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**Barney S. Heath**  
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## 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**

<b>Applicant: Herrick Road Realty Trust</b>	
<b>Site:</b> 39 Herrick Road	<b>SBL:</b> 61035 0007
<b>Zoning:</b> BU1	<b>Lot Area:</b> 12,979 square feet
<b>Current use:</b> Parking lot	<b>Proposed use:</b> 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