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PUBLIC HEARING MEMORANDUM

Public Hearing Date: December 9, 2014
Land Use Action Date: January 6, 2015
Board of Aldermen Action Date: February 17, 2015
90-Day Expiration Date: March 2, 2015

DATE: December 5, 2014

TO: Board of Aldermen

FROM: James Freas, Acting Director of Planning and Development
Alexandra Ananth, Chief Planner for Current Planning
Daniel Sexton, Senior Planner

SUBJECT: **Petition #272-09(4)**, HERRICK ROAD REALTY TRUST, for a SPECIAL PERMIT/SITE PLAN APPROVAL to erect at 39 HERRICK ROAD, Ward 6, NEWTON CENTRE a 3-story mixed-use building containing 4 dwelling units and ground floor commercial space with a restaurant, with underground parking and associated parking waivers unit; to allow off-street parking facilities to be located on a separate lot; waive 9 parking spaces; waive 3 bicycle parking spaces; allow frontage to be measured along a public footway) and to construct a retaining wall greater than 4 feet within the rear/side setbacks and waive 18 existing parking spaces on Lot 7 Herrick Road, Ward 6, Newton Centre, on land known as Sec 61, Blk 35, Lots 6 and 7, in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(d)(2), (8), (9), 30-19(f)(1), (2), 30-19(k), 30-19(m), 30-15(b)(2), 30-15 Table 3, 30-5(b)(4) 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.



39 Herrick Road

EXECUTIVE SUMMARY

The petitioners obtained a special permit via Board Order #272-09 for this project, but never exercised the permit prior to its expiration. A variance was never sought from the Zoning Board of Appeals to allow the reduction of the required front setback.

The property at 39 Herrick Road (Lot 7) consists of 11,638 square feet of land improved with a surface parking lot, which is used by the tenants of the adjacent apartment building at 17-31 Herrick Road (Lot 6) (Lot 6 and 7 are commonly held). The petitioners are proposing to erect a three-story, mixed-use building consisting of four residential dwellings and a 75-seat restaurant on the ground floor. A below-grade parking garage containing 20 parking stalls and a five stall surface parking lot are proposed to serve the uses in the building. In order to develop the mixed-use building as proposed, the petitioners are seeking a special permit to allow a multi-family dwelling and a restaurant with more than 50 seats in a Business 1 (BU-1) district. The development plan contains fewer parking stalls than are required by the Newton Zoning Ordinance (NZO), will result in a parking facility which does not meet the dimensional and design controls required, and includes retaining walls greater than four feet in height in the rear and side setbacks, which requires review through the special permit process for such waivers (**ATTACHMENT A**).

The proposed entrance drives for the surface parking lot and below-grade parking garage are partially located on two adjacent parcels and will require the petitioners to obtain access easements with the parcels at 17-31 Herrick Road and the City as owner of 1294 Centre Street (formerly the City's Health and Human Services Department building). Because vehicular access to the site is also proposed through the City's Cypress Street municipal parking lot, which is currently allowed via a license agreement between the City and the petitioners, the existing license will need to be amended. In addition, the property has insufficient frontage along Herrick Road. As such, the petitioners are proposing to count the frontage along an existing public footpath between the subject parcel and the Massachusetts Bay Transportation Authority's (MBTA) D Branch of the Green Line to meet the NZO frontage requirements, which also requires review through the special permit process. In order to allow the building in its proposed location, the petitioners will also need to obtain a variance from the Zoning Board of Appeals (ZBA).

The Planning Department and *Comprehensive Plan*, adopted 2007, are supportive of this type of mixed-use development in Newton Centre. The project is proximate to a robust mix of uses and amenities with a variety of transportation connections and aligns with smart growth principals. The location and shape of the subject parcel do, however, create unique challenges for access, circulation, and parking on the site. Further, the Department is concerned about the potential impacts this project may have on the City's efforts to repurpose the former Health and Human Services Department building and the development of a parking structure on the Cypress Street municipal parking lot. The petitioners should also consider the comments raised by the Engineering and Transportation Divisions of Public Works, which are attached to this memorandum.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for the development of a mixed-use building, including four residential units and a restaurant with more than 50 seats. (§30-11(d)(8) and (9), and §30-24(d)(1))
- The development of the mixed-use building with its height, number of stories, reduced front setback, retaining walls greater than four feet in the rear and side setbacks, and frontage along the public footpath will not adversely affect the neighborhood (§30-5(b)(4), §30-15, Table 3, §30-15(b)(2), §30-11(d)(8) and (9), and §30-24(d)(2)).
- The granting of waivers from the bicycle and vehicular parking requirements, including the reduction of the number of bicycle and vehicle spaces provided, the ability to locate parking spaces off-street on a separate lot, will not adversely affect the neighborhood or result in a nuisance or serious hazard to vehicles or pedestrians in the surrounding neighborhood. (§30-19(d)(2), §30-19(d), §30-19(f)(1) and (2), §30-19(k), §30-19(m), §30-24(d)(2), and §30-24(d)(3))
- Access to the site over streets is appropriate for the numbers and types of vehicles involved. (§30-24(d)(3))

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The site is located along Herrick Road, just past the intersection of Herrick Road and Union Street. The subject parcel directly abuts a public footpath and is proximate to the MBTA's D Branch of the Green Line. The parcel is currently listed as vacant, but is used as a surface parking lot, and is proximate to parcels being used for commercial, mixed-use, multi- and single-family residences, nonprofit, and open space (**ATTACHMENT B**). The site is zoned Business 1, but there are other parcels in the immediate area that are zoned Business 2, Single Residence 2, and Public Use. The parcels located across the MTBA right-of-way from the subject parcel are zoned Multi-Residence 1 (**ATTACHMENT C**).

The Newton Centre commercial business district represents a diverse mix of commercial and residential uses that contribute to the vibrancy and vitality of the immediate area. The types of businesses proximate to the site are mostly small retail/service stores and restaurants with professional office space and residential uses mixed in. The businesses are in two- and three-story buildings, some with small surface parking lots in the side or rear of each parcel.

In the recent past, the City and private property owners have initiated examinations of the village's traffic patterns and parking demand. While these analyses have arrived at a number of conclusions, each has acknowledged that traffic volumes and

a perceived shortage of parking are of paramount concern. The commercial mix in the area has also undergoing a transformation of sorts with some businesses closing and others opening. As such, the Planning Department expects that the area will continue to undergo changes in the near future and that investment will continue to occur.

B. Site

The subject property (Lot 7) consists of 11,638 square feet of land and is improved with a surface parking lot containing 18 parking spaces. The property is under common ownership with the adjacent 27-unit residential building (Lot 6); however, there is no on-site parking provided for residents of Lot 6, so many of the tenants currently rent parking spaces on a mon-to-month basis on Lot 7 and would be displaced if this project is approved. The petitioners have a license agreement with the City to allow access to and from the parking lot on Lot 7 through the Cypress Street municipal parking lot. The portions of the site surrounding the surface parking lot have been improved with landscape plantings that improve the visual appearance of the lot.



To the south of the site is a 10-foot wide public footpath that was acquired from Lot 7 through eminent domain by the City in 1951 via Board Order #99149. This pedestrian way connects the Cypress Street municipal parking lot to Herrick Road and the surrounding neighborhood. The petitioners still claims this taking resulted in an easement and has included this area as part of the subject property. The City contends that the land was taken for municipal purposes and, consequently, the petitioners must seek a variance from the ZBA to waive the required front setback or move the building back ten feet to comply with the setback requirements prescribed in the NZO.

The site is relatively flat with a slight increase in grade from the northern property line towards the southern property line next to the public footpath. A retaining wall on Lot 6 parallels the northeast property line of the subject property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The property is currently used as a surface parking lot that residents of Lot 6 currently rent parking spaces on a month-to-month basis. As proposed, the

petitioners are intending to develop a mixed-use building, including four two-bedroom residential units on the second and third floors and a restaurant with up to 75-seats on the ground floor. The petitioners have not submitted any information on the proposed restaurant use, as a specific establishment to occupy the space has not been identified. Based on the previous special permit approval, it appears that the petitioners are targeting a fine dining establishment with peak hours in the evening. The proposed uses require the petitioners to obtain a special permit approval to develop the uses in question according to the NZO.

The Planning Department believes this type of mixed-use development is appropriate for Newton Centre, which is supported by the *Comprehensive Plan*, as it is proximate to a robust mix of uses and amenities with a variety of transportation connections, and aligns with smart growth principals. The Department acknowledges, however, that such developments must also be sensitive to the surrounding neighborhood context and should minimize the off-site impacts stemming from noise, parking, and traffic.

B. Building and Site Design

The petitioners are proposing to erect a three-story brick and stucco structure with a 20-stall parking garage below. The building is oriented towards the MBTA, using the 10-foot wide public footpath as meeting the required setback and as additional frontage. As such, the buildings main entrance, which provides access to the building's main lobby, faces the MBTA and footpath. Entrances are also provided on all other sides of the structure to provide access into the building from the surface parking lot, Herrick Road, and the Cypress Street municipal parking lot. Further, the proposed site plan includes landscape plantings throughout the site, but especially along the property lines flanking the surface parking lot and entrance drives and the ends of the building. A 3' X 40' planting bed is also being proposed within the public footpath, which will reduce portions of the footpath down to seven feet in width.

The ground floor of the structure will contain a 2,890 square foot restaurant, with no outdoor seating proposed at this time. The second and third floors of the building will contain four dwelling units, each with two-bedrooms, totaling approximately 1,379 square feet. The residential units all appear to be accessible as they are accessed by an elevator from the garage and surface parking lot. The below-grade parking garage includes 20 parking stalls and represents a significantly larger footprint than the actual structure above.

The petitioners did not provide any information regarding how this project will comply with the City's Inclusionary Housing Ordinance. As such, the petitioner should be prepared to explain whether they plan to designate 15% of the proposed units as affordable or make a cash payment to the City in lieu of providing an affordable unit.

The building's design is sympathetic to the surrounding context of two- and three-

story brick structures. To echo the historic designs of surrounding buildings, the petitioners are proposing paired double-hung window arrangements with four-over-four panes. They are also proposing to accent the ends of the building with ornamental parapets and semi-circular entrances. The size of the building appears to fit the site well and minimizes the visual impact of the structure on the surrounding neighborhood.

The development plan for the site will change the vehicular access to and from the site. The proposed surface parking lot will be accessed via a one-way 12-foot wide entrance drive from Herrick Road, which partially encumbers Lot 6, and a two-way entrance drive through the Cypress Street municipal parking lot. The below-grade garage is accessed via an entrance drive that runs from Herrick Road along the northwest side of the adjacent residential building on Lot 6, below the corner of a City owned parcel (formerly the site of the Health and Human Services Department), and into the subject property below-grade. The existing brick structure in the northwest corner of Lot 6 will be removed to make way for the entrance drive. In 2009, the Board authorized then Mayor Cohen, through Board Order #71-09(2), to negotiate with the petitioners for a subsurface easement below City owned property to allow for vehicular access to the proposed garage on the subject property (**ATTACHMENT D**).

The Planning Department is supportive of the proposed building design and type of mixed-use development in Newton Centre. The Department believes, however, that the location and shape of the subject parcel creates unique challenges for access, circulation, and parking on the site. The Department is also concerned about the potential impacts this project may have on the City's efforts to repurpose the former Health and Human Services Department building and the development of a parking structure on the Cypress Street municipal parking lot. As noted above, the petitioners should be prepared to explain how the project will comply with the City's Inclusionary Housing Ordinance.

C. Parking and Circulation

Presently, the subject property is being used as a surface parking lot containing 18 parking stalls, generally used by the adjacent residents and surrounding businesses during the day. The surface lot has two-way vehicular access through the Cypress Street municipal parking lot. A bituminous footpath in the southeast corner of the site provides access to Herrick Road.

The petitioners are seeking a lesser parking requirement of 1¼-parking stalls per residential unit for a total of five parking stalls, where eight stalls are required by the NZO, and has calculated the anticipated parking requirements for the restaurant use as 29 parking stalls (combined for a total of 34 spaces required). Since the development plan indicates 25 parking stalls to be provided on-site (five stalls in a surface parking lot and 20 stalls provided in a below-grade garage), the petitioners

are requesting a waiver of nine parking stalls. In addition, the petitioners are requesting a waiver to remove 18 parking stalls that are currently available on the subject property to the tenants of Lot 6. This waiver is necessary because once parking is provided for a nonconforming situation, even if the situation was not totally brought into conformity, the parking stalls cannot be removed without zoning relief. It is not clear how many residents of units on Lot 6 currently use the parking on Lot 7, but the petitioners have indicated that these spaces are rented on a month-to-month bases. The petitioners should be prepared to better explain the status of these parking stalls at the meeting.

The proposed development plan indicates two separate parking areas: a surface parking lot with five vehicle spaces and a below-grade garage with parking for 20 vehicles. The petitioners have indicated that the parking garage will be for tenants of the new building, employees of the restaurant, and, if possible, residents of Lot 6 who currently park on Lot 7. It appears that the configuration and design for the parking garage is intended to allow for a possible future connection with a below-grade segment of a City-owned parking garage on the Cypress Street municipal parking lot. As proposed, the internal circulation of the garage is quite tight, but the petitioners have provided a vehicle turning template that demonstrates how vehicles will safely move in and out of the parking spaces in the garage. In addition, the proposed access to the parking garage narrows to a pinch point of 13.6', where 20 feet is required by the NZO. The petitioners are proposing a traffic signal and a small passing area to minimize congestion and control traffic flows of vehicles entering and exiting the parking garage. The below-grade parking garage also has two post & ring bicycle racks that will accommodate parking for four bicycles.

The surface parking lot would be for restaurant patrons. The vehicles using these parking stalls would either enter the lot via a one-way entrance drive off of Herrick Road or the Cypress Street municipal parking lot. The connection with the Cypress Street municipal parking lot is proposed to accommodate two-way vehicular travel, and will therefore be used as the exit point from the surface lot. The petitioners will need to amend the license agreement (#L-3540) between the City and the petitioners to account for the new vehicular circulation patterns proposed by this project (**ATTACHMENT E**). The petitioners submitted a parking survey, with data from October 15 and 17 of 2009, of the current surface parking lot on Lot 7 usage. Under the previous special permit approval, the petitioners provided a parking management plan and information regarding valet parking arrangement. This information was not provided as part of this petition, so the petitioners should be prepared to provide this information and explain the structure of the valet parking arrangement.

As proposed, the entrance drive off of Herrick Road will require the removal or relocation of one metered parking space and, likely, a municipal street light and a pedestrian crosswalk. The petitioners previous offered to relocate the metered

parking stall partially on the site and partially on City-owned property that appears to be part of the Cypress Street municipal parking lot; however, no information regarding the relocation of the stall was provided with this petition request. The petitioners should be prepared to explain how the loss of the metered parking stall will be accommodated. If the petitioners propose to remove the stall completely, it will require the approval of the City's Traffic Council to do so. In addition, the petitioners should be prepared to explain how the project will impact the existing municipal street light and pedestrian crosswalk.

The development plans indicate trash collection areas in multiple locations: a dumpster is located in the surface parking lot and two dumpsters and three recycling containers are located within the below-grade parking garage. It is not clear how a trash collection service will access the parking garage. Previously, the petitioners indicated that residents of Lot 6 will be allowed to dispose of their trash and recycling in the facilities provided on Lot 7. The petitioners should be prepared to explain how the collection of trash and recycling will be handled for the two properties. In addition, no loading facilities are shown on the development plans. The petitioners should be prepared to explain how deliveries will be handled for the proposed uses.

Based on the Planning Department's concerns (above) and the comments submitted by the Transportation Division (**ATTACHMENT F**), the petitioners should be prepared to provide supplemental information at the public hearing or prior to scheduling a working session.

D. Landscape Screening

The petitioners provided a landscape plan that indicates plantings throughout the site, but especially along the property lines flanking the surface parking lot and entrance drives and at the ends of the building. The proposed plantings include a mix of conifer and deciduous trees and some decorative shrubs and flowers. Within the improved public footpath, the petitioners have also shown a 3' X 40' planting bed. The planting bed will reduce the available travel path for users of the footpath to seven feet. The petitioners proposed plantings will provide partial screening of the subject property and a low-maintenance, yet attractive, look.

The Planning Department is concerned about the installation of plantings, especially trees with a substantial root system, over or in close proximity to the below-grade parking garage. The Department encourages the petitioners to work with the MBTA to develop and install an upgraded fence along the public footpath to improve the visual appearance of this corridor. As some existing trees will be removed to develop the project, the petitioners should provide a plan for tree removal, including the caliper inches of each tree, to the City's Tree Warden and Planning Department for review prior to scheduling a working session.

In addition, the petitioners should be prepared to explain which of the materials proposed for the footpath is preferred by the petitioners. The Department also encourages the petitioners to consider the removal of the planting bed within the footpath to ensure adequate access. Further, the petitioners should provide details for the proposed retaining walls and fencing segments to the Engineering Division and Planning Department for review prior to scheduling a working session.

E. Lighting

The petitioners did not provide any lighting information for the project. The petitioners should provide fixture cut-sheets and a photometric plan to the Planning Department prior to scheduling a working session.

F. Signage

Based on the submitted development plans, no information on site signage was provided. As a commercial tenant is proposed within the building, the petitioners should consider how and where signage for this tenant would be accommodated on the building or site. In addition, the locations for directional signage should be provided for review by the Transportation Division and Planning Department. The petitioners should be expected to provide this information at the public hearing or prior to scheduling a working session.

IV. COMPREHENSIVE PLAN REVIEW

Per the *Newton Comprehensive Plan*, dated 2007, the project appears to be consistent with the City's vision for its village centers, as it will contribute to the traditional mix of uses found in Newton Centre. Further, the project appears to be designed to be respectful of and compatible with the context of the surrounding development patterns.¹ The Plan supports fostering viable businesses and projects to enhance the commercial real estate tax and employment base. The project also appears to contribute to the quality of the experience for the site and surrounding neighborhood due to the siting of the building, the proposed landscaping treatments, and the integration of the adjacent foot path in with the design of the outdoor spaces.² Finally, the Plan envisions a mix of residential and commercial uses that enhance the existing community and provide vibrant vital places for people to live, play, and work, which the project does appear to achieve.³

¹ *Newton Comprehensive Plan*, dated 2007, page 3A-4.

² *Newton Comprehensive Plan*, dated 2007, page 3A-4.

³ *Newton Comprehensive Plan*, dated 2007, page 3A-8

V. 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 A**). Based on this review, the petitioners are seeking a Special Permit/Site Plan Approval for the following reliefs:

- §30-5(b)(4) to allow retaining walls greater than 4 feet in height within the rear and side setback.
- §30-15, Table 3 to allow a building height exceeding 24 feet.
- §30-15, Table 3 to allow a three-story building.
- §30-15(b)(2) to allow frontage to be measured along a public footpath.
- §30-11(d)(8) to allow a multi-family dwelling.
- §30-11(d)(9) to allow a restaurant with greater than 50 seats.
- §30-19(d)(2) to allow a 1¼ parking space requirement per housing unit.
- §30-19(d) and §30-19(m) to waive nine required parking spaces.
- §30-19(f)(1) and (2) to allow off-street parking facilities to be located on a separate lot.
- §30-19(k) and §30-19(m) to waive three required bicycle parking spaces.
- §30-19(m) a waiver of parking spaces to allow the removal 18 existing parking stalls located on Lot 7 that are associated with the multi-family residential use on Lot 6.

In order to reduce the front setback requirement, the petitioners must also seek a variance from the Zoning Board of Appeals for the following provision of the Newton Zoning Ordinance:

- §30-15, Table 3 to reduce the required front setback.

B. Engineering Review

The Associate City Engineer submitted an Engineering Review Memorandum (**ATTACHMENT G**), providing an analysis of the proposal with regards to engineering issues. According to the Associate City Engineer's memorandum, the issues raised include: the lack of a drainage report, the lack of a design for the public footpath, lack of designs for the proposed retaining walls and fences, emergency access, lack of a snow storage plan, lack of a construction management plan, and a number of issues that will need to be addressed prior to issuance of a building permit. The petitioners should provide revised plans and information to supplement the original submission prior to scheduling any working sessions.

C. Transportation Division Review

The City Transportation Engineer submitted a memorandum (**ATTACHMENT F**), providing an analysis of the proposal with regards to transportation issues. According to the Transportation Engineer's memorandum, a number of issues with the development plan were raised. The issues raised include: the proposed access to the site, on-site circulation, and the potential impacts of the City's infrastructure. The petitioners should provide revised plans and information to supplement the original submission prior to scheduling any working sessions.

VI. PETITIONERS' RESPONSIBILITIES

The petitioners should consider the recommendations and suggestions raised by different City departments. Prior to the close of the public hearing or scheduling of a working session, the petitioners should address and/or provide information regarding the following:

- How the project will comply with the City Inclusionary Housing Ordinance.
- A revised site plan.
- Updated parking usage for the parking lot on Lot 7.
- A Parking Management Plan, including details of the valet parking arrangement.
- Plans for the removal or relocation of the metered parking stall on Herrick Road.
- An updated Tree Removal Plan and Planting Plan, clearly listing the caliper inches and locations of trees to be removed and planted.
- Fencing and retaining wall details, including heights of these structures.
- A lighting and photometric plan.
- A comprehensive signage plan for the site.
- Respond to the concerns raised by the Engineering Division.
- Respond to the concerns raised by the Transportation Division.
- A Construction Management Plan.


ATTACHMENTS:

- ATTACHMENT A:** Zoning Review Memorandum, dated September 11, 2009
ATTACHMENT B: Land Use Map
ATTACHMENT C: Zoning Map
ATTACHMENT D: Copy of Board Order #71-09(2)
ATTACHMENT E: Copy of the License Agreement #L-3540
ATTACHMENT F: Transportation Division Memorandum, dated December 4, 2014
ATTACHMENT G: Engineering Review Memorandum, dated December 4, 2014

Zoning Review Memorandum

Dt: September 11, 2009

To: John Lojek, Commissioner of Inspectional Services

Fr: Eve Tapper, Chief Zoning Code Official
Candace Havens, Chief Planner 

Cc: Michael Kruse, Director, Department of Planning and Development
Terrence Morris, attorney for Herrick Road Realty Trust
Ouida Young, Associate City Solicitor

RE: Request to construct a mixed-use building

Applicant: Herrick Road Realty Trust	
Site: 39 Herrick Road	SBL: Section 61, Block 35, Lots 6&7
Zoning: BU-1	Lot Area: 11,638 square feet (lot 7) ¹
Current use: Parking lot	Proposed use: Mixed-use building

Background:

The subject property consists of an 11,638 square foot lot currently improved with a parking lot used by the tenants and guests of the adjacent apartment building (the parking lot and the apartment building are in common ownership). The property owner is proposing to develop the site with a three-story mixed-use commercial building. The first floor of the building will be a 75-seat restaurant. The upper two stories will have a total of four housing units. The following review is based on plans and materials submitted to date as referenced under Plans and Materials Submitted below.

Administrative determinations:

1. The proposed development includes a 75-seat restaurant on the first floor. A restaurant with greater than 50 seats is allowed in the BU-1 zone with a special permit from the Board of Aldermen per Section 30-11(d)(9).
2. The second and third floors of the proposed building will contain a total of four dwelling units. A multi-family dwelling is allowed in the BU-1 zone with a special permit from the Board of Aldermen per Section 30-11(d)(8).

¹ This figure is from the City's Assessor's database. The applicant claims the lot contains 12,979 square feet. The discrepancy will be discussed later in this memo.

3. The proposed development must comply with the dimensional standards of Section 30-15, Tables 1 and 3 for the BU-1 zone (see chart below).

BU-1 Zone	Required/Allowed	Proposed
Lot size	10,000 sq. ft.	11,638 sq. ft.
Lot size per unit	1,200	2,909.5 sq. ft.
Frontage	80 feet	27.55 feet along Herrick Rd, 130.88 feet along the public footway
Setbacks		
• Front	Average	0 feet
• Side	½ building height	18 feet
• Rear	0 feet	9.5 feet
FAR	1.0	0.97
Building Height	24 feet (by right) 36 feet (special permit)	30.19 feet
Maximum Stories	2 (by right) 3 (special permit)	3

4. The subject property has only 27.55 feet of frontage along Herrick Road where 80 feet is required. Section 30-15(b)(2) allows frontage to be measured along a public footway with a special permit from the Board of Aldermen. This lot has adequate frontage along a public footway (130.88 feet) to meet the requirement if a special permit is obtained.
5. The subject lot contains 11,638 square feet according to the City's Assessor's Database. The applicants claim that the property size is 12,979 square feet. The size of the property is not an issue with respect to the dimensional controls for minimum lot size, lot area per unit, or FAR. The site complies with these requirements regardless of the figure used. However, the discrepancy is important with respect to the front setback.

In 1951, the Board of Aldermen approved Board Order #99149 to take 1,342 square feet from Lot 7 (as it was constituted at the time) for a public footway. The applicants claim that this taking was actually only an easement and that the owner retained underlying ownership of the land. The City disagrees. The plan in the City's Engineering Department dated October 16, 1950 and signed by Albert A. Morse, acting City Engineer shows the land was taken for municipal purposes (a parking area and public footway). Sometime after the taking the City Assessor reduced the parcel size to account for the square footage within the footway and the owners' tax assessment has been based on this smaller lot since that time. The deed for the property was not changed.

At issue for the current development project is whether the front setback is measured from the northern boundary of the footway or the southern boundary. The submitted plans show the building constructed immediately on the northern boundary, using the ten-foot-wide footway as the required ten-foot setback. The applicants believe it to be their land and therefore argue that they can use it to satisfy the setback requirement. The City contends that the land within the footway is public land, rather than part of the development parcel. Therefore, the applicants must either move the building ten feet to the north to comply with the required setback or apply to the Zoning Board of Appeals for a variance with respect to the front setback.

6. The proposed development will be 30.19 feet in height and three stories. These dimensions are allowed with approval of a special permit from the Board of Aldermen under Section 30-15, Table 3.
7. Lot 7 is currently used as a parking lot for the tenants and guests of the adjacent apartment building (Lot 6). There are 18 existing parking spaces. The apartment building has no on-site parking. Since the building was constructed well before parking standards were enacted in Newton, it is legally nonconforming with respect to parking. However, in 1998 the owners of the apartment building entered into a license agreement with the City of Newton (Agreement #L-3540) to allow access and egress through the City-owned Cypress Street parking lot to the parking lot on Lot 7.

The License Agreement specifically defines the Licensee as “the owner of two parcels of land...said parcels being numbered by the Newton Assessor as parcels #61-35-6 and 61-35-7 [the two parcels included in this current application].” The License Agreement continues by stating “Licensee wishes to develop parking spaces on parcel #61-35-7 and has requested a right of access and egress for its tenants and guests through the Cypress Street parking lot.” A Law Department memo from Gayle A. Smalley, Associate City Solicitor dated November 6, 2001 reiterates the intent of the License Agreement to provide parking for the apartment building.

Although no parking is required for the apartment building, once parking has been provided (as was done in 1998) making the situation less nonconforming, it cannot be removed without zoning relief. In order to remove the existing parking on Lot 7 and redevelop the site, the record owner of Lot 6 must obtain a special permit from the Board of Aldermen to waive 18 parking spaces required for the use on Lot 6.

8. Section 30-19(d) lays out the parking requirements for each of the proposed uses on the site. The proposed uses require 34 parking spaces (see chart below). The proposed site plan depicts parking for 25 spaces (20 in an underground garage and five surface parking spaces). Therefore, the applicants must obtain a waiver from the Board of Aldermen for nine (34-25=9) parking spaces under Section 30-19(m).

Category of Use	Requirement per 30-19(d)	Proposed Use	Required Number of Parking Spaces
Restaurant	1 space/3 seats and 1 space/3 employees	75 seats and 12 employees	29 (25+4)
Dwellings	2 spaces/dwelling unit or 1.25 spaces/dwelling unit with special permit	4 units	5 (assuming a special permit is obtained)
TOTAL			34

9. Section 30-19(d)(2) generally requires two parking spaces per dwelling unit. In apartment buildings, the number of required parking spaces may be reduced to 1¼ spaces per unit with approval of a special permit from the Board of Aldermen.
10. Section 30-19(f)(1) requires that off-street parking facilities be provided on the same lot as the use served. Access driveways are considered part of a parking facility. Both the driveways shown on the submitted plan, leading to the surface and garage parking lots, are partially on

adjoining lots. The driveway for the surface parking lot is located on Lot 6. These two lots have been represented to be in common ownership and if this should ever change an easement must be provided to allow the driveway encroachment.

The proposed driveway leading to the underground parking garage begins at Herrick Road and travels over Lot 6 before passing underground on City-owned property (the Health Department). Again, an easement to traverse Lot 6 will be needed with any change in ownership. However, an underground easement must also be obtained from the Board of Aldermen through the Real Property Reuse Committee in order to connect the driveway on Lot 6 to the garage on Lot 7. The project proponents have started this process. In April 2009, the Board of Aldermen, under Section 2-7, authorized the Mayor to negotiate a lease for the subsurface easement. The City is now awaiting an appraisal of the property to continue the process.

To locate the driveways on these adjacent lots, the proponents must obtain a special permit from the Board of Aldermen under Section 30-19(f)(2).

11. All of the parking spaces on a lot are considered when determining whether the parking facility must meet the design standards of a facility containing five stalls or less (Section 30-19(g)) or more than five stalls (Section 30-19(h)). For this project, there are two parking areas that provide a total of 25 on-site parking spaces. Therefore, the provisions of Section 30-19(h) apply. Section 30-19(h)(4)(a) dictates that the driveway be a minimum of 12 feet for one-way traffic or 20 feet for two-way traffic. The plans submitted appear to show a two-way, 12-foot driveway. In this case, the developer must obtain a special permit under Section 30-19(m).
12. Section 30-19(h)(3) requires a 20-foot wide driveway. Due to a pinch point between the apartment building and the lot line, the driveway shown on the northwest side of Lot 6 is only 13.6 feet wide. The applicant must obtain a special permit from the Board of Aldermen under Section 30-19(m) in order to construct the driveway as proposed.
13. In order to construct the access driveway to the garage, an eight-foot retaining wall is necessary in the rear and side setback of Lot 6. Section 30-5(b)(4) requires a special permit from the Board of Aldermen for a retaining wall of greater than four feet in any setback.
14. Section 30-19(k) requires parking for one bicycle for each ten spaces in a parking facility containing 20 or more stalls. The developer should either locate three bicycle spaces on-site or obtain a special permit from the Board of Aldermen under Section 30-19(m) to waive this provision.
15. The proposed development is subject to the Inclusionary Zoning provisions of Section 30-24(f). For developments of six housing units or less, a cash payment in lieu of providing affordable units is permitted. The applicants have indicated that they will opt to make the required payment.

Zoning Relief Summary		
Ordinance	Lot 7	Action Required
	Building	
§30-15, Table 3	Allow height to exceed 24 feet	SP per §30-24
§30-15, Table 3	Allow three story building	SP per §30-24
§30-15, Table 3	Reduce front setback requirement	Variance from ZBA
	Use	
§30-11(d)(9)	Allow restaurant with greater than 50 seats	SP per §30-24
§30-11(d)(8)	Allow multi-family dwelling	SP per §30-24
	Parking	
§30-19(d)(2)	Allow 1¼ parking spaces per housing unit	SP per §30-24
§30-19(d), §30-19(m)	Waive nine required parking spaces	SP per §30-24
§30-19(k), §30-19(m)	Waive three required bicycle parking spaces	SP per §30-24
§30-19(f)(1)&(2)	Allow off-street parking facilities to be located on a separate lot	SP per §30-24
	Site	
§30-15(b)(2)	Allow frontage to be measured along the public footway	SP per §30-24
§30-15 Table 3	Site Plan Approval required	Site Plan Approval per §30-23

Zoning Relief Summary		
Ordinance	Lot 6	Action Required
	Site	
§30-5(b)(4), Ordinance Z-45	Construct an 8-foot retaining wall within the rear and side setback	SP per §30-24
§30-19(m)	Waive 18 existing parking spaces located on Lot 7 associated with the use on Lot 6	SP per §30-24

Plans and materials reviewed:

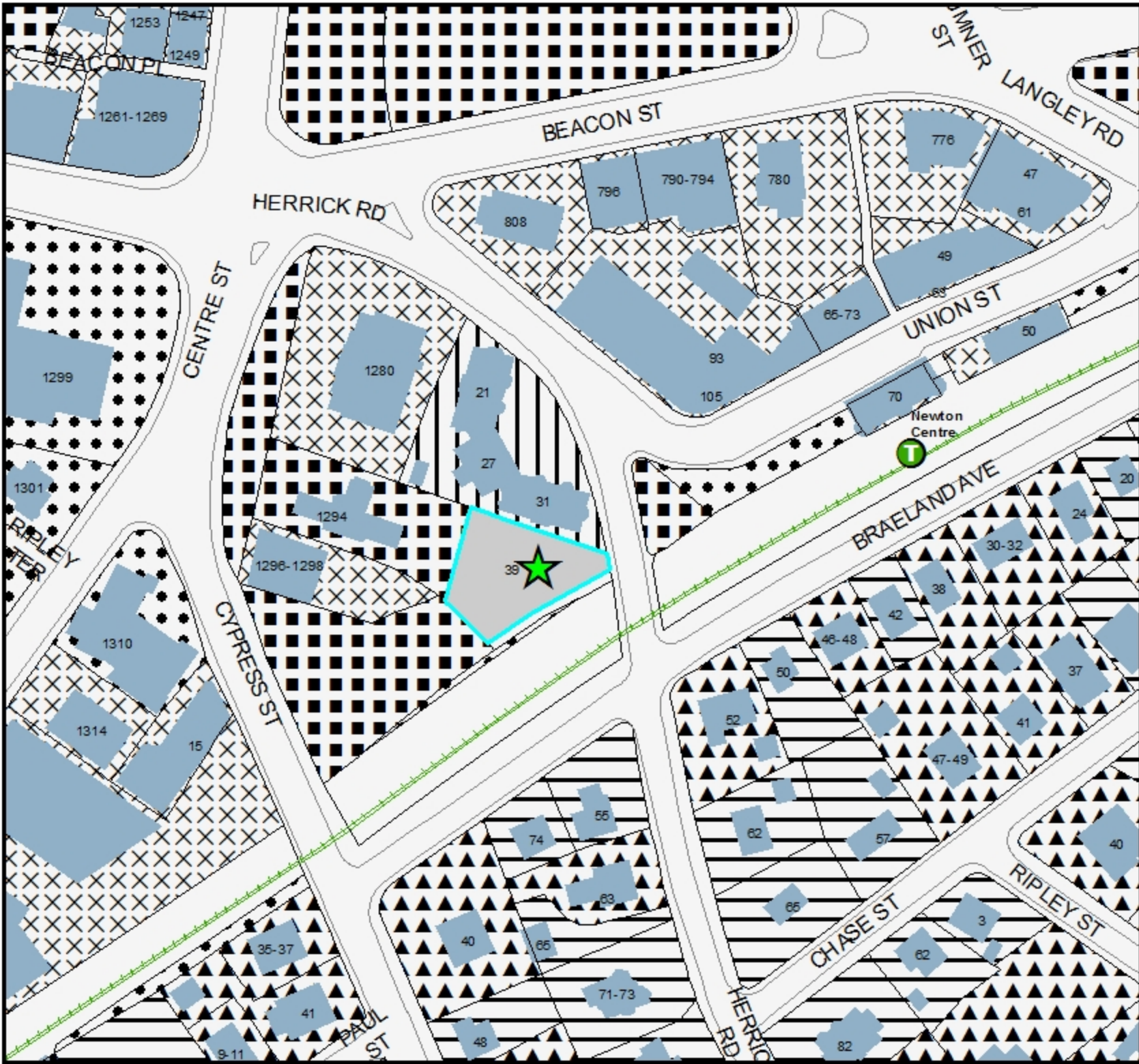
- Quitclaim Deed from Newton-Waltham Bank and Trust Company to Harold Tingley, Trustee of the Longacre Trust, recorded on August 2, 1951 at the Middlesex South Registry of Deeds in Book 7780 at Page 76.
- Quitclaim Deed from Thomas W. Pryor and Elliott Tingley, Trustees of the Longacre Trust II to the Trustees of the Herrick Road Realty Trust, recorded on 1/10/97 at the Middlesex South Registry of Deeds in Book 26980 at Page 377.
- Plan set titled "Herrick Road Residences, 17-31 Herrick Road, Newton, MA", dated June 14, 2008 (rev. 11/07/08), prepared by Khalsa Design, Inc., Architect, 17 Ivaloo St., Suite 400, Somerville, MA, 02143, Jai Singh Khalsa, Registered Architect, consisting of the following:
 - Sheet A1 – Architectural Site Plan
 - Sheet A2 – Floor plans, Elevations & Perspective View
 - Sheet A-3 – Landscape Plan
 - Sheet A-4 – Architectural Site Section
- Plan set, prepared by VTP Associates, Inc., PLS, Land Surveyors – Civil Engineers, 132 Adams Street, Newton, MA 02458, stamped and signed James J Abely, Registered Civil Engineer, consisting of the following:
 - Topographic Site Plan - Newton, Massachusetts Showing Conditions At Lot B Herrick Road," dated December 11, 2001, rev. 1/10/02

- Topographic Site Plan – Newton, Massachusetts Showing Proposed Conditions At Herrick Road, dated November 12, 2008
 - Detail Sheet (2), dated November 3, 2008
 - Detail Sheet (3), dated November 3, 2008
 - Cross-section, dated November 3, 2008
 - Area Plan of Land at Herrick Road, dated November 4, 2008
-
- License Agreement Relative to Access Through City’s Cypress Street Parking Lot, executed 7/11/98.
 - Aldermanic Board Order #71-09(2) dated April 6, 2009 regarding sub-surface easement under city-owned land.
 - Memorandum to John Lojek dated May 2, 2009 regarding ownership of the public footway.
 - Aldermanic Board Order #99148 dated May 7, 1951 regarding taking of an easement over subject premises.
 - Letter to John Lojek dated June 23, 2009 regarding determination of lot size.
 - “City of Newton, Massachusetts, Private Land, Land Taken for Municipal Purposes, (Parking Area), Public Footway, Plan & Profile Showing Laying Out, Grade & Acceptance” dated Oct. 16, 1950, signed by Albert A. Morse, Acting City Engineer

Land Use Map 39 Herrick Road

City of Newton,
Massachusetts

ATTACHMENT B



Legend

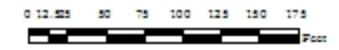
Land Use

- Single Family Residential
- Multi-Family Residential
- Commercial
- Mixed Use
- Open Space
- Nonprofit Organizations
- Vacant Land
- 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 - Seth D. Warren
GIS Administrator - Douglas Greenfield









Zoning Map 39 Herrick Road

City of Newton,
Massachusetts

ATTACHMENT C

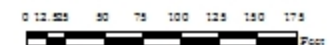
Legend

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 2
-  Business 1
-  Business 2
-  Public Use
-  Property Boundaries
-  Building Outlines

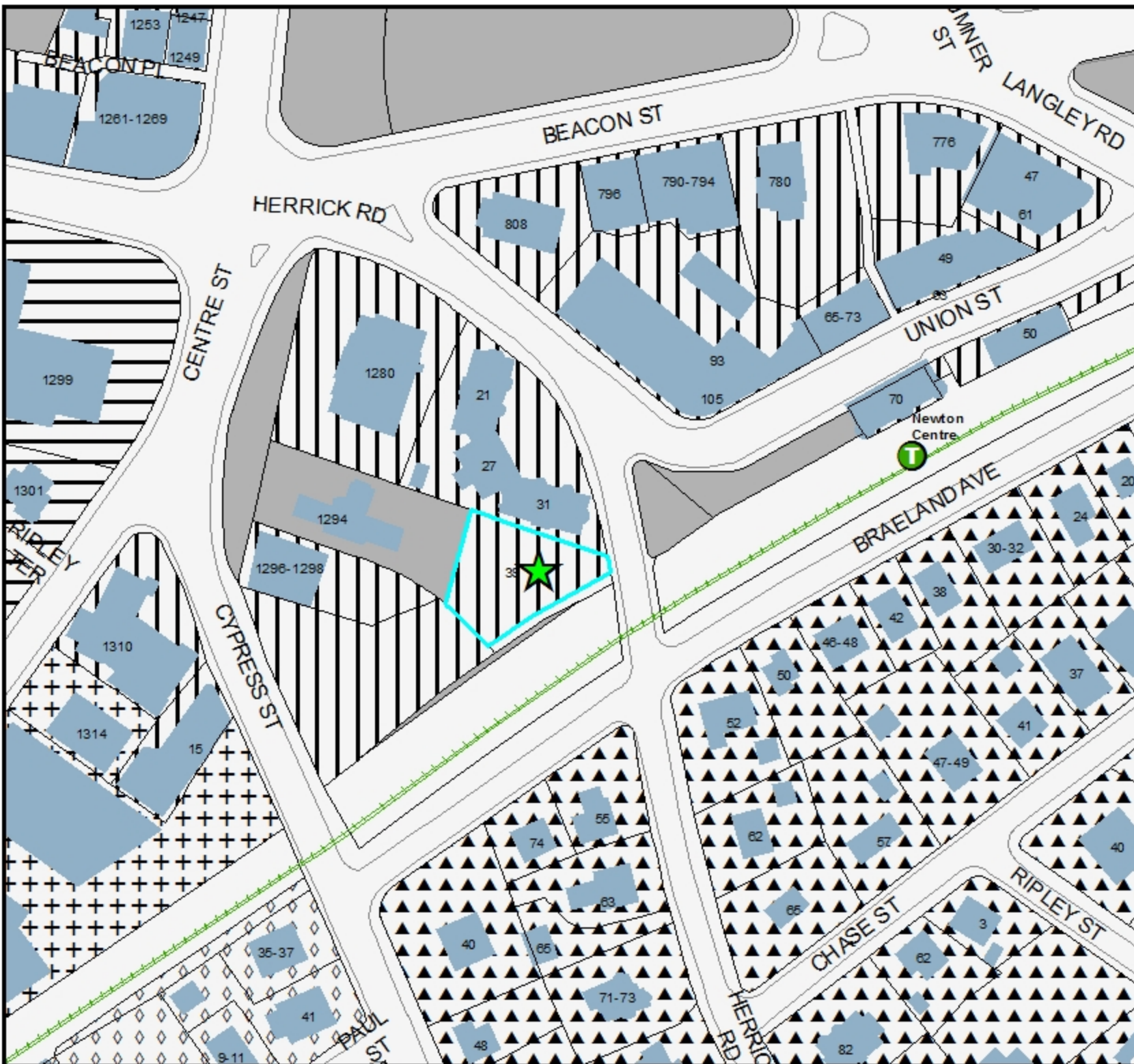


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Seth D. Warren
GIS Administrator - Douglas Greenfield



Map Date: November 24, 2014



#71-09(2)

CITY OF NEWTON

IN BOARD OF ALDERMEN

April 6, 2009

That, pursuant to Section 2-7 of the Revised Ordinances of 2007, as amended, after a public hearing and upon the recommendation of the Real Property Reuse Committee through its Chairman Carleton P. Merrill, it is hereby ORDERED:

That His Honor the Mayor be and is hereby authorized to enter a renewable lease for a subsurface easement for vehicular access consistent with proposed plans prepared for the Herrick Road Realty Trust for a portion of land containing approximately 845 square feet, which is part of a city-owned parcel containing 16,160 square feet of land located at 1294 Centre Street, Newton Centre, known as Section 61, Block 35, Lot 3, in a Public Use zoned district.

ORDERED:

That the property be leased subject to the minimum financial terms and conditions as voted by the Honorable Board of Aldermen and set forth as follows:

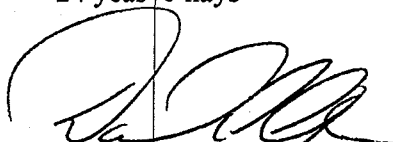
TERMS OF LEASE:

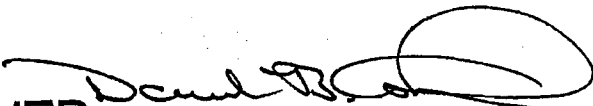
That the financial terms for the renewable subsurface lease for vehicular access shall be established by an independent appraisal obtained by the City but paid for by the prospective lessee, but no lower than a minimum of \$15.01 per square foot/\$12,683 per year with an annual increase in the lease payment tied to the Boston area Consumer Price Index.

FURTHER BE IT RESOLVED:

- a. That if any relocation of utilities is necessary, the utilities shall be located underground at the lessee's expense.
- b. That the subsurface lease shall become invalid should the lessee fail to seek or obtain a special permit.

Under Suspension of Rules
Readings Waived and Adopted
24 yeas 0 nays


(SGD) DAVID A. OLSON
City Clerk


RECEIVED (SGD) DAVID B. COHEN
Mayor

JUN 12 2009

MAYOR'S OFFICE

JUN 26 8 30 AM '98

Agreement #L-3540

**LICENSE AGREEMENT
RELATIVE TO ACCESS THROUGH
CITY'S CYPRESS STREET PARKING LOT**

This License Agreement ("Agreement") is made this day of April, 1998 by and between George Rothman and Stuart J. Rothman, Trustees of the Herrick Road Realty Trust under a Declaration of Trust dated January 10, 1997 recorded at the Middlesex, South, Registry of Deeds at Book 26980 Page 360 ("Licensee") and the City of Newton ("City"), a municipal corporation existing under the laws of the Commonwealth of Massachusetts, acting through its Commissioner of Public Works, but without personal liability to him.

WITNESSETH THAT:

WHEREAS, Licensee is the owner of two parcels of land now known and numbered as 17 - 31 Herrick Road, Newton Centre, by deed dated January 3, 1997 and recorded with the Middlesex County Registry of Deeds at Book 26980 Page 377, said parcels being numbered by the Newton Assessors as parcels #61-35-6 and 61-35-7; and

WHEREAS, City is the owner of an adjacent parcel which is known as the Cypress Street parking lot, acquired by eminent domain action of the Board of Aldermen set out in an Order dated May 7, 1951 and recorded with the Middlesex County Registry of Deeds at Book 7752 Page 546, said parcel being numbered by the Newton Assessors as parcel #61-35-1 ("Cypress Street parking lot"); and

WHEREAS, Licensee wishes to develop parking spaces on parcel #61-35-7 and has requested a right of access and egress for its tenants and guests through the Cypress Street parking lot; and

WHEREAS, City is willing to allow such an arrangement on the conditions set out below;

NOW, THEREFORE, in consideration of the promises contained in this Agreement, the Parties agree as follows:

1. City hereby grants to Licensee a non-exclusive right to use the Cypress Street parking lot as follows:

(A) Licensee, its agents, tenants and guests may use the Cypress Street parking lot to provide vehicular ingress and egress into the new parking lot on parcel 61-35-7;

(B) Licensee and its contractors may, at Licensee's sole expense, construct an opening between the Cypress Street parking lot and said new parking lot in order to allow for such vehicular ingress and egress. All design of the construction to be carried out on the Cypress Street parking lot shall be subject to the review and approval of the City Engineer; and all such construction carried out within the Cypress Street parking lot shall be subject to the supervision of the City Engineer. Licensee shall promptly deliver to the City any reusable materials which are removed from the Cypress Street parking lot as a result of the construction, such as, but not limited to parking meters, granite curbing and sign posts.

2. All maintenance of Licensee's property and the regulation and control of parking rights in the new parking lot shall be the responsibility of Licensee.

3. Licensee hereby agrees to "adopt" the planter areas in the Cypress Street Parking lot, and to install plantings and maintain them for the term of this license, at Licensee's sole expense. The choice of plant materials and type of maintenance must be approved by the Commissioner of Public Works and shall be in accordance with a plan approved from time to time by the City's Coordinator of the Adopt a Space Program (in the event that such position is discontinued, the City may designate another official or agent to carry out such supervisory role.)

4. Title to all plantings and improvements made by Licensee on the Cypress Street parking lot shall vest in the City.

5. Licensee shall be responsible for repairing any damage to the Cypress Street parking lot which is caused by Licensee, its agents, tenants, guests and contractors in connection with the use of the Cypress Street parking lot. Licensee releases and holds harmless the City from any damage, injury or loss of whatever kind which it may sustain by virtue of carrying out the use of the Cypress Street parking lot permitted by this License. Licensee shall indemnify, defend and hold harmless the City and its officers, agents, servants and employees against all suits, claims and liabilities of every kind and nature, for or on account of injuries to or death of persons, and damage to property arising out of, or in consequence of, the use of the Cypress Street parking lot by Licensee, its agents, tenants, guests and contractors.

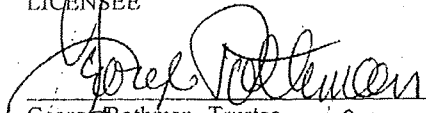
6. The rights given to the Licensee hereunder shall not constitute either an easement, lease, tenancy at will, or other similar property right, but shall be simply a revocable license.


7. The Licensee shall at all times during the duration of this License conduct itself in accordance with the reasonable requests of the Licensor and shall coordinate its activities in order to avoid conflicts with the City's schedule for maintenance, including snow clearance, of the Cypress Street parking lot.

8. The rights granted under this License shall commence upon the Mayor's execution of this License Agreement. The City may revoke this License at any time by giving 30 days written notice to Licensee and in the event of such revocation, the Licensee shall have no recourse against the City and shall have no claim, action, or right to damages or compensation from the City. The Licensee may revoke this License at any time by giving written notice to the Commissioner of Public Works, provided that in the event of Licensee's revocation, Licensee shall be responsible for promptly restoring to its prior condition that portion of the Cypress Street parking lot which Licensee has modified pursuant to paragraph 1 (B) hereof.

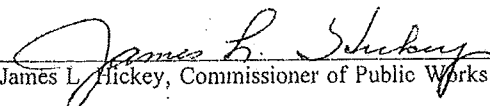
IN WITNESS WHEREOF, the parties hereto have executed this License Agreement in quintuplicate as of the day and year first above written.

LICENSEE

 5/6/98
 George Rothman, Trustee date

 5/6/98
 Stuart J. Rothman, Trustee date


CITY OF NEWTON

By:  6/29/98
 James L. Hickey, Commissioner of Public Works date

Approved as to legal form and character

 7/6/98
 Assistant City Solicitor date

APPROVED:

 7/11/98
 David B. Cohen, Mayor date





Setti D. Warren
Mayor

Attachment F

DEPARTMENT OF PUBLIC WORKS
TRANSPORTATION DIVISION
110 Crafts Street
Newton, MA 02460

DATE: December 04, 2014
TO: Dan Sexton, Senior Planner
FROM: Zach Bosch, Transportation Engineer
CC: William Paille, PE, Director of Transportation
RE: **Proposed Improvements at 17-31 & 39 Herrick Road**

The Transportation Division was provided three documents developed by VTP Associates Inc., Land Surveyors – Civil Engineers, located at 132 Adams Street, Newton, MA 02458: A plan titled “Topographic Site Plan Showing Proposed Conditions At Herrick Road”, dated November 12, 2008, with revision date October 28, 2009 & December 8, 2009; a plan titled “SK-1 Newton Massachusetts At Herrick Road”, dated March 27, 2014; and a plan titled “Topographic Site Plan Showing Proposed Curb Cut At 17-31 Herrick Road”, dated September 16, 2014. It should be noted, the existing site located at 17-31 Herrick Road includes construction of an at-grade access driveway to connect to the site at 39 Herrick Road, and the site at 39 Herrick Road includes construction of a structure bordered by the MBTA Green Line, the City-owned Cypress Lot and property at 17-31 Herrick Road. The Transportation Division submits the following with respect to our primary concerns:

- The project proposes a new three-story, mixed-use building consisting of four dwellings and a restaurant with approximately 75 seating capacity at 39 Herrick Road. Although it appears the new structure will provide approximately 25 parking spaces, the residents of 17-31 Herrick Road who currently use the surface parking lot at 39 Herrick Road are clearly going to be displaced as a result of the new restaurant. This is going to have a significant impact on parking in the immediate area which is already limited.
- The restricted access into the site at 17-31 Herrick Road requiring the use of a traffic signal to control access to the lower level could result in vehicle queueing into Herrick Road and/or Beacon Street.
- The one-way access to the at-grade parking lot at 39 Herrick Road will likely require removal of an on-street metered parking space, relocation of an existing street light and pedestrian crosswalk.
- According to the proposed plan, a vehicle entering the one-way access (i.e. upper level) from 39 Herrick Road, discovering the 5 spaces are occupied will then have to continue into the City-owned parking lot (i.e. Cypress Lot). If those metered spaces are occupied, the driver will have to proceed thru the Cypress Lot, onto Cypress Street, onto Centre Street, back onto Herrick Road in order to enter the site at 17-31 Herrick (lower level) to find parking. Alternatively, a vehicle entering the upper level from the Cypress Lot has insufficient space to reverse direction should the five spaces be occupied. This presents a challenge to circulation, inefficient and undesirable.
- The proposed site at 39 Herrick Road could result in significant impacts to the Cypress Lot with respect to circulation, parking and pedestrian access/safety.
- It is not clear but there appears to be a vehicle/pedestrian conflict where the proposed 6’x10’ dumpster is located near the staircase/gate. Are residents of 17-31 Herrick Road expected to carry their trash down stairs and thru a gate?

**CITY OF NEWTON
DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**

MEMORANDUM

To: Alderman Mark Laredo, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 39 Herrick Road

Date: December 4, 2014

CC: Lou Taverna, PE City Engineer
Linda Finucane, Associate City Clerk
Ouida Young, Associate City Solicitor
Alexandria Ananth, Chief Planner
Dan Sexton, Sr. Planner
Shawna Sullivan, PFC Clerk

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

*Topographic Site Plan
Showing Proposed conditions at
Herrick Road
Newton, MA
Prepared by: VTP Associates, Inc.
Dated: November 12, 2008
Revised: October 28, 2009
December 8, 2009*

Executive Summary:

A 2-1/2 story edifice is proposed to be built on a lot of approximately 13,000 square feet. The lot is bound on the north by City of Newton property [the former Health Department building], on the east by a multi-story residential building, on the south by the MBTA Greenline & a City owned 10' wide foot path, and on the west by a municipal parking lot.

The lot is almost entirely paved as a parking lot and has a gentle slope from elevation 72 at the southeast corner at Herrick Road and slopes to elevation 70' at the northeast corner of the lot near the Health Department lot. At the time of this review no drainage report was provided.

Herrick Road paved in 2011 construction season, the applicant shall be responsible to mill curb to curb and pave with Type I-1 bituminous concrete the section of Herrick Road from where the water main is extended up to the MBTA Bridge upon complete installation, testing and approval of all utilities in accordance to the City of Newton Construction Standards and Specifications.

Site Access:

1. The applicant has proposed a **Red & Green** traffic control device and associated Stop bar [Note: the word "**BAR**" does not need to be stenciled onto the pavement as indicated on the site plan, just the word **STOP**], at both ends of the proposed driveway along the northwesterly property line. This will allow safe passage upon entering and exiting the underground garage.
2. According to the site *Section B-B* the area that is [cross hatched] will be covered over with what is assumed to be a reinforced concrete deck then loam and seed will be placed over this area. Due to the vertical grade change an 8' high non-climbable fence will be needed along the entire property line that divides the City of Newton property and the applicant's property. Maintenance of the fence shall be the responsibility of the applicant. The proposed driveway ramp to the underground parking garage will traverse a portion of the City owned property at #1294 Centre Street (former Health Department building) this will require a License Agreement and or Access Easement with the City.
3. A generic sketch of the proposed retaining wall has been provided. A Registered Structural Engineer shall submit a complete design prior to the building Permit being issued. Any wall greater than 4 –feet shall have a non-climbable safety fence installed on top of the wall. Details of the fence will be needed.
4. According to the City records the existing public pedestrian footpath is 10-feet wide, however between the chain link fence of the MBTA and the chain link along this property the pathway varies between 3' – 5'. According to the architectural plans the front entrance of the building will be directly connected to this pathway, accordingly the pathway should be widened to the maximum extent and reconstructed with cement concrete as a public benefit. This footpath shall remain open during construction.
5. A fire truck turning template plan is needed for the proposed conditions.

6. The Commissioner of Public Works has no objection to the proposed 3' wide landscaping bed provided that the applicant obtains all legal requirements of the Law Department, maintains the planting so that they do not interfere with safe pedestrian access, the plantings shall be small low plants so that no one can hide behind the plantings, the new 7' wide path shall be reconstructed of cement concrete, and that it is cleared of snow, maintained, and the path be properly illuminated for safe pedestrian passage. The Commissioner is requiring a detailed landscape plan of specific plantings, lighting scheme once plans are finalized for review and approval.
7. The engineer of record & contractor will need to make provision to properly shore and brace the footpath during construction to ensure that the public can safely use the pathway while the foundation for the proposed building is being excavated and the site is under construction. The applicant may have to provide a protective covered scaffolding system that will be determined by the Inspectional Services Department. As an alternative the footpath can be temporarily closed to install the water main while allowing the public to use the applicant's property within a dedicated zone with proper barricades to have access from the municipal parking lot and Herrick Road and the MBTA stop. Liability issues need to be reviewed by the Law Department prior to any closure or relocation of the pathway.
8. As a public benefit the applicant is asked to improve the existing walkway (southeast corner) parallel to the last parking stall that abuts their property by making the walkway ADA accessible. This will provide a mid-point for HP access off the footpath rather than having to go to either end.
9. Based on the proposed and existing grades a safety fence or rail shall be installed along the entire length of the proposed walkway along the access driveway to the underground garage.
10. The truck access to the proposed dumpster location needs to be modified by pulling the paved area southeasterly approximately 15' to accommodate the loading and unloading of the dumpster.
11. Granite curbing should be installed along the proposed 3' wide walkway to protect pedestrian when they are walking on this path.
12. Snow storage areas need to be identified on the plan.
13. Currently the municipal parking lot and this private lot are interconnected, what will be the status of this interconnection after construction, motorists will utilize this as a cut through to avoid going out to Cypress & Centre Streets.
14. The proposed walkway along the northeast and along the proposed driveway do not connect to any other walk ways, this needs to be developed so that there is safe contiguous walking paths.

Drainage:

1. Updated drainage analysis is needed for the City of Newton's 100-year storm event. On site soil evaluation needs to be performed to obtain the seasonal high groundwater elevation, percolation rate in accordance to Title V.
2. I am concerned about the proposed infiltration systems that are proposed below the garage floor, this is not a typical installation, and how would the system be accessed for cleaning and removal of debris?
3. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities is acceptable. This needs to be 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. 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 Homeowners Association or owner of the property.

Construction Management:

1. A Construction Management Plan is needed for this project prior to filing for a Building Permit.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.

Environmental:

1. With the removal of the power plant building that supplies heat to the existing apartment building the applicant needs to work with the Fire Department to ensure that the existing oil tank(s) are removed in accordance to local, state and federal laws.
2. There is a monitoring well on the site but is not shown on the site plan, what is the status of this well?

Water & Sewer:

1. In 2003 the applicant obtained permission from the Board of Aldermen to extend both the water main and sanitary sewer mains within Herrick Road; however neither utility has been installed to date. The applicant should check with the

Clerk of the Public Facilities to ensure that the approval for the extensions has not expired.

2. To confirm the design assumptions of the 4" fire line, Fire flow testing is required for the proposed fire suppression system. The applicant must coordinate this test with both the Newton Fire Department and the Utilities Division; representatives of each department shall witness the testing, test results shall be submitted in a write report. Hydraulic calculation shall be submitted to the Newton Fire Department for approval.
3. The water meter shall be located in a heated room within the garage.
4. The applicant has the proposed water main extension off Herrick Road be extended through the property and connect to the existing main in the municipal parking lot, thus creating a looped system. This will be a public benefit which would improve water quality and reinforce the water pressure.
5. The sanitary sewer service will need a grease trap for the restaurant prior to the final connection of the main.
6. The final configuration of the water and sewer systems will have to be approved by the Director of Utilities.
7. All water and sewer construction shall be pressure tested and vacuum tested in accordance to the City of Newton Construction Standards. All testing must be witnessed by a representative of the Engineering Division.

General:

1. As of January 1, 2009, 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 water services, sewer service, and drainage

system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval.

4. The applicant will have to apply for Street Opening, Sidewalk Crossing, and Utilities Connecting permits with the Department of Public Works prior to any construction.
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.
7. All site work must be completed prior to applying for a Certificate of Occupancy.

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.