

CITY OF NEWTON
IN BOARD OF ALDERMEN

April 6, 2009

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

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

ORDERED:

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

TERMS OF LEASE:

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

FURTHER BE IT RESOLVED:

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

Under Suspension of Rules
Readings Waived and Adopted
24 years 0 days


(SGD) DAVID A. OLSON

City Clerk

RECEIVED


(SGD) DAVID B. COHEN

Mayor

JUN 12 2009

MAYOR'S OFFICE

CITY OF NEWTON

IN CITY COUNCIL

2016

That, pursuant to Section 2-7 of the Revised Ordinances of 2012, as amended, upon the recommendation of the Real Property Reuse Committee through its Chair Susan S. Albright, it is hereby

ORDERED:

That Board Order #71-09(2) approved on April 6, 2009 be amended by authorizing His Honor the Mayor to grant a subsurface easement for vehicular access consistent with proposed plans prepared for the Herrick Road Realty Trust for a portion of land containing approximately 845 square feet, which is part of a city-owned parcel containing 16,160 square feet of land located at 1294 Centre Street, Newton Centre, known as Section 61, Block 35, Lot 3, in a Public Use zoned district and rescinding the authorization to enter into a lease for the subsurface easement,

ORDERED:

That the easement be granted for a monetary consideration of at least the appraised value of the land as determined by an independent appraiser obtained by the City but paid for by the grantee,

FURTHER BE IT RESOLVED:

- a. That if any relocation of utilities is necessary, the utilities shall be located underground at the grantee's expense.
- b. That the grantee shall pay all costs related to the grant of the easement including preparing the plan of easement to be recorded. There shall be no expense to the City of Newton.

That if any relocation of utilities is necessary, the utilities shall be located underground at the grantee's expense.

Under Suspension of Rules
Readings Waived and Adopted

(SGD) DAVID A. OLSON
City Clerk

(SGD) SETTI D. WARREN
Mayor

Middlesex South Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 219308
Document Type	: DECIS
Recorded Date	: December 24, 2015
Recorded Time	: 02:03:02 PM
Recorded Book and Page	: 66588 / 367
Number of Pages(including cover sheet)	: 8
Receipt Number	: 1894550
Recording Fee	: \$75.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.cambridgedeeds.com

#272-09(4)

CITY OF NEWTON

IN BOARD OF ALDERMEN

March 16, 2015

2015 MAR 18 PM 2:00
RECEIVED


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, 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 erect a three-story mixed use building containing an office use on the ground floor, four dwelling units above, and underground parking, the waiver of 18 parking stalls, and to allow retaining walls greater than four feet in the setback as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Alderman Marc Laredo:

Property Address: 39 Herrick Road, Newton

1. The Herrick Road location is an appropriate location for the proposed mixed-use development including an office use on the ground floor and four dwelling units above, as they will complement other uses in the immediate vicinity. (§30-24(d)(1))
2. The proposed structure including height, number of stories, reduced front setback, and frontage along the public footway will not adversely affect the surrounding area and neighborhood. (§30-24(d)(2))
3. The existing apartment building on Lot 6 was constructed in the 1920s and has been a legal nonconforming use without the provision of parking. In the late 1990s the petitioner, which owns both Lot 6 and Lot 7, voluntarily paved Lot 7 (subject property) to provide parking for the apartment residents. The petitioner intends to allow the apartment residents off-peak use of the new parking facilities to be constructed on Lot 7 on the same terms as the apartment residents currently use parking on Lot 7. (§30-19(m))
4. The construction of retaining walls in the rear and side setbacks of Lot 6 will not adversely affect immediate abutters. (§30-24(d)(2))
5. The petitioner has offered to provide additional public benefits in the way of widening, paving, planting, upgrading the accessibility, and lighting of 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. (§30-24(d)(3))

A True Copy
Attest



City Clerk of Newton, Mass.

- 6. The proposed use is consistent with the *Newton Comprehensive Plan* as it is a mixed-use development adjacent to public transportation and its parking spaces will be shared by different users at different times of day.
- 7. The petitioner shall contribute to the diversity of housing in the community by making an in-lieu payment towards affordable housing in accordance with §30-24(f) of the Newton Zoning Ordinance.

PETITION NUMBER: #272-09(4)

PETITIONER: Herrick Road Realty Trust

LOCATION: 17-31 and 39 Herrick Road, 39 Herrick Road, Section 61, Block 35, Lots 6 & 7 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 mixed-use building containing an office use on the ground floor, four dwelling units above, and underground parking, and associated parking waivers for Lot 7.

CONSTRUCTION: Brick

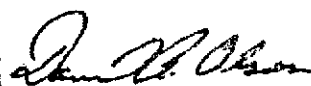
EXPLANATORY NOTES: §30-5(b)(4) to allow for retaining walls or system of walls of greater than four feet within the setback; §30-15 Table 3 to allow a three-story building with a height of greater than 24 feet; §30-15(b)(2) to allow frontage to be measured along a public footway; §30-11(d)(8) for a multi-family building; and §30-19(m) a waiver of parking spaces to allow the removal of 18 existing parking stalls located on Lot 7 that are associated with the multi-family residential use on Lot 6.

ZONING: Business 1

Approved subject to the following conditions:

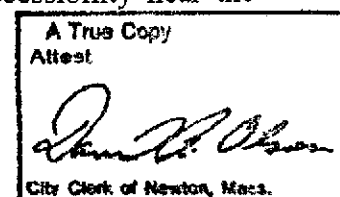
- 1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the following plans:

A True Copy
Attest

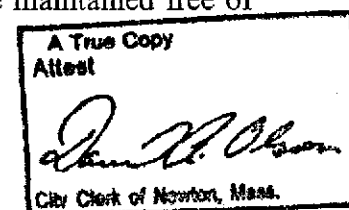


Dan H. Olson
City Clerk of Newton, Mass.

- a. 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. The plan set includes the following five (5) sheets:
 - i. "Topographic Site Plan Showing Proposed Conditions at Herrick Road, Sheet 1 of 3," dated November 12, 2008, and revised December 8, 2009;
 - ii. "Topographic Site Plan Showing Proposed Grading Plan at Herrick Road, Sheet 1A of 3," dated November 12, 2008, and revised December 8, 2009;
 - iii. "Detail Sheet Showing Proposed Conditions at Herrick Road, Sheet 2 of 3," dated November 3, 2008, and revised December 8, 2009;
 - iv. "Detail Sheet Showing Proposed Conditions at Herrick Road, Sheet 3 of 3" dated November 3, 2008, and revised December 8, 2009; and
 - v. "Cross-Section Showing Proposed Conditions at Herrick Road," dated December 8, 2009.
 - 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. The plan set includes the following four (4) sheets:
 - i. Sheet A-1, "Architectural Site Plan," dated June 14, 2008 and revised September 8, 2009;
 - ii. Sheet A-2, "Garage and First Floor Plans," dated June 14, 2008, and revised December 18, 2009;
 - iii. Sheet A-3, "Second and Third Floor Plans and Bldg Elevations," dated June 14, 2008, and revised September 8, 2009; and
 - iv. Sheet A-4, "Landscape Plan," dated June 14, 2008, and revised September 8, 2009.
2. The ground floor of the building shall not be used for a restaurant as shown in the plan referenced in Condition #1bii, or as a bank or salon, but may be used for offices or other by right uses.
 3. Prior to the issuance of a building permit for the construction of any portion of this project, the petitioner shall obtain an easement from the City of Newton, which allows access to the underground parking garage from Herrick Road that is below a portion of the City-owned property at 1294 Centre Street (SBL 61/35/3).
 4. The at-grade parking area shall be one-way from Herrick Road to Cypress Street. The petitioner shall install a "Do Not Enter" sign facing the Cypress Street municipal lot to alert drivers.
 5. The petitioner shall connect the pedestrian walkway along the northeast property line, which shall consist of a different material than the driveway but will not have curbing, to the walkway in front of the proposed building.
 6. As a public benefit, the petitioner shall make the existing public footpath handicap accessible at the southwest corner of the site, so as to provide accessibility near the midpoint of the public footpath.



7. The petitioner shall install a synchronized signal/warning system at/near the driveway entrance and the entrance to the garage to regulate traffic flows and minimize congestion. After one year of operations, the petitioner shall evaluate the functionality of the system, and shall provide recommendations for any improvements to such systems to the Department of Planning and Development for its review and approval.
8. The petitioner shall allow the off-peak use of the below grade parking facility to residents of the multi-family residential building on Lot 6, a/k/a 17-31 Herrick Road (SBL 61/35/6), on the same terms as such residents are currently permitted to park on the site. After one year of operations, the petitioner shall evaluate usage of the below grade parking facility by the residents of the adjacent multi-family residential building, and provide recommendations for improved use of this facility by the residents to the Department of Planning and Development for review and approval.
9. An Operations and Maintenance plan for Stormwater Management Facilities on the site shall be recorded at the Middlesex South District Registry of Deeds.
10. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
11. All overhead wires shall be placed underground.
12. The petitioner will remove snow from the site, including from the public footpath.
13. The petitioner will replace and/or repair and maintain the fence that borders the tracks with 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.
14. The petitioner shall, at its expense, relocate any on-street metered parking spaces displaced by the proposed driveway off of Herrick Road to a location within Newton Centre approved by the Traffic Council, so as to maintain the existing number of parking spaces on-street in the village and the associated parking revenues.
15. Signage shall conform to City standards. If a future tenant 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.
16. If use of the public footpath is needed in order to construct the proposed building, the petitioner shall seek a temporary construction license from the City.
17. The petitioner shall remove fencing along the north side of the footpath so that it may be reused by the City.
18. 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.
19. 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.



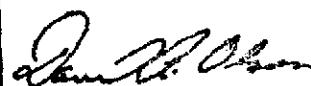
20. All deliveries and trash pick-up shall occur on-site between 7:00 a.m. and 7:00 p.m. so as not to disturb nearby residents at times and in such a manner as not to obstruct public parking spaces or the flow of traffic at peak times.
21. In the event that Lots 6 and 7 are not in common ownership, the 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.
22. Prior to the issuance of any building permit the petitioner shall submit a Construction Management Plan 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 Board 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 between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services.
 - c. The proposed schedule of the project, including the general phasing of the construction activities.
 - 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 delivery vehicles, and location of any security fencing.
 - e. Proposed truck route(s) that minimize travel on local streets.
 - 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 during construction.
23. 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 board order for the approved Special Permit/Site Plan with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

A True Copy
Attest

John H. Olson

City Clerk of Newton, Mass.

- c. Submitted a revised site plan, landscape plan and lighting plan that reflects all of the conditions as applicable that are set forth in this board order.
 - d. 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.
 - e. Obtained an easement from the City of Newton, which allows access to the underground parking garage from Herrick Road that is below a portion of the City-owned property at 1294 Centre Street (SBL 61/35/3). Such easement shall be recorded with the Registry of Deeds for the Southern District of Middlesex County.
 - f. Updated the license agreement with the City for the passage of vehicles through the subject property via the adjacent Cypress Street municipal parking lot.
 - g. Made a cash contribution in-lieu of providing an affordable housing unit pursuant to Section 30-24(f) of the Zoning Ordinance.
 - h. 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.
 - i. 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.
 - j. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
24. 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 planting areas.

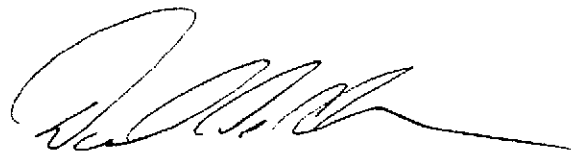
Attest

 City Clerk of Newton, Mass.

25. Notwithstanding the provisions of Condition #24f 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 March 18, 2015. 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:



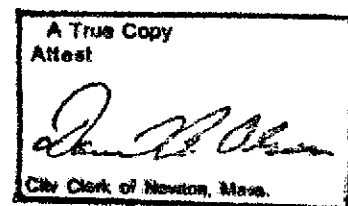
(SGD) DAVID A. OLSON, City Clerk
Clerk of the Board of Aldermen

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 3/8 and that NO APPEAL to said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:



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





2010 00124763

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

80-17

09 DEC 23 PM 3:18
CITY CLERK
NEWTON, MA. 02159

CITY OF NEWTON
IN BOARD OF ALDERMEN

December 21, 2009

ORDERED:

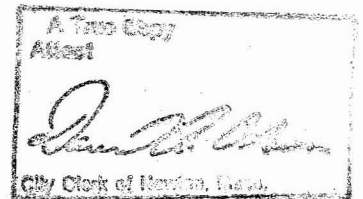
That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, that the application meets the criteria established in §30-24 (d) (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

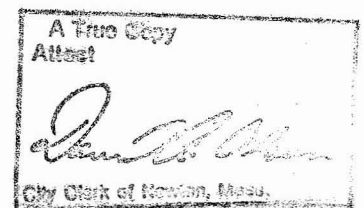
ADDRESS OF OWNER: 907 Massachusetts Avenue, Cambridge, MA 02139

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

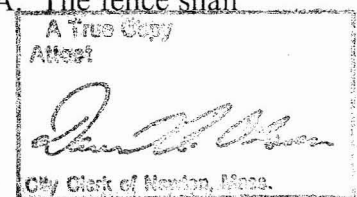
EXPLANATORY NOTES: The following special permits are granted: §30-11(d)(8) for a multi-family building; §30-15 Table 3 to allow a three-story building with a height of greater than 24 feet; §30-11(d)(9) for a restaurant with more than 50 seats; §30-15(b)(2) to allow frontage to be measured along a public 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

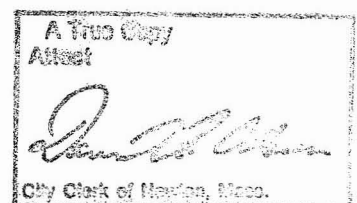


Approved subject to the following conditions:

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:
 - 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
 - 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.

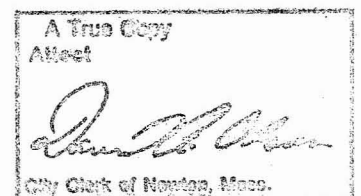
b. filed for a tree removal permit and submitted a revised landscape plan to the Planning and Development Department with caliper inches for review and approval.

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.

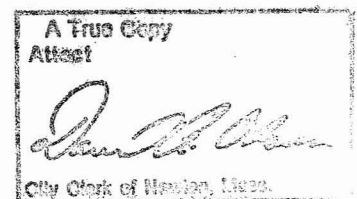
d. updated its license agreement to pass through the subject property via the adjacent Cypress Street municipal parking lot.

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.

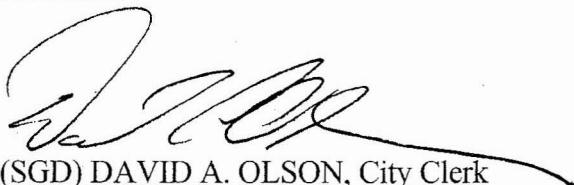
ATTEST:



(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

