

CITY OF NEWTON

IN CITY COUNCIL

June 17, 2019

ORDERED:

That the Council, 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, 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a three-story, 35.5 foot tall, multi-family dwelling containing nine units, including ground floor units, to waive nine parking stalls, to allow off-site parking facilities, to allow a retaining wall greater than four feet in the setback, and to waive the requirements of parking facilities containing more than five stalls, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed multi-family dwelling because the site is located within a village center and is proximate to transit. (§7.3.3.1)
2. The multi-family dwelling as developed and operated will not adversely affect the neighborhood given the presence of a multi-family dwelling on the adjacent parcel. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because access will be provided over the Cypress Street Municipal Lot. (§7.3.3.3)
4. Access to the site is appropriate for the types and numbers of vehicles involved. (§7.3.3.4)
5. Exceptions to the parking requirements, including, waive nine parking stalls, allowing parking stalls within the side setback, waiving the drive aisle width, allowing off-site parking facilities, and waiving the dimensional and design controls for parking facilities containing more than five stalls are in the public interest for the following reasons:
 - a. Waiving nine parking stalls increases the amount of open space on site.
 - b. The Petitioner will implement a Transportation Demand management plan that will partially reimburse residents for the cost of a transit pass and will provide residents with secure, weatherproof bicycle parking.
 - c. Allowing parking with the side setback, reducing the minimum width of maneuvering aisles, while locating parking stalls off site makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.

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DAVID A. GREEN
NEWTON, MA 02459

layout of the parking lot and helps to maximize the number of stalls that will be available.

- d. Fencing and landscaping will be installed to screen the facility. Additionally, lighting will be minimized to mitigate trespass onto neighboring properties while still lighting the facility to ensure safety.

(§5.1.4, §5.1.6.A, §5.1.6.B, §5.1.8.A, §5.1.8.B.5, §5.1.8.C.2, §5.1.9.A, §5.1.10 and §5.1.13

- 6. The construction of retaining walls within the side setback of 17-31 Herrick Road will not adversely affect the immediate abutters. (§5.4.2)

PETITION NUMBER: #564-18 and #564-18(2)

PETITIONER: Herrick Road Realty Trust

LOCATION: 17-31 Herrick Road Section 61, Block 35, Lot 06 and 39 Herrick Road, Section 61, Block 35, Lots 07 containing approximately 34,618 square feet of land

OWNER: Rothman George & Stuart J. Trust and Herrick Road Realty Trust

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

TO BE USED FOR: A three-story, 35-foot tall multi-family dwelling containing nine units, including ground floor units on 39 Herrick Road and a driveway and a retaining wall exceeding four feet within the setback at 17-31 Herrick Road.

CONSTRUCTION: Brick

EXPLANATORY NOTES: §4.4.1, §4.1.2.B.3, and §7.3.3 to allow a multi-family dwelling with ground floor units of three stories and 35.5 feet in height; §1.5.2.E.2 to measure frontage along a public footpath; §5.4.2 to allow for a retaining wall greater than four feet within the setback; §5.1.4 and §5.1.13 to waive nine parking stalls; §5.1.6.A, §5.1.6.B, and §5.1.13 to allow off-site parking facilities; §5.4.2. to allow a retaining wall in excess of four feet within the setback; §5.1.8.B.5 and §5.1.13 to waive the maneuvering space required of end stalls; §5.1.8.C.2 and §5.1.13 to reduce the drive aisle width; §5.1.9.A and §5.1.13 to waive the perimeter screening

requirements; and §5.1.10 and §5.1.13 to waive the lighting and surfacing requirements.

ZONING: Business Use 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:
 - a. Set of plans for 39 Herrick Road, prepared by VTP Associates, 132 Adams Street, West Newton, MA 02458, stamped and signed by Marc Besio, Professional Engineer, and Joseph R. Porter, Professional Land Surveyor. The plan set includes the following five (5) sheets:
 - i. "Topographic Site Plan Showing Proposed Conditions" dated January 4, 2017 revised through April 26, 2019
 - ii. "Detail Sheet 1 Showing Proposed Conditions at Herrick Road" dated January 4, 2017.
 - iii. "Detail Sheet 2 Showing Proposed Conditions at Herrick Road" dated January 4, 2017 revised June 15, 2018.
 - b. 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, dated August 8, 2018, revised through March 19, 2019, consisting of twelve (12) sheets.
 - c. Landscape Plans for 39 Herrick Road, prepared by Verdant Landscape Architecture stamped and signed by Blair C. Hines, Registered Landscape Architect, dated March 14, 2019 consisting of two (2) sheets.
 - d. Lighting Plans for 39 Herrick Road, prepared by RAB Lighting, unstamped and unsigned, dated September 24, 2018, consisting of nine (9) sheets.
2. Prior to the issuance of any building permits, the Petitioner is required to request an amendment to its license with the City to allow for access and exit to and from the site over the Cypress Street Municipal Lot for the purpose of parking for the special permit use and agrees to accept all reasonable terms and conditions of an amended license.
3. In the event that the license with the City is not amended or is later revoked, resulting in a lack of access to the site, the Petitioner may construct the driveway shown on the approved site plan to provide access to the site from Herrick Road. Said driveway shall not be constructed unless or until the site cannot be accessed through the Cypress Street Municipal Lot pursuant to a license.

- a. In the event the Petitioner is allowed to include the driveway under this condition, the Petitioner is required to seek approval from the Traffic Council for the removal of an on-street, metered parking stall and shall confer with the Commissioner of Public Works to determine whether the City light pole along the site's frontage can be relocated from the west side of Herrick Road to the east side prior to the issuance of any building permit for driveway construction.
 - b. If the Petitioner is allowed to include the driveway under this condition, the Petitioner is not required to seek an amendment to this Special Permit/Site Plan Approval unless the driveway is inconsistent with the plan referenced in Condition #1(a).
4. This Special Permit/Site Plan Approval governs both 17-31 Herrick Road and 39 Herrick Road. As such, this Special Permit/Site Plan Approval shall be recorded against both lots at the Middlesex South Registry of Deeds. 17-31 Herrick Road contains a legal nonconforming multi-family dwelling. This Special permit/Site Plan Approval shall not prevent the Petitioner or his successors and assigns from pursuing as of right improvements to 17-31 Herrick Road.
5. Prior to the issuance of any building permits for the Project, the Petitioner shall obtain a variance from the Zoning Board of Appeals to reduce the front setback along the public footpath from ten feet to zero feet.
6. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), one of the dwellings units shall be made available to households earning at or below 65% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA. Monthly housing costs (inclusive of heat, hot water, electricity, domestic water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).

The Inclusionary Units shall comply with the provisions of the City's Inclusionary Zoning Ordinance (§5.11.4).
7. The inclusionary unit shall be a two-bedroom, two-bathroom unit, located on the second floor of the multi-family dwelling, as proposed in the Preliminary Inclusionary Housing Plan dated February 22, 2019, that is on file with the City Clerk, and approved by the Director of Planning and Development.
8. To the extent permitted by applicable regulations of DHCD, the Inclusionary Unit shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Unit through DHCD's Local Initiative Program. Prior to the issuance of any occupancy certificates (temporary or final), the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of

Newton Law Department, which will establish the affordability restriction for the Inclusionary Unit in perpetuity.

9. Prior to the issuance of any building permits for the construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.9. of the Newton Zoning Ordinance. In accordance with DHCD's current guidelines, the Inclusionary Unit will be affirmatively marketed and leased through a lottery.
10. No dwelling unit shall be constructed to contain, and/or marketed and/or sold to contain more bedrooms than the number of bedrooms indicated for said unit in the plans referenced in Condition #1(b).
11. The cost of parking stall(s) shall be rented separately from the cost of rent for a unit, provided, however that the cost of one parking stall shall be included in the rent for the Inclusionary Unit. Prior to the issuance of any certificate of occupancy for a market rate unit (temporary or final), the Petitioner shall provide a sample lease that includes said language.
12. The Petitioner shall revise the Transportation Demand Management (the "TDM") Plan dated May 17, 2019, a copy of which is on file in the office of the City Clerk to include a 20% transit reimbursement for the future residents of 39 Herrick Road. The Petitioner shall implement the TDM Plan 30 days after notifying the residents of 17-31 Herrick Road that agreements allowing parking at 39 Herrick Road will be dissolved.
13. The Petitioner shall provide space for not less than ten bicycles within the multi-family dwelling. Additionally, the petitioner shall provide not less than five electric vehicle charging stations on site.
14. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance.
15. The Petitioner shall remove all snow from site but shall not be required to remove snow from the public footpath.
16. The Petitioner shall comply with the City's Tree Preservation Ordinance.
17. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
18. At the Petitioner's sole expense, the petitioner shall locate all utility service lines on site underground from the right of way into the site.

19. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
20. Prior to the issuance of any building permit for the Project, the Petitioner shall receive approval from the City Council, through its Public Facilities Committee, to extend the sewer and water lines within Herrick Road to the site. The petitioner shall also gain approval to connect the water line to the existing municipal water line located within the Cypress Street Municipal Lot. Any required easements shall be approved by the City Council, recorded at the Middlesex South Registry of Deeds, shall be provided to the Engineering Division of Public Works, and the Department of Planning and Development.
21. Prior to the issuance of any building permit for the Project, the Petitioner shall submit a final photometric plan detailing the lighting level as well as the location and the height of the poles to light the public footpath along the Project's frontage to the Commissioner of Public Works and the Department of Planning and Development for review and approval. The petitioner shall have no obligation regarding the ongoing maintenance or repair of either the poles or the fixtures. .
22. Prior to the issuance of any building permit for the Project, the petitioner shall submit a final landscape plan detailing the number, type, and maturity size of any planting proposed along the public footpath to the Commissioner of Public Works and the Department of Planning and Development for review and approval.
23. Prior to the issuance of any building permit for the Project the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. on weekdays and from 8:00 a.m. to 7:00 p.m. on Saturdays. No construction is permitted on Sundays, or holidays except in emergencies, and only with prior approval from the Mayor.
 - c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - d. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for ensuring the public walkway will be open during construction and proposed temporary detour paths for when the walkway will be closed. The construction timeline in Condition #23.c above should indicate when this walkway will be open and closed.
 - f. 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; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
- g. 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.
 - h. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
 - i. A plan for rodent control prior to demolition, during demolition, and during construction.
 - j. The CMP shall also address the following:
 - safety precautions;
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties.
24. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be recorded by the petitioner at the Middlesex South District Registry of Deeds and implemented. A recorded copy of the O&M shall be submitted to the Engineering Division of Public Works, the Inspectional Services Department, and the Department of Planning and Development.
25. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall return Herrick Road to a pavement condition index equal to or better than the existing condition, to the satisfaction of the Commissioner of Public Works.
26. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall reconstruct the public footpath out of stamped concrete, or a similar material approved by the Commissioner of Public Works. The walkway shall comply with Massachusetts Architectural Access Board (MAAB) regulations. All other walkways on site shall also comply with MAAB regulations but shall not be required to be constructed of stamped concrete.
27. Prior to the issuance of any certificate of occupancy for the Project (temporary or final), the Petitioner shall update the pedestrian curb cuts on either side of Herrick Road to the satisfaction of the Commissioner of Public Works.
28. 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.
29. In the event that 17-31 Herrick Road and 39 Herrick Road are not in common ownership, the Petitioner or his successor in interest shall record easements that allow driveway

access over 17-31 Herrick Road to 39 Herrick Road. Copies of the recorded easements shall be filed with the City Clerk, the Director of Planning and Development, and the Commissioner of Inspectional Services.

30. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. Recorded a certified copy of this council order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County for both parcels.
 - b. Filed a copy of such recorded council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Amended its license with the City in accordance with Condition #3 above.
 - d. Obtained a variance from the Zoning Board of Appeals to reduce the front setback in accordance with Condition #5 above.
 - e. Obtained approval from the Director of Planning and Development for the Final Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan in accordance with Condition #9 above.
 - f. Obtained approval from the City Council to extend the water and sewer lines in Herrick Road to the Project site, recorded all necessary easements, and provided evidence of such recordation to the Engineering Division of Public Works and the Department of Planning and Development in accordance with Condition #20 above.
 - g. Received approval from the Commissioner of Public Works and the Director of Planning and Development for the photometric and landscape plans for the public footpath in accordance with Conditions #21 and #22 above.
 - h. Received approval for the Construction Management Plan in accordance with Condition #23 above.
 - i. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
31. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development statements by a registered architect and a professional land surveyor certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - c. Provided the City Engineer, Department of Inspectional Services, and the Department of Planning and Development with a recorded copy of the Operation and Maintenance (O & M) plan for Stormwater Management in accordance with Condition #2 above.

- d. Received approval from the Commissioner of Public Works for restoring Herrick Road in accordance with Condition #25 above.
 - e. Received approval from the Commissioner of Public Works for the reconstruction of the public footpath accordance with Condition #26 above.
 - f. Received approval from the Commissioner of Public Works for the reconstruction of the pedestrian curb cuts in accordance with Condition #27 above.
 - g. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
 - h. Filed with 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, and parking areas.
 - i. Provided evidence confirming the marketing, lottery, and resident selection for the Inclusionary Unit has been completed to the Director of Planning and Development for review and approval.
 - j. Entered into, and recorded at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants for the Inclusionary Unit with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Unit in perpetuity.
 - k. The Inclusionary Unit shall be constructed and available for occupancy coincident with market rate units such that no more than four market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
32. Notwithstanding the provisions of Condition #31 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. This condition shall not apply to the public footpath.

Under Suspension of Rules

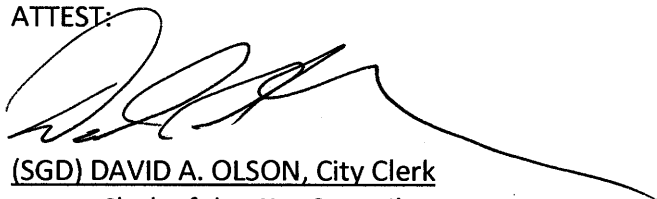
Readings Waived and Approved

22 yeas 0 nay 2 absent (Councilors Baker and Downs)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council 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 June 19, 2019. 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.

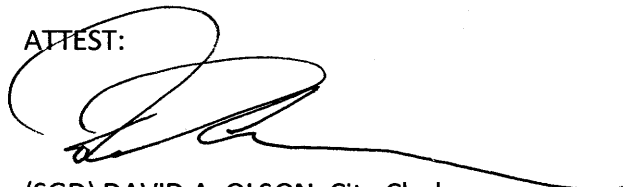
ATTEST:



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

I, David A. Olson, as the Clerk of the City Council 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 Newton City Council in the Office of the City Clerk on 6/19 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



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