and registered engineer certifying compliance with Condition #1.
 - d. submitted to the City Engineer final as-built, record site engineering, utilities, grading and drainage plans in both digital format and hard copy.
 - e. submitted to the Director of Planning and Development, final as-built plans in digital format.
 - f. 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, fencing, signage and parking areas.
 - g. Notwithstanding the provisions of Condition #19f. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the site prior to installation of final landscaping, fencing, and/or benches provided that the Petitioner shall first have filed with the Director of Planning and Development a bond, letter of credit, cash or other security in the form satisfactory to the Director of Planning and Development in an amount not less than 135% of the value of the aforementioned remaining site work to secure installation of such landscaping, fencing, signage and parking areas.

