



2010 00124763

Bk: 55066 Pg: 55 Doc: DECIS
Page: 1 of 7 07/29/2010 09:21 AM

09 DEC 23 PM 3:18
CITY CLERK
NEWTON, MA 02459

CITY OF NEWTON

IN BOARD OF ALDERMEN

December 21, 2009

ORDERED:

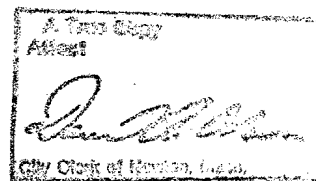
That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, that the application meets the criteria established in §30-24 (d) (1)-(4), and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN for a three-story mixed-use building containing four dwelling units and ground floor commercial space with a 75-seat restaurant with underground parking and associated parking stall waivers as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman George E. Mansfield:

39 Herrick Road, Newton

1. The Herrick Road location is an appropriate location for a restaurant use with more than 50 seats to serve shoppers, employees, and the surrounding neighborhoods.
2. The proposed mixed-use development including four residential units and a restaurant with a maximum of 75 seats will increase the vitality of the Newton Centre BU-1 zoned commercial district and will complement other uses in the immediate vicinity.
3. The proposed structure including height, number of stories, reduced front setback, and frontage along the public footway will not be more detrimental to the surrounding area and neighborhood than the existing parking facility.
4. The granting of waivers from the parking requirements, including a reduction in the number of spaces to be provided will not have adverse affects on parking, traffic, and circulation in the Newton Centre commercial district or adjacent residential streets as the property is within walking distance of the Newton Centre MBTA station.
5. The existing apartment building on Lot 6 was constructed in the 1920s and has been a legal nonconforming use without the provision of parking until the late 1990s when the property owner voluntarily paved the adjacent Lot 7 (subject property) to provide parking for apartment residents. This parking lot has not been fully utilized and the waiver of 18 parking spaces located on Lot 7 will not have adverse affects on residents of the apartment building on Lot 6 or on parking, traffic, and circulation in the Newton Centre commercial district or adjacent residential streets.
6. The construction of retaining walls in the rear and side setbacks of Lot 6 will not adversely affect immediate abutters.
7. The petitioner has offered to provide additional public benefits in the way of widening, paving, planting, and lighting the public footpath so as to enhance the safety and pedestrian experience of those traveling on the footpath; and looping of the water main off Herrick Road through the adjacent municipal parking lot to improve water quality and reinforce water pressure.

RETURN TO: Terrence P. Morris, Esq.
57 Elm Road, Newton
MA 02460-2144

Bk 26980
PG 377



8. The petitioner will design improved signage in Newton Centre to direct people to available municipal parking in the lot on Cypress Street, which will help to reduce traffic and circulation in the vicinity.
9. The petitioner will provide publicly accessible metered parking space adjacent to the Cypress Street parking lot to replace a metered parking space that will be removed from Herrick Road to make way for a new driveway to the site and to provide an easement for such use.
10. The design of the underground parking facility will allow for future connection to underground parking on the Cypress Street Lot if developed in the future.
11. The proposed use is consistent with the *Newton Comprehensive Plan* because it increases the vitality of the commercial district without adverse impacts on adjacent businesses or residents, as it is a mixed-use development and adjacent to public transportation. The sharing of parking spaces at different times of day by different users is also encouraged by the *Comprehensive Plan*. An in-lieu fee towards affordable housing in accordance with §30-24(f) of the Zoning Ordinance will contribute to the diversity of housing in the community. The addition of a restaurant is an amenity to the surrounding community and will contribute to the commercial real estate tax and employment base.

PETITION NUMBER: #272-09

PETITIONER: Herrick Road Realty Trust

LOCATION: 39 Herrick Road, Section 61, Block 35, Lots 6 & 7 containing approximately 11,638 sq. ft. of land

OWNER: Herrick Road Realty Trust

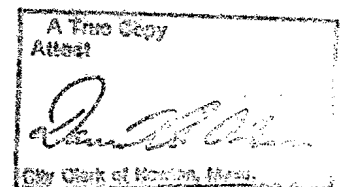
ADDRESS OF OWNER: 907 Massachusetts Avenue, Cambridge, MA 02139

TO BE USED FOR: A 3-story mixed-use building containing 4 dwelling units and ground floor commercial space with a 75-seat restaurant, with underground parking and associated parking waivers on Lot 7.

CONSTRUCTION: Wood frame

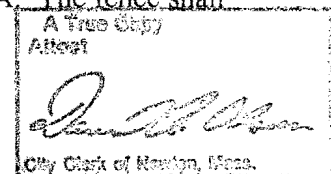
EXPLANATORY NOTES: The following special permits are granted: §30-11(d)(8) for a multi-family building; §30-15 Table 3 to allow a three-story building with a height of greater than 24 feet; §30-11(d)(9) for a restaurant with more than 50 seats; §30-15(b)(2) to allow frontage to be measured along a public footway; §30-5(b)(4) to allow for retaining walls or system of walls of greater than four feet within the setback; §30-19(f)(1-2) to locate off-street parking facilities (a driveway) on a separate lot; §30-19(d)(2) to allow 1¼ parking spaces per dwelling unit; §30-19(m) to waiver required parking spaces as to Lot 6.

ZONING: Business 1

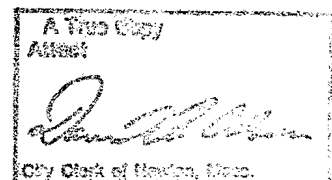


Approved subject to the following conditions:

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
 -
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.

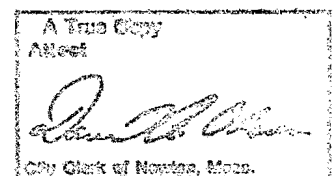


18. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:

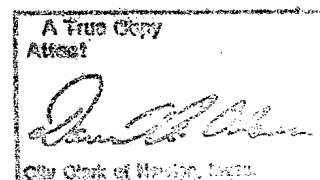
a. submitted a Construction Management Plan for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer.

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.



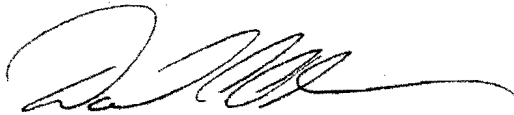
- g. obtained approval from the Director of Planning and Development of site lighting, including parking garage warning lights and low-key down lighting for driveway to parking garage.
 - h. recorded a certified copy of this board order for the approved special permit/site plan with the Registry of Deeds 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.



Under Suspension of Rules
Readings Waived and Approved
23 yeas 0 nays 1 absent (Alderman Sangiolo)

The undersigned hereby certifies that the foregoing copy of the decision of the Board of Aldermen granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the CITY CLERK on December 23, 2009. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

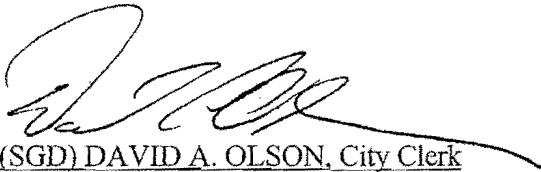
ATTEST:



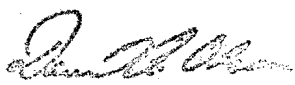
(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

I, David A. Olson, 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 certify 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 12/23 and that NO APPEAL to said decision pursuant to M.G.Laws Chapter 40, Section 17 has been filed thereto.

ATTEST:



(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

A True Copy
Attest

City Clerk of Newton, Mass.