



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: January 8, 2019  
Land Use Action Date: March 26, 2019  
City Council Action Date: April 1, 2019  
90-Day Expiration Date: April 8, 2019

DATE: January 4, 2019

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Jennifer Caira, Chief Planner for Current Planning  
Neil Cronin, Senior Planner

SUBJECT: **Petition #564-18**, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a three-story, multi-family structure, 35.5' in height containing nine dwelling units, to allow a reduction in the parking requirement to one stall per unit, to allow a retaining wall greater than four feet within the setback, to allow off-site parking and to allow waivers to the requirements of parking facilities containing more than five stalls, in Ward, 6, Newton Centre, at **39 Herrick Road**, Section 61 Block 35 Lot 07, containing a lot area of approximately 12, 979 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: §7.3.3, §7.4, §4.4.1, §4.1.2.B.3, §5.1.4, §5.1.13, §5.1.6.A, §5.1.6.B, §5.4.2.B, §5.1.8.A, §5.1.8.B.5, §5.1.8.C.2, §5.1.8.D.1, §5.1.9.A, §5.1.10, of the City of Newton Rev Zoning Ord, 2015.

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



**39 Herrick Road**

### **EXECUTIVE SUMMARY**

The subject property consists of 12, 979 square feet in the Business Use 1 (BU-1) zone in Newton Centre. The property is improved with an 18-stall surface parking facility serving the multi-family dwelling located on the adjacent parcel at 17-31 Herrick Road. The petitioner proposes to construct a three-story, 35.5-foot tall multi-family dwelling containing nine residential units and an associated nine-stall surface parking facility. To construct the proposed multi-family dwelling, the petitioner requires special permits to allow a three-story 36 foot tall, multi-family dwelling with ground floor units, to allow a retaining wall exceeding four feet tall within the setback, to reduce the parking requirement from two stalls per unit to one stall per unit, and to waive certain requirements of parking facilities containing more than five stalls.

The Planning Department believes the petition satisfies several principles found in the *Comprehensive Plan* as well as the *Housing and Transportation Strategies* by diversifying the City's housing stock with smaller units reserved for those 55 years of age and older, creating an inclusionary zoning unit, and developing an underutilized parcel within a village center, adjacent to transit. However, staff believes the petition could benefit from improved the site design with respect to access, parking, and open space as well as the structure's relationship with the street. The Planning Department suggests the petitioner work to redesign the petition with input from Planning Department and Engineering Division, as well as the Urban Design Commission

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed multi-family structure. (§7.3.3.C.1.)
- The proposed multi-family structure as developed and operated will not adversely affect the neighborhood. (§7.3.3.C.2.)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3.)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4.)
- Literal compliance with the parking requirements of the Newton Zoning Ordinance (Ordinance) is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§5.1.13.)
- The specific site is an appropriate location for a retaining wall exceeding four feet within the setback. (§5.4.2)

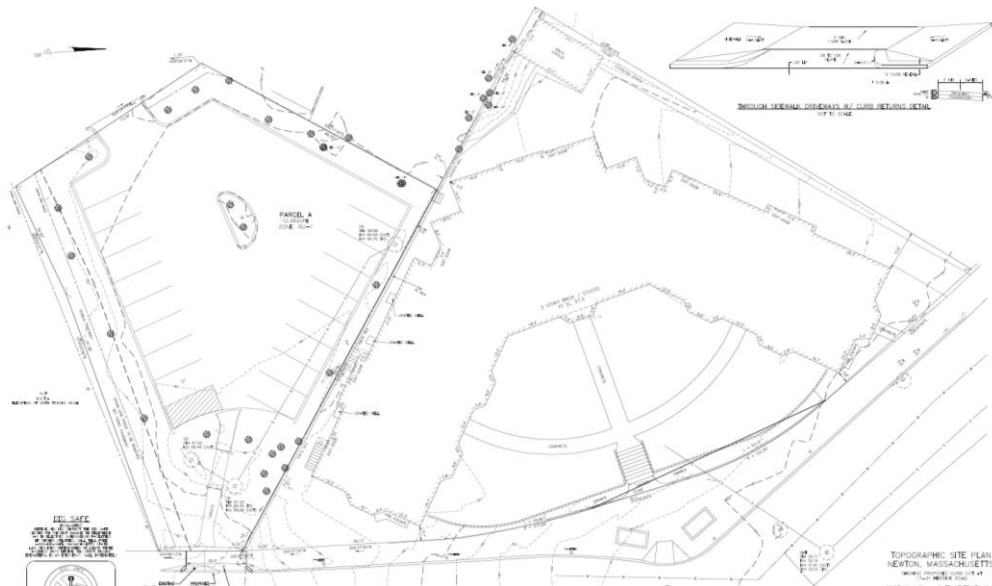
## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on Herrick Road in Newton Centre. The immediate area is comprised of the Business Use 1 and 2 zones as well as the Public Use zone. Farther south lie the Multi-Residence 1 and 2 zones (**Attachment A**). These zones contain a variety of uses from commercial, to mixed use, to nonprofit organizations which comprise the Newton Centre Village (**Attachment B**). The site is located within a transition zone buffering the single and multi-family uses to the south from the village.

### B. Site

The site consists of 12, 979 square feet of land, improved with an 18-stall surface parking facility serving the multi-family dwelling on the adjacent parcel at 17-31 Herrick Road. The lot has a pie-shape that is narrow along the Herrick Road frontage and which widens towards the rear along the Cypress Street Municipal Lot. The southern portion of the site was subject to a taking by the City in 1951 to allow for the creation of a ten-foot wide public footpath connecting the Cypress Street Municipal Lot to Herrick Road, and ultimately the MBTA station. The site is generally flat with mature trees located at the northern and eastern boundaries.



C. Parcel History

The parcel was unimproved until the petitioner obtained a license from the City to allow vehicles to access the site over the Cypress Street Municipal Parking Lot. Once this license was obtained, the petitioner constructed an 18-stall surface parking facility to serve the multi-family dwelling at 17-31 Herrick Road.

The petitioner received a special permit from the then Board of Alderman in 2009 to construct a three-story, mixed use building with a 75-seat restaurant on the ground floor and four residential units in the above stories. The structure also contained a below grade parking structure accessed over the municipal property at 1294 Centre Street. The Board Order required the petitioner to secure an easement from the City to allow access over 1294 Centre Street and required the petitioner to obtain a variance from the Zoning Board of Appeals (ZBA) for the front setback distance from the footpath. The petitioner was able to obtain the variance from the ZBA but was not able to obtain the easement from the City. A similar special permit petition was approved in 2014 with office space rather than a restaurant, but an easement was not obtained.

In 2016 the petitioner was awarded the right to develop the adjacent municipal property at 1294 Centre Street following a City issued Request for Proposals. The proposal included both the municipal property at 1294 Centre Street as well as the subject property at 39 Herrick Road and included restoration of 1294 Centre Street, a new restaurant, housing for the chronically homeless, community meeting space, and a specialty hotel. Ultimately, the City chose not to move forward with the proposal.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

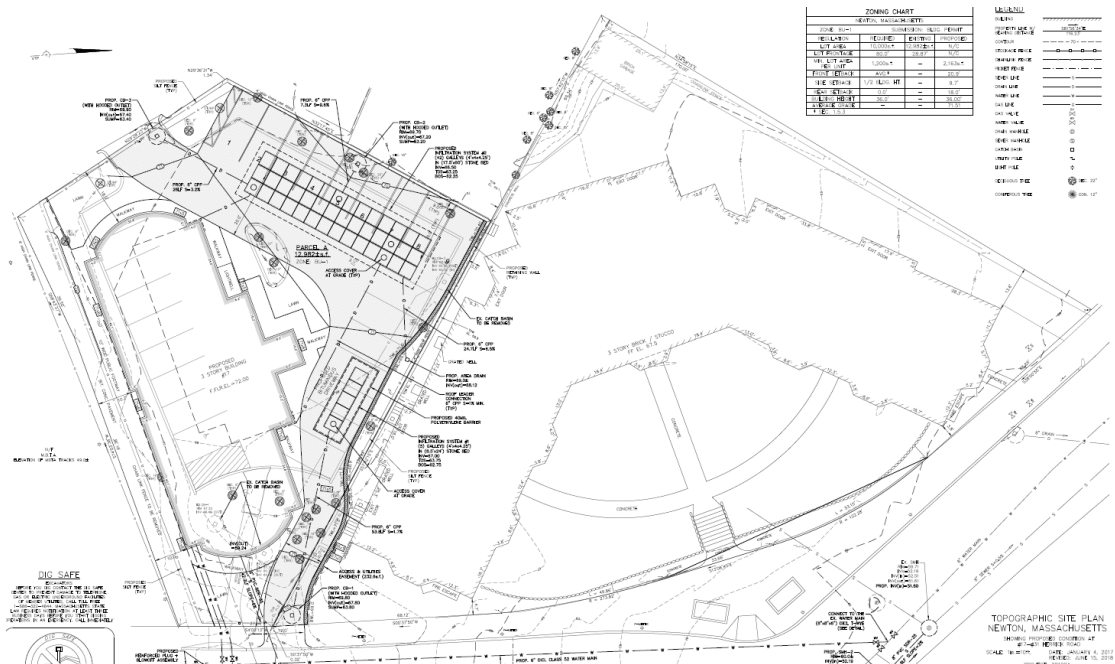
The principal use of the site will change from a surface parking facility to a multi-family dwelling. The petitioner is requesting a waiver from the requirement to locate commercial uses on the ground floor in a BU-1 zone. The Planning Department is unconcerned with this waiver given the location of the project within Newton Centre adjacent to the MBTA tracks and its limited frontage on Herrick Road.

B. Site Design

The petitioner is proposing to construct a three-story, 36-foot tall multi-family dwelling containing nine units restricted to persons over 55 years of age. The multi-family dwelling will have an associated surface parking facility containing nine stalls. The structure will have a zero setback from the footpath, due to the variance granted by the ZBA. Otherwise, the structure is compliant with the dimensional requirements of the

BU-1 zone.

The petitioner proposes to install a 12-foot wide curb cut from Herrick Road to provide access to the site. The curb cut leads to a 12-foot wide drive aisle and the nine-stall surface parking facility. A portion of this drive aisle is located on the adjacent property at 17-31 Herrick Road, which is under common ownership with the subject property, and requires a special permit. Additionally, due to the change in grade between the two sites a retaining wall is necessary to accommodate the aisle. The retaining wall is approximately 5.5 feet tall and is located within the setback of 17-31 Herrick Road. Lastly, the proposed driveway will result in the loss of a metered parking stall on Herrick Road, requiring approval from the Traffic Council.



C. Building Design

The petitioner is proposing to construct a three-story, 35.5-foot tall multi-family dwelling. The dwelling will contain three one-bedroom units averaging 695 square feet and six two-bedroom units averaging 1,381 square feet. The proposed structure borrows heavily from architectural details seen in nearby structures such as lintels, Georgian style parapet walls, a clock tower, and hipped-roof dormers. Staff suggests that the petitioner provide details as to the proposed materials.

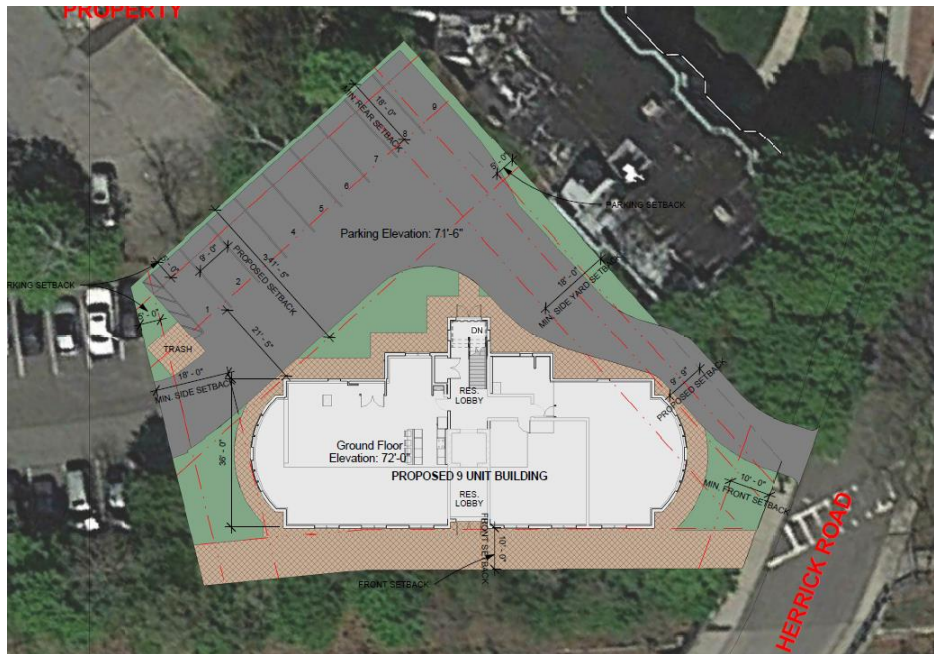


**View from MBTA Tracks**

As proposed, the structure is oriented towards the MBTA tracks to the south and to the surface parking facility to the north, not Herrick Road. This design is unchanged from previous petitions that included a below grade garage. These earlier designs that included the restaurant or the office space, featured a front door from Herrick Road for pedestrians. The Planning Department would like to see a front door featured on the Herrick Road façade and suggests the petitioner consider redesigning the structure to feature a prominent pedestrian entrance.

The driveway location along Herrick Road is partially dictated by the location of an existing light pole. The Planning Department informed the petitioner that the Department of Public Works would consider the petitioner relocating the existing light pole to reduce the likelihood of the pole being hit by a vehicle. The Planning Department believes the petitioner should seize upon this flexibility to create a stronger façade facing Herrick Road and suggests the petitioner appear before the Urban Design Commission to discuss the site design and building orientation. Additionally, relocating the light pole may allow for the retention of the metered stall on Herrick Road.

As proposed, much of the lot will be consumed by impervious surfaces to allow for access and parking. This is in part due to the site's constraints and the orientation of the proposed structure. Such a design does not create any open space for the building's tenants, orients the building towards surface parking and the MBTA tracks, relies on egress through the Cypress Street Municipal lot, and creates a narrow drive aisle that would serve as both ingress and egress if the license over the Cypress Street Municipal Lot was ever revoked. For these reasons, the Planning Department recommends the petitioner redesign the project to reorient the building, improve access, reduce impervious area, and increase useable open space.



D. Circulation and Parking

The petitioner is proposing to facilitate a one-way traffic pattern through the site where vehicles enter the site from Herrick Road and exit the site through the Cypress Street Municipal Lot. Such a design requires an amendment to the license with the City. The petitioner proposes to install a 12-foot wide curb cut from Herrick Road providing access to a 12-foot wide drive aisle and a nine-stall surface parking facility along the eastern boundary. The nine stalls are compliant with the standards of the Ordinance. However, the Planning Department suggests the petitioner provide a turning template for stall #9 as it is restricted by a retaining wall on its right side and the accessible stall should be a van accessible stall with an eight-foot aisle and should be located closest to the entrance.

The multi-family dwelling located on the adjacent parcel at 17-31 Herrick Road was constructed prior to any zoning provisions concerning parking. In 1998, the petitioner created 18 stalls, bringing the multi-family dwelling more into conformance with the parking provisions. Per the Ordinance, once a structure or use is brought closer to conformance, that structure or use may not become more nonconforming. Because the petitioner is proposing to remove the 18 stalls, the petitioner requires a special permit to waive the stalls. Of the 18 stalls, 15 are currently leased to tenants through agreements that can be terminated upon a 30-day notice. The petitioner informs staff that three of the 18 stalls are not leased.

The Petitioner provided a Parking Demand Management Plan dated November 13, 2018 (**Attachment C**). The plan primarily describes the existing and proposed conditions but does not offer any strategies for managing or reducing parking demand other than unbundling the cost of parking from the cost of rent. While the site's

proximity to the MBTA Green Line, and its location within Newton Centre suggest that a reduction of on-site parking for both the existing and proposed buildings would be appropriate, the petitioner should provide additional justification for the waivers and stronger demand management measures to reduce the need for residents to have cars. Strategies could include subsidizing transit passes, providing a space for carshare on site, subsidizing car-share/bike-share memberships, posting transit and bicycle information within the buildings, and providing a lounge or coworking space within the new building for residents of either building to utilize if they work from home.

In addition to the comments above regarding the amount of impervious surface on the site, most of which is dedicated to parking and access, the Planning Department is considering whether the site's proximity to the MBTA Green Line and walkable location in Newton Centre , suggest that site is a unique opportunity to further reduce parking.

Staff may support such a waiver provided strong Transportation Demand Management (TDM) strategies are implemented and the proposed dwelling is oriented towards pedestrians with a prominent entrance from Herrick Road. However, staff is unsure of how such a petition would affect accessibility, specifically, accessible parking. The proposed dwelling will contain an accessible unit and will contain an elevator thereby classifying all units in the dwelling as visitable and adaptable to those with disabilities. Staff will consult with the petitioner as well as Inspectional Services and the City's ADA Coordinator to determine the feasibility and implications of reducing parking.

E. Landscape Screening

The petitioner submitted a landscape plan, proposing plantings at the eastern and western facades, with a few trees along the northern boundary. The Planning Department suggests the petitioner replace the four-foot tall chain link fence along the western boundary with stockade fencing to match the existing fencing along the northwestern boundary. The petitioner is proposing to remove a number of trees to accommodate the structure and parking facility. As such the petitioner will be required to comply with the City's Tree Preservation Ordinance. Staff suggests the petitioner explore replacing the caliper of inches lost rather than pay into the fund.



F. Affordable and Fair Housing Policy

**Table I: Unit Mix**

Unit Type	Number of Units	Number of Deed Restricted Units	Percentage of Area Median Income (AMI)	Average Square Footage (Of Unit Type)
One-Bedroom	3	0	N/A	695 S.F.
Two-Bedroom	5	1	65%	1,321 S.F.
Two-Bedroom w/ Study	1	0	N/A	1,684 S.F.
<b>Total</b>	<b>9</b>	<b>1</b>	<b>N/A</b>	<b>1,152 S.F.</b>

The petitioner submitted an Inclusionary Housing Plan and an Affirmative Fair Marketing and Resident Selection Plan. The petitioner is required to provide 15%, or one, of the units as an Inclusionary Unit. The Inclusionary Unit will be restricted to households earning up to 65 percent of Area Median Income (AMI) and will be a 1,395 square-foot, two-bedroom, two-bathroom unit. Staff has not yet completed review of the proposed Inclusionary Housing Plan and expect to provide an update at the Public Hearing.

G. Accessibility

The project is required to be compliant with ADA and Massachusetts Architectural Access Board (MAAB) regulations. The petitioner is proposing nine surface parking stalls, one of which has a three-foot wide aisle. Inspectional Services requires that accessible stall provided must be van-accessible, which requires an eight-foot wide stall with an eight-foot wide drive aisle (or alternatively an 11-foot wide stall with a five-foot wide aisle). Additionally, the proposed stall does not appear to be the closest stall to the entrance, as required by Code. The petitioner should revise the plans to comply with these two criteria.

H. Signage

The petitioner has not requested relief from the Ordinance regarding the number, size or type of signs. As a result, all signs are expected to be as of right and will be reviewed by the Urban Design Commission, should this petition be approved.

I. Lighting

The plan indicates there is light spillover beyond the property lines, and there appears to be a light fixture located on the adjacent parcel at 17-31 Herrick Road. The Planning

Department suggests the petitioner revise the plan to remove the spillover. Otherwise, staff is supportive of the light levels throughout the facility.

J. Project Phasing and Construction Management

Should this project be approved, a Construction Management Plan (CMP) will be required prior to the issuance of any building permits and will be reviewed by the Commissioner of Inspectional Services, the Commissioner of Public Works and the Director of Planning and Development.

IV. CONSISTENCY WITH COMPREHENSIVE PLAN, TRANSPORTATION & HOUSING STRATEGIES

*Newton's Comprehensive Plan of 2007* seeks to protect the rich choice among the City's neighborhoods while also relating density to neighborhood character and infrastructure capacity while promoting a range of housing opportunities. The *Housing Needs Analysis and Strategic Recommendations* from June 2016 contains housing strategy principles to provide greater housing diversity to preserve the City's character and quality and the *Newton Leads 2040 Transportation Strategy* contains strategies intended to make it safer and easier for Newtonians to utilize alternative modes of transportation such as walking, biking, and taking transit.

These plans contain relevant goals for residential development, such as smart growth principles to guide growth in the City to where it is "best served by public transport, where it is closest to businesses which provide services or to the largest employers, and for family housing, where it has safe and close access to public schools"; and providing greater housing diversity. The proposed project is located in Newton Centre, directly across from the entrance to the MBTA Green Line and surrounded by a multitude of restaurants, shops, and services. Additionally, the Newton Centre Green is also nearby. The walkability of the neighborhood and proximity to transit and services will support the City's adopted smart growth policies.

In addition to supporting transportation access and choice, housing diversity and choice are critical goals of the City. The *Housing Strategy* contains principles which include pursuing diverse housing choices to meet changing housing needs of a diverse population, locating housing to promote access and choice, seeking high-quality design that is responsive to context, and pursuing green design. The petition will provide nine residential units restricted to those 55 years and older. The units will be modestly-sized one- and two-bedroom units in a walkable, transit-accessible neighborhood. Of the nine units, one unit will be deed-restricted in perpetuity to households earning up to 65 percent of the Area Median Income (AMI). While the proposed project meets many goals for locating housing within a village center, the building's relationship to the street could be improved. The building is oriented towards a surface parking lot and to the MBTA tracks and does not have much of a presence on Herrick Road. The Planning Department recommends the petitioner continue to work on the site plan and consult with the Urban Design Commission.

Overall, the Planning Department believes the petition satisfies many of the principles of the above referenced plan by providing much needed housing in a location that meets smart growth principles.

V. TECHNICAL REVIEW

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

The Zoning Review Memorandum, dated March 15, 2018 provides an analysis of the proposal regarding zoning. **(Attachment D)**

B. Engineering Review

Associate City Engineer, John Daghlian, reviewed this petition for conformance with the City of Newton Engineering Standards **(Attachment E)**. Staff suggests the petitioner meet with Mr. Daghlian given the City's review over improvements to the footpath and other identified issues.

C. Fire Department Review

It is expected that the multi-family dwelling will be sprinkled. Nevertheless, staff suggests the petitioner overlay the proposed site plan with the BUS-45 template used by the Newton Fire Department for access. Additionally, the petitioner should meet with the Newton Fire Department prior to be appearing before the Land Use Committee for a Working Session.

VI. PETITIONER'S RESPONSIBILITIES










The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

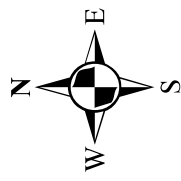
**ATTACHMENTS:**

- Attachment A:** Zoning Map  
**Attachment B:** Land Use Map  
**Attachment C:** Parking Management Plan, dated November 13, 2018  
**Attachment D:** Zoning Review Memorandum, dated December 11, 2018  
**Attachment E:** Engineering Memorandum, dated September 17, 2018

# Attachment A Zoning Map Herrick Rd., 39 City of Newton, Massachusetts

## Legend

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



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 - Ruthanne Fuller



Map Date: January 04, 2019



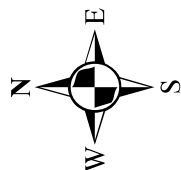


# Attachment B Land Use Map Herrick Rd., 39

*City of Newton,  
Massachusetts*

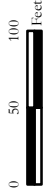
**Legend**

	Land Use
	Land Use
	Single Family Residential
	Multi-Family Residential
	Commercial
	Mixed Use
	Open Space
	Nonprofit Organizations
	Building Outlines
	Surface Water
	Property Boundaries

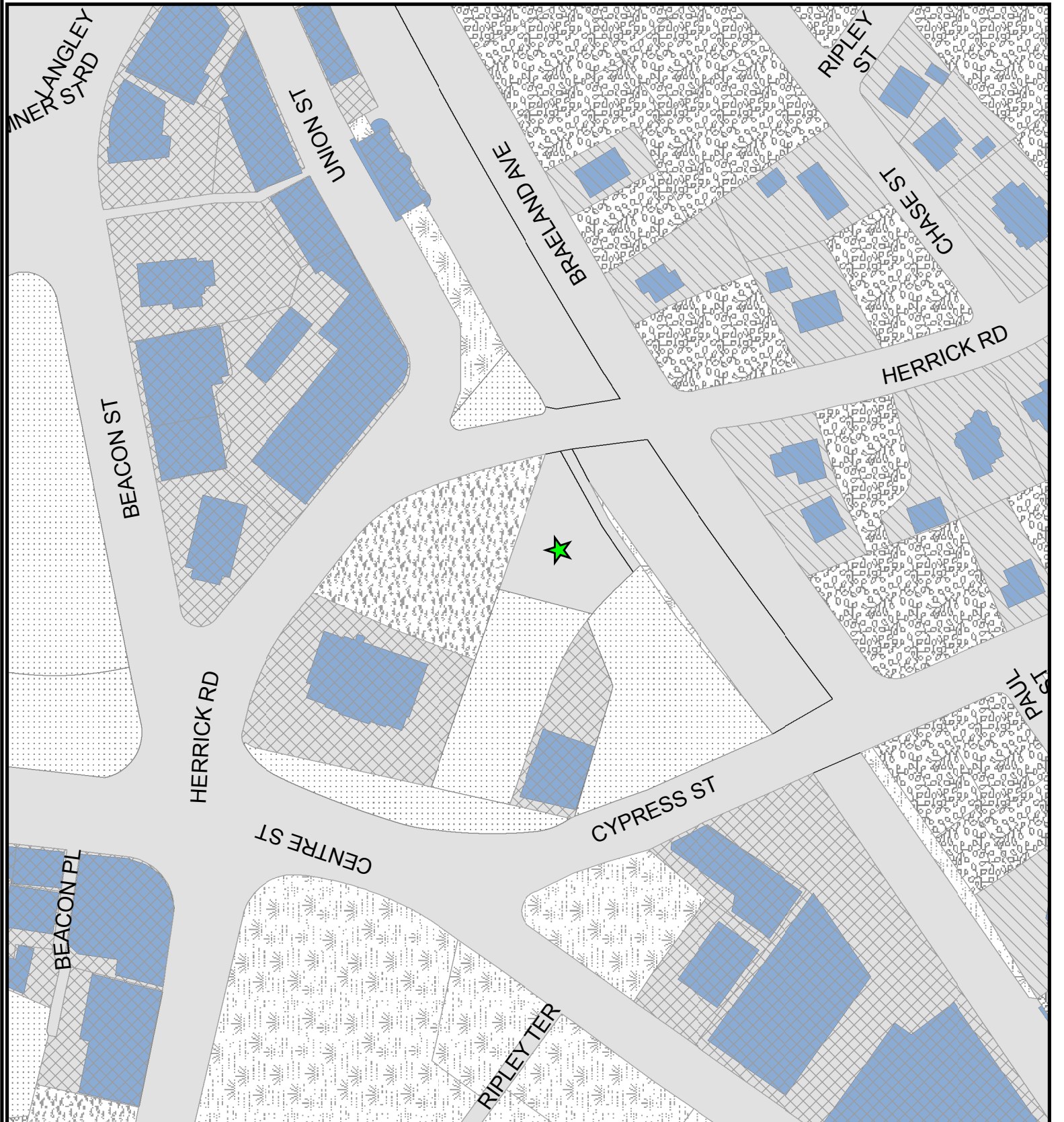


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller



Map Date: January 04, 2019



*Terrence P. Morris, Esq.*  
*Law Offices of Terrence P. Morris LLC*  
*57 Elm Road*  
*Newton, MA 02460*  
*617 202-9132*

November 13, 2018

***By electronic transmission: jsobel@newtonma.gov***

Jason Sobel, Deputy Director of Transportation  
Department of Public Works  
1000 Commonwealth Avenue  
Newton, MA 02459

Re: 39 Herrick Road (the "Locus")  
Special Permit Petition #464-18

Dear Jason:

Thank you for taking the time recently to discuss the above-referenced petition in the context of current and future development plans for Newton Centre. We have been asked to produce a parking demand management plan in conjunction with the proposed development of the Locus. You have indicated that this letter should suffice.

***Background***

The site consists of a 12,979+/- square foot lot and is currently undeveloped land used as a parking lot. It is located immediately behind and adjacent to another lot containing a 26-unit apartment building with a street address of 17-31 Herrick Road. The apartment building was constructed circa 1930 prior to there being any accessory parking requirements. It has been a legal nonconforming use without the provision of parking. The Locus provides some accessory parking for the apartment building and has 28.87 feet of frontage along Herrick Road. It also has access through the municipal-owned parking lot on Cypress Street by virtue of a license granted by the city.

The Locus can accommodate parking for up to 18 spaces. Fifteen (15) of the 18 spaces are currently leased to tenants in the apartment building under tenancy-at-will agreements, which are terminable upon 30-day notice. Three of the spaces are currently vacant. The spaces are leased independently of the rental of the apartments.

***Current Proposal***

The petitioner proposes to construct a 9-unit multifamily dwelling which requires a special permit. There will be surface parking for nine (9) cars. According to the current parking standards eighteen (18) spaces (2 per dwelling unit) would be required. The petitioner is seeking a waiver of nine (9) spaces under that provision in the ordinance which allows for a reduction by special permit. The parking is to be “unbundled”, i.e., not designated for any unit, which allows use of the spaces to be maximized on an “as-needed” basis for visitors and other short-term use. The development is intended to be marketed to that segment of the population which is over 55 years of age and would be deed restricted to that effect. Given the target market there is increased likelihood that we would be attracting residence with only one car.

***Context***

The Locus has two previous special permits granted for a mixed-use building with 1<sup>st</sup> floor commercial upper story residential units that also required parking waivers. In each of those cases the parking demand was exacerbated by the commercial component, which has been removed. A waiver of the spaces was granted largely based on the fact that the Locus is within walking distance of the MBTA Highland Branch station, adequate public parking and a broad spectrum of neighborhood amenities.

***Site Circulation***

Under the current proposal, a new access point would be opened on the Herrick frontage. The proposed 12-ft. driveway off Herrick Road, which is not practical for two-way traffic, is desirable for several reasons. It would allow for through traffic over the site entering and Herrick Road and exiting onto Cypress Street.

I trust that this information will be sufficient in evaluating the impact of the proposed development from your perspective. Thank you for your time and attention to this matter.

Sincerely,

*Terrence P. Morris*

Terrence P. Morris

Cc: Neil Cronin, Senior Planner *via email*  
Stuart Rothman, Herrick Road Realty Trust *via email*



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Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: December 11, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Jennifer Caira, Chief Planner for Current Planning

Cc: Stuart Rothman, applicant  
Terrence P. Morris, attorney  
Barney S. Heath, Director of Planning and Development  
Ouida Young, Acting City Solicitor

**RE: Request to allow a nine-unit multi-family dwelling with surface parking for nine cars**

Applicant: Herrick Road Realty Trust	
Site: 39 Herrick Road	SBL: 61035 0007
Zoning: BU1	Lot Area: 12,979 square feet
Current use: Parking lot	Proposed use: Nine-unit multi-family dwelling

### BACKGROUND:

The subject site consists of 12,979 square feet and is currently undeveloped land used as a parking lot. The site is located adjacent to the MBTA green line in the Business 1 zoning district. The property has 28.87 feet of frontage along Herrick Road, and also has access through a City-owned parking lot on Cypress Street. The property is also abutted by a 10-foot wide public foot path, provided by an easement, which is considered frontage for the purposes of zoning. The site was granted a variance in 2010 from front setback requirement from the footpath, allowing the structure to be built directly abutting it. The site has two previous special permits granted for a mixed use building with first floor commercial, upper story residential units and below-grade parking. The below-grade parking required an easement from the City which has never been granted. The applicant now requests a special permit to construct a three-story nine-unit multi-family dwelling with accessory parking for nine cars. Access to the site will be gained from both Herrick Road and through the City parking lot.

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

- Zoning Review Application, prepared by Terrence P. Morris, attorney, dated 6/7/2018



- Site Plan, prepared by VTP Associates Inc, dated 1/4/2017
- Architectural plans, prepared by Khalsa Design, architects, dated 1/19/2016
  - Perspective view
  - Architectural site plan
  - Landscape plan
  - Floor Plans
  - Exterior elevations
  - Architectural site plan
  - Rendering

#### **ADMINISTRATIVE DETERMINATIONS:**

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1. The applicant proposes to construct a nine-unit multi-family dwelling. Per Section 4.4.1, a ground floor residential use in the Business 1 zoning district requires a special permit.
2. The applicant proposes to construct a three-story structure on the property. Per Section 4.1.2.B.3, a three-story structure requires a special permit in the BU1 zoning district.
3. The proposed building height is 36 feet within a three-story structure per Section 4.1.3. As per Section 4.1.2.B.3, a special permit is required for the proposed building height in a three-story structure.
4. The applicant was granted a variance allowing the frontage to be measured along the public foot path along the MBTA property, as well as Herrick Road. Per Section 1.5.3.A, the rear lot line is that which is opposite the main entrance. The main public entrance to the building is located along the footpath, thus the property has two rear lot lines given the irregular shape of the lot along the property boundaries with 17-31 Herrick Road and 1294 Centre Street.
5. The applicant proposes nine surface parking stalls to service the nine dwelling units. Section 5.1.4 requires each dwelling unit have two parking stalls. The proposed multi-family residence requires 18 parking stalls per the Ordinance. The applicant seeks a waiver from this requirement to allow one stall per unit, citing the project's proximity to public transportation and the village center. The applicant requests this waiver to reduce the required parking to nine stalls per section 5.1.13.
6. The property is currently used as a parking lot for the tenants and guests of the adjacent apartment building 17-31 Herrick Road. 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 the subject property.

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 [which is now the subject parcel 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. To remove the existing parking on Lot 7 and redevelop the site, the property at 17-31 Herrick Road must obtain a special permit relief to waive 18 parking spaces required for the use that lot.

7. The access drive from Herrick Road has a small portion of its width over the property line of the adjacent parcel at 17-31 Herrick Road, which is in common ownership with the subject parcel. Section 5.1.6.A-B requires a special permit to locate off-street parking facilities off-site through an easement, bond, lease etc. As the applicant intends to locate a small portion of the access to the parking on the adjacent commonly-owned parcel, a waiver is required.
8. To accommodate the access drive from Herrick Road, a retaining wall is proposed. This wall is 5.5 feet tall and is located within the side setback. Per section 5.4.2.B, a retaining wall of 4 feet or more within a setback requires a special permit.
9. Section 5.1.8.A states that no parking shall be located in a side setback. A portion of two of the proposed parking stalls is located within the 18-foot required side setback along the southeast property line, requiring a waiver from this provision.
10. Section 5.1.8.B.5 requires that end stalls restricted on one or both sides by curbs, wall, fences, or other obstructions shall have maneuvering space at the aisle end of at least five feet in depth and nine feet in width. Parking stall number 9 on the plans does not have this space, requiring a waiver.
11. The minimum aisle width for one- and two-way traffic in a parking facility with stalls at a 90 degree angle is 24 feet per Section 5.1.8.C.2. The plans show an aisle width of 20 feet at the parking area, narrowing to 12 feet in the access drive off of Herrick Road, with a small portion of that width over the property line of the adjacent parcel at 17-31 Herrick Road, which is in common ownership with the subject parcel. A waiver to allow a reduced aisle width is required.
12. Section 5.1.9.A requires outdoor parking facilities with more than five stalls to provide landscape screening from abutting properties through fencing and vegetation. No screening is proposed, and a waiver from this provision is required.
13. Per Section 5.1.10 requires outdoor parking facilities containing more than five stalls to be lighted, surfaced and maintained. No lighting details are provided on the plans. To the extent that the proposed parking lot does not meet the requirements of this section, a waiver is required.

<b>BU1 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	10,000 square feet	12,982 square feet	No change
Frontage	80 feet	131 feet	No change
Setbacks <ul style="list-style-type: none"> <li>• Front</li> <li>• Side</li> <li>• Rear (1294 Centre)</li> <li>• Rear (17-31 Herrick)</li> </ul>	10 feet 18 feet 18 feet 0 feet		10 feet 18 feet 30.5 feet 8.7 feet
Building Height	<b>36 feet</b>		<b>36 feet</b>
Max Number of Stories	<b>3</b>		<b>3</b>
Lot Area Per Unit	1,200 square feet		1,442 square feet

14. See “Zoning Relief Summary” below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§4.4.1	To allow a multi-family residential use on the ground level in an BU1 zoning district	S.P. per §7.3.3
§4.1.2.B.3	To allow three stories and 36 feet in height	S.P. per §7.3.3
§5.1.4 §5.1.13	To allow a reduction to one parking stall per unit	S.P. per §7.3.3
§5.1.13	To waive 18 stalls on the parcel associated with the multi-family dwelling located on the adjacent parcel	S.P. per §7.3.3
§5.1.6.A §5.1.6.B §5.1.13	To allow off-site parking facilities	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall greater than 4 feet in a setback	S.P. per §7.3.3
§5.1.8.A §5.1.13	To allow parking in the side setback	S.P. per §7.3.3
§5.1.8.B.5 §5.1.13	To waive the maneuvering space required of restricted stalls	S.P. per §7.3.3
§5.1.8.C.2 §5.1.13	To allow a reduced minimum aisle width	S.P. per §7.3.3
§5.1.9.A §5.1.13	To waive the perimeter screening requirements	S.P. per §7.3.3
§5.1.10 §5.1.13	To waive lighting and surfacing requirements	S.P. per §7.3.3

CITY OF NEWTON  
Department of Public Works  
ENGINEERING DIVISION

MEMORANDUM

To: Council Gregory Schwartz, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 17-31 Herrick Road

Date: September 17, 2018

CC: Barney Heath, Director of Planning  
Jennifer Caira, Chief Planner  
Lou Taverna, PE City Engineer  
Nadia Khan, Committee Clerk  
Neil Cronin, Sr. Planner

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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: January 4, 2017  
Revised: June 15, 2015*

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. At the time of this review no drainage report was provided.

Herrick Road paved in 2011 construction season, and is in good condition, 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 sanitary sewer 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. 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 (or a temporary detoured path) shall be provided as it allows pedestrians access to the MBTA station.
2. A fire truck turning template plan is needed for the proposed conditions.
3. In lieu of the proposed pavers on the foot path, the City will require stamped cement concrete. The Commissioner of Public Works has no objection to the proposed planters provided that the applicant obtains all legal requirements of the Law Department, maintains the plantings 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.
4. 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.
5. 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.
6. 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.
  7. 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.
  8. Granite curbing should be installed along the proposed 3' wide walkway to protect pedestrian when they are walking on this path.
  9. Snow storage areas need to be identified on the plan.
  10. 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.

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. 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.
3. The design has two separate infiltration systems; both will need impervious barriers on the side near the abutting properties.

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. 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 building.
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 shall be 8" to connect to the proposed 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.