

Middlesex South Registry of Deeds Electronically Recorded Document

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**Middlesex South Registry of Deeds
Eugene C. Brune, Register
208 Cambridge Street
Cambridge, Massachusetts 02141
617/679-6310**

6 pages

#02-09
DEC 23 PM 3:22
CITY CLERK
NEWTON, MA 02459

CITY OF NEWTON
IN BOARD OF ALDERMEN

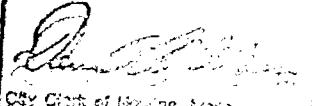
December 21, 2009

ORDERED:

That the Board, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, that the application meets the criteria established in §30-19(m), §30-21(b), and §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 parking waiver of up to 23 parking stalls, a restaurant in excess of 50 seats and the extension of a nonconforming structure as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman Alderman George E. Mansfield:

1339-1243 Centre Street, Newton
Title Ref. Book 51701, Page 546

1. The Centre Street location is an appropriate location for a restaurant use with greater than 50 seats that will serve shoppers, employees, and the surrounding neighborhood.
2. The proposed restaurant use as developed and operated 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 outdoor seating will enhance the rear façade of the building through active use of outdoor space and landscape improvements.
4. The proposed expansion to the non-conforming structure will not be more detrimental than the existing building to the surrounding neighborhood and will not worsen the nonconforming nature of the front and side setbacks.
5. The petitioner submitted a parking study showing that there is adequate on-site and public parking nearby to absorb the expected demand for parking during peak periods, and that the waiver of the requirement for 23 parking stalls will not adversely affect parking, traffic, or circulation in the Newton Centre commercial district.
6. During six months of the year (November through April), there will be a waiver of 14 parking stalls and a maximum of 80 seats located entirely in the indoor café, or in the indoor café and three-season room. The waiver of up to 23 parking stalls applies for six months of the year (May through October) when all 105 seats in the indoor café (66), three-season room (14), and outdoor patio (25) are in use.
7. The provision of 6 on-site parking spaces for employee use will minimize potential conflicts related to the entering and exiting of cars onto and from the subject property since employees will be moving their cars less frequently than customers. This, in turn, will free metered municipal parking spaces for use by the public.
8. The petitioner will improve pedestrian safety in Newton Centre by contributing \$25,000 towards the installation of a pedestrian-activated signal at the intersection of Centre and

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Pelham Streets, which has been identified as a hazardous intersection for pedestrians to cross.

- 9. The petitioner will restripe the handicap parking spaces, add handicap ramping nearest the rear entrance to the site from the Pelham Street municipal parking lot, and replace and add to landscaping at the boundaries of the petitioner's property and the parking lot, if permitted by the City, which will improve access for all patrons traveling from their cars to the restaurant and adjacent businesses by providing a safe and well-marked path to the sidewalk and an attractive pedestrian environment.
- 10. The petitioner will design improved signage in Newton Centre to direct people to available municipal parking in the lots on Pelham Street and Pleasant Street which will help to reduce traffic and circulation in the vicinity.
- 11. The proposed use is consistent with the *Newton Comprehensive Plan* because it increases the vitality of the commercial district.

PETITION NUMBER: #242-09

PETITIONER: Panera, LLC

LOCATION: 1239-1243 Centre Street, Section 64, Block 28, Lots 21 and 24 containing approximately 11,860 square feet of land

OWNER: Linear Retail Newton #1 LLC

ADDRESS OF OWNER: 5 Burlington Woods Drive, Burlington, MA 01803

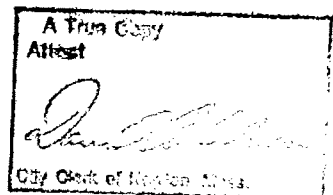
TO BE USED FOR: Restaurant in excess of 50 seats; parking waiver of 14 parking stalls for an 80 seat bakery/café restaurant, with an additional parking waiver of 9 parking stalls (for a total waiver of 23 parking stalls) for six months of the year (May through October) when the restaurant may have 25 additional seats located on an outdoor patio; and enlargement of a nonconforming commercial structure.

CONSTRUCTION: Renovation to exterior of existing commercial building

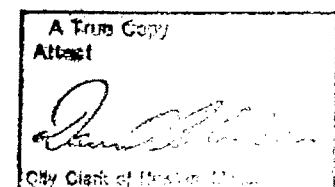
EXPLANATORY NOTES: §30-19(c)(2), 30-19(d)(13), and 30-19(m) for parking waivers
 §30-15, Table 3, §30-21(b) for extension of nonconforming structure
 §30-11(d)(9) for restaurant in excess of fifty seats

ZONING: Business 1 Zone District

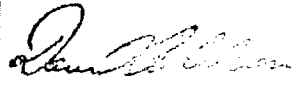
Approved subject to the following conditions:



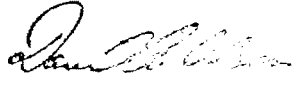
1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans entitled "Existing Parking Plan, 1239-1241 Centre Street, Newton, MA," dated 7-21-09 by Christopher Emilius, Professional Engineer
"Conceptual Design for Panera Bread Landscaping, Parking and Handicap Access" dated December 1, 2009 by Andrea W. Kelley, Rockwood Terrace Consultants Landscape Design
"Proposed Site Plan, 1239-1243 Centre Street, Newton, Massachusetts," dated July 20, 2009 by Francis L. Struble, Professional Land Surveyor and Christopher Emilius, Professional Engineer
"Area Plan, 1239-1243 Centre Street, Newton, Massachusetts," dated June 8, 2009 by Francis L. Struble, Professional Land Surveyor
"Proposed Panera Bread, Proposed Floor Plan, 1241 Centre Street, Newton, MA," dated 7-8-09 by Peter Sullivan, revised 9-23-09
"Proposed Panera Bread, Proposed Site and Patio Plan, 1241 Centre Street, Newton, MA," dated 7-8-09 by Peter Sullivan
"Proposed Panera Bread, Existing Exterior Elevations, 1241 Centre Street, Newton, MA," dated 7-8-09 by Peter Sullivan
"Proposed Panera Bread, Proposed Exterior Elevations, 1241 Centre Street, Newton, MA," dated 7-8-09 by Peter Sullivan
"Sheet EC-2.1, Floor Plan, Existing Conditions" dated 7-17-09 by Cubellis Architects
2. The petitioner may operate a bakery/café restaurant with a maximum of 80 seats and 9 employees on the largest shift, with a parking waiver of 14 parking stalls. The petitioner may locate an additional 25 seats on an outdoor patio during a six-month period from May through October, with an additional parking waiver of 9 parking stalls for such use, provided however, that the total number of seats shall not exceed 105 and the total number of outdoor patio seats shall not exceed 25, notwithstanding any subsequent change to the Zoning Ordinance which may authorize additional outdoor seating independent of a parking requirement.
3. Any plant material installed by the petitioner that becomes diseased or dies shall be replaced on an annual basis with similar material.
4. All dumpsters on the subject property will be appropriately screened with fencing to be approved by the Planning Department, and maintained by the petitioner so that they are clean and the area is free of debris and odors.
5. Any changes to approved signage shall be reviewed by the Urban Design Commission and the Director of Planning and Development.
6. The bakery café hours of operation shall be from 6 a.m. to 10 p.m. daily, provided, however, that the outdoor patio shall be utilized only from 7 a.m. to 9 p.m. Routine deliveries and trash collection shall occur at the rear private parking area off Pelham Street only between 7 a.m. and 7 p.m. so as not to disturb residents in the area. Deliveries from vehicles too large to enter the lot off Pelham Street may occur on Centre Street, but only before 7 a.m. or after 10 p.m. to prevent traffic problems during peak hours for traffic on Centre Street.



7. Cooking on the premises shall be limited to baking, which may occur at any hour unless otherwise prohibited by Ordinance. The use of Panini presses, egg steamers and similar items are permitted, but no grilling or frying equipment may be installed or utilized. The premises shall be secured from entry from 10 p.m. to 6 a.m., except for deliveries authorized by the petitioner.
8. Two parking stalls at the north end of the parking area owned by the petitioner's landlord shall be made available for short term parking for retail customers. The remaining six stalls shall be reserved for parking for employees of business tenants in the owner's property.
9. In the event that the petitioner seeks approval for live or recorded music or entertainment from appropriate municipal officials, no such music or entertainment shall be permitted at any time in the outdoor seating area.
10. The petitioner shall make an annual donation of \$1,000, due and payable on or before April 1st of each year, to be applied to the maintenance of the Newton Centre green.
11. The petitioner shall request permission from the Commissioner of Public Works to restripe handicap parking spaces, to construct handicap ramping nearest to the rear entrance to the site from the Pelham Street municipal parking lot, and to remove and install landscaping therein. If permission is granted, the petitioner shall, at its sole expense, restripe such spaces and construct the handicap ramping at the time the petitioner is installing abutting landscaping on its own site.
12. The petitioner shall also request permission from the Commissioner of Public Works to place trash receptacles on the public sidewalks near both the front and rear entrances to the premises. If permission is granted, the petitioner shall, at its sole expense, provide the approved receptacles and maintain and empty them regularly to prevent litter.
13. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has
 - a. contributed \$25,000 to the City of Newton for installation of a pedestrian-activated traffic warning signal to be installed at the intersection of Centre and Pelham Streets, or other traffic control improvements in Newton Centre village, as approved by the Traffic Council, which shall be designed and installed by the City of Newton.
 - b. submitted for review to the Urban Design Commission, Director of Planning and Development, and Commissioner of Public Works a signage plan for improved directional signs to the Pelham Street and Pleasant Street municipal lots. The petitioner shall also pay for the cost of fabricating any approved signage, but not the cost of installing such signage.
 - c. submitted to the Director of Planning and Development for review and approval a final landscape plan indicating the location, number, size, and type of plants to be installed and improvements to the adjacent Pelham Street parking lot to accommodate handicap access.

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- d. designated a site for the placement of a bike rack for at least six bikes at a location in or adjacent to the Pelham Street municipal lot, that is visible from public property, to be reviewed and approved by the Director of Planning and Development.
 - e. submitted to the Director of Planning and Development a Transportation Demand Management Plan to actively encourage employees to use alternative modes to access the site. Such a plan may include but not be limited to providing subsidies for employee expenses for public transportation and other incentives to foster walking, biking and carpooling.
 - f. 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.
 - g. filed a copy of such recorded board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - h. obtained a statement from the Director of Planning and Development that plans are consistent with Condition #1.
14. 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 a statement by the City Engineer certifying that final construction of the handicap access improvements have been constructed to the standards of the Department of Public Works.
 - b. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect or registered engineer certifying compliance with Condition #1.
 - c. submitted to the City Engineer final as-built, record site engineering, utilities, grading and drainage plans in both digital format and hard copy.
 - d. submitted to the Director of Planning and Development final as-built plans in digital format.
 - e. filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving the final location, number and type of plant materials, final landscape features, bike rack and directional signage.
15. Notwithstanding the provisions of Condition #9.e. above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of the bike rack, directional signage and landscaping provided 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 improvements to ensure their completion.

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Under Suspension of Rules
Readings Waived and Approved
23 yeas 1 nay (Alderman Harney)

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.

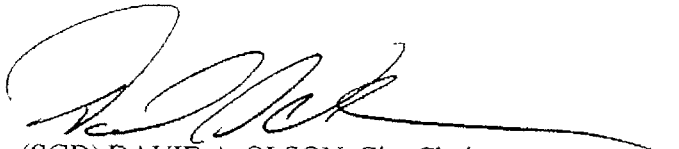
ATTEST:



(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

