



#337-21

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**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Ruthanne Fuller  
Mayor

Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 26, 2021  
Land Use Action Date: January 11, 2022  
City Council Action Date: January 17, 2022  
90-Day Expiration Date: January 17, 2022

DATE: October 22, 2019

TO: City Council

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

SUBJECT: **Petition #337-21**, for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #140-10 to amend the site plan to allow for the installation of a tent/awning at 187 North Street, Ward 3, Newtonville, on land known as Section 21 Block 12 Lot 10, containing approximately 24,108 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec. 7.3.3, 7.4 of the City of Newton Rev Zoning Ord, 2017

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



**187 North Street**

## EXECUTIVE SUMMARY

The subject property located at 187 North Street consists of a 24,108 square foot lot improved with a single-story commercial structure in the Manufacturing district (the “M zone”). The site is governed by Council Order #140-10 which increased the number of seats in the restaurant and allowed alterations to the previously nonconforming surface-parking facility. The petitioner is seeking to construct an awning to the side of the structure that requires an amendment to the approved site plan. Additionally, the awning reduces the side yard setback to 0.0 feet, where 8.11 feet is the minimum allowed, requiring a variance from the Zoning Board of Appeals.

The petitioner should clarify the awning’s location in relation to the fencing and to the northern boundary. Otherwise, the Planning Department is unconcerned with the proposed awning because this portion of the site is enclosed with fencing, contains some landscaping, and the awning is subordinate to the principal structure.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the City Council should consider whether:

- The specific site is an appropriate location for the proposed modifications to Council Order #140-10. (§7.3.3.C.1.)
- The proposed modifications to Council Order #140-10 will adversely affect the neighborhood. (§7.3.3.C.2.)
- The proposed modifications to Council Order #140-10 will create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3.)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4.)

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

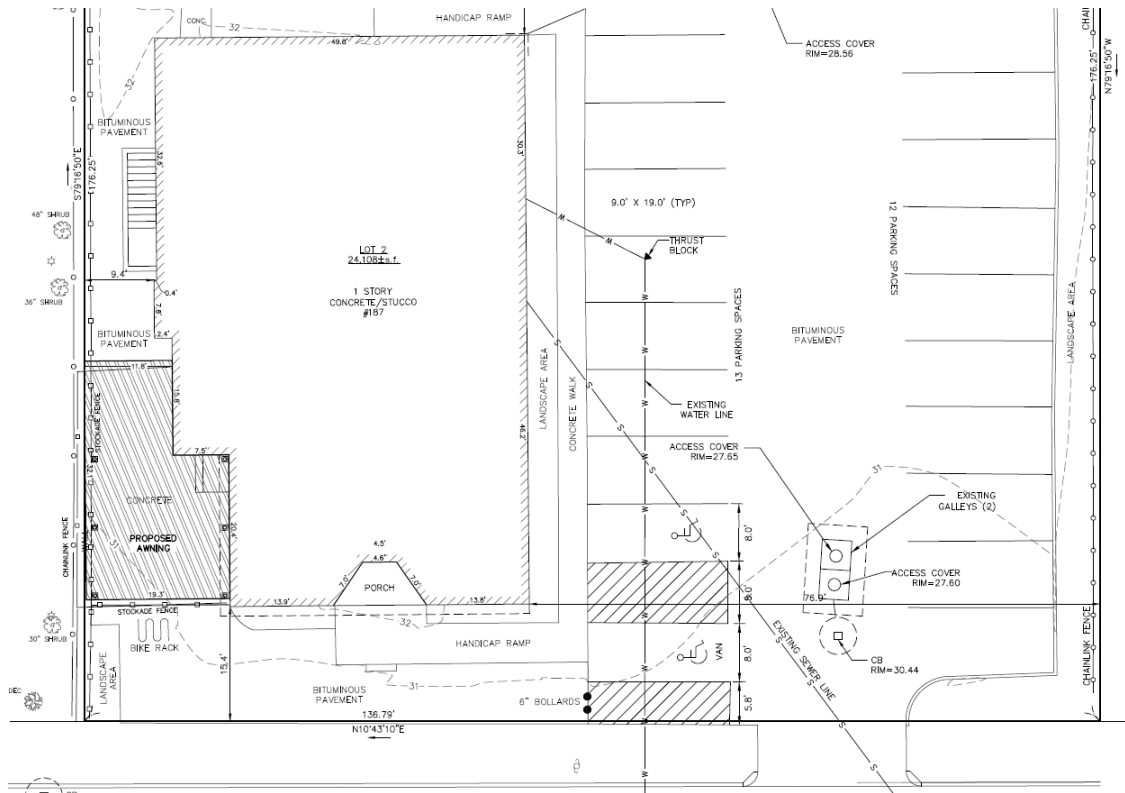
#### A. Neighborhood and Zoning

The subject property is located within the M zone in Newtonville. The M zone continues to the north and south along North Street while a Public Use district and a Single Residence 3 district exist to the west and a Limited Manufacturing zone as well as a Multi Residence 2 zone exists to the east beyond the site (**Attachment A**). Given these zones the west side of North Street is improved with commercial and industrial uses, an open space parcel lies on the west side of North Street, and single- and multi-family uses exist to the west and northeast (**Attachment B**).

B. Site

The site consists of 24,108 square feet and it is improved with a 1-story commercial structure, used as a restaurant, constructed circa 1959 and a surface parking facility containing 43 stalls. The site is predominantly flat. And the boundaries include mature landscaping and fencing.

**Graphic I: Proposed Conditions Site Plan**



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain a restaurant.

B. Site and Building Design

The petitioner is proposing to construct an awning to the side of the structure. The awning would extend from the northern façade to the northern boundary, in the location of a concrete patio. The awning would enclose the patio, which is currently used for outdoor dining, although the number of seats would not increase. The awning would be 11 feet seven inches at its tallest point and slope downward toward the northern boundary to a height of eight feet ten inches. The side setback would

be reduced from 11.8 feet to 0.0 feet, where 8.11 feet is required. This reduction requires a variance from the Zoning Board of Appeals.

The Planning Department suggests the petitioner clarify the awning's location in relation to the fencing and to the northern boundary because it is unclear whether the awning would extend beyond the fence. Additionally, the area enclosed by the awning would count towards the floor area ratio calculation; however, given the size of the site, the site would remain below the maximum allowed as of right. Otherwise, the Planning Department is unconcerned with the proposed awning because this portion of the site is enclosed with fencing, contains some landscaping, and the awning is subordinate to the principal structure.

C. Parking and Circulation

The petitioner is not making changes to either the parking or circulation.

D. Landscaping and Screening

A landscape plan is not required with this petition.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum (the "Memorandum") provides an analysis of the proposal regarding zoning (**Attachment C**). Based on the Memorandum, the petitioner is seeking the following relief:

- Special permit to amend Council Order #140-10 to amend the site plan.
- §4.3.3 and §7.6 of Section 30, to reduce the side yard setback requirement via a variance from the Zoning Board of Appeals

B. Engineering Review

Review from the Engineering Division of Public Works is not required at this time. The petition will be reviewed for conformance with the City of Newton Engineering Design Standards prior to the issuance of a building permit, should this petition be approved.

C. Newton Historical Commission Review

This petition does not meet the minimum threshold for Newton Historical Commission review.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Zoning Map
- Attachment B:** Land Use Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** DRAFT Order



# ATTACHMENT A

## Zoning

### 187 North Street

*City of Newton,  
Massachusetts*

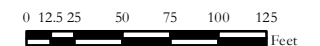
## Zoning

-  Single Residence 3
-  Multi-Residence 2
-  Limited Manufacturing
-  Manufacturing
-  Public Use

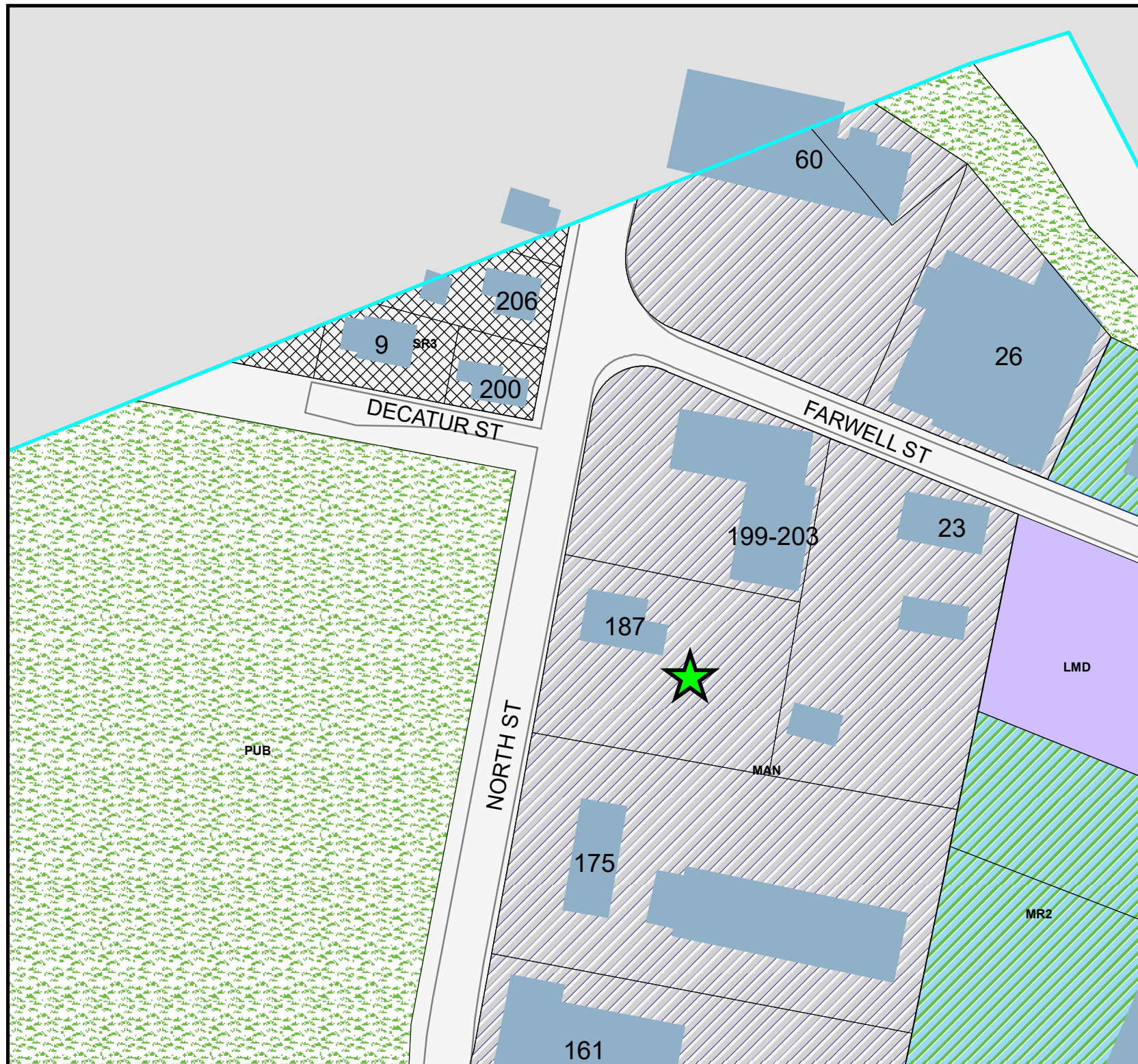


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CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield



Map Date: October 12, 2021



# ATTACHMENT B








## Land Use

### 187 North Street

*City of Newton,  
Massachusetts*

#### Land Use

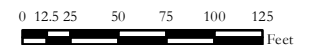
#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Open Space
-  Nonprofit Organizations
-  Vacant Land

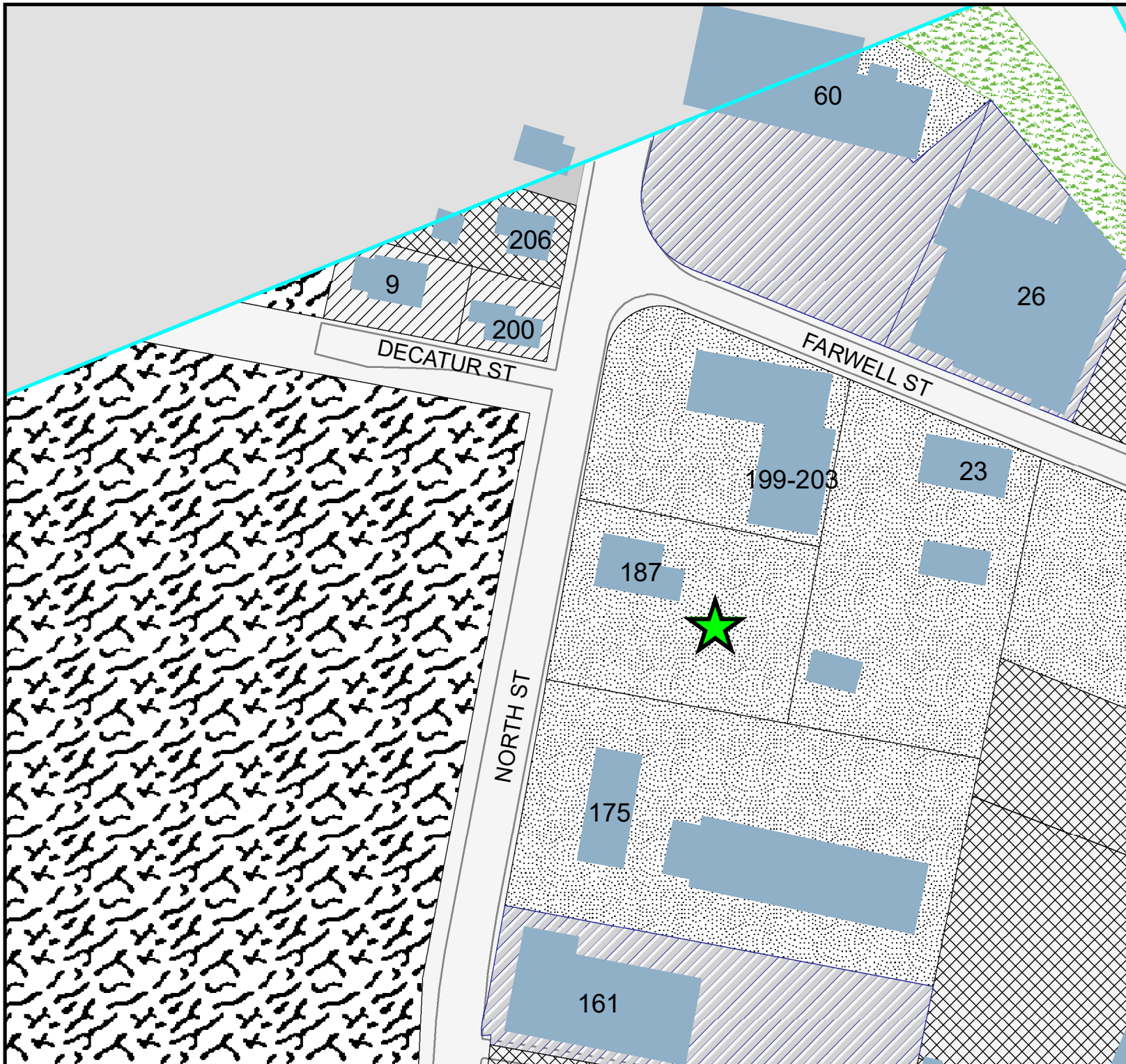


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Ruthanne Fuller  
Mayor

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**Barney S. Heath**  
Director

## ZONING REVIEW MEMORANDUM

Date: June 30, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: Michael and Susan Penta, Applicant  
Laurance Lee, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request for a variance from the side setback requirement and to amend Special Permit #140-10**

Applicant: Michael and Susan Penta	
Site: 187 North Street	SBL: 21012 0010
Zoning: MAN	Lot Area: 24,108 square feet
Current use: Restaurant	Proposed use: No change

### BACKGROUND:

The property located at 187 North Street consists of a 24,108 square foot lot improved with a one-story restaurant constructed in 1959 and 43 surface parking stalls. The petitioners were granted a special permit in 2010 to allow for expanded parking at the rear of the property. The petitioners propose to construct an awning on the side of the building to allow for covered outdoor seating, requiring a variance from the side setback and an amendment to the site plan associated with the special permit.

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

- Zoning Review Application, prepared by Laurance Lee, attorney, submitted 4/8/2021
- Site Plan, signed and stamped by Joseph R Porter, surveyor, dated 1/19/2021
- Awning Model, prepared by Neon Company, dated 8/17/2020
- Council Order #140-10



**ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioners received Special Permit #140-10 in 2010 to allow for parking to expand to the rear of the property. To the extent necessary, an amendment to the site plan associated with the special permit is required to indicate the proposed awning on the property.
2. The structure has a conforming setback of 9.4 feet, where 8.11 feet is required per section 4.3.3. The petitioners intend to construct an awning on the north facade which extends to the lot line. To allow for a 0.0-foot setback where 8.11 feet is required requires a variance per section 7.6.
3. The petitioner does not intend to increase seating capacity with the outdoor dining. Seats will be taken from the inside.

See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§4.3.3	Request to allow a 0.0-foot setback where 8.11 feet is required	Variance per §7.6
	Amend Special Permit #140-10	

CITY OF NEWTON  
IN CITY COUNCIL

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Council Order #140-10 to amend the site plan, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Rick Lipof:

1. The specific site is an appropriate location for the modifications to Council Order #140-10 because the site is governed by a special permit and the proposed awning affects the dimensional standards. (§7.3.3.C.1)
2. The use as developed and operated resulting from the proposed modifications to Council Order #140-10 will not adversely affect the neighborhood because the proposed awning would enclose a patio currently used for outdoor dining. (§7.3.3.C.2)
3. The modifications to Council Order #140-10) will not create a nuisance or serious hazard to vehicles or pedestrians because the changes to the site plan are restricted to an area that is inaccessible to both vehicles and pedestrians. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

PETITION NUMBER: #337-21

PETITIONER: Michael Penta and Susan Sgarzi Penta

LOCATION: 187 North Street  
Newton, MA 02460

OWNER: Michael Penta and Susan Sgarzi Penta, Trustees of SMC Trust

ADDRESS OF OWNER: 483 Pleasant Street  
Watertown, MA 02472

TO BE USED FOR:           Awning

CONSTRUCTION:           Steel

EXPLANATORY NOTES:     Amend Council Order #140-10 to amend the site plan

ZONING:                    Manufacturing District

Approved subject to the following conditions:

This Special Permit/Site Plan Approval amends Council Order #140-10 by replacing the site plan with the site plan referenced in Condition #1.a below . All other conditions of Council Order #140-10 remain in full force and effect.

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:
  - a. Topographic Site Plan, prepared by VTP Associates, signed and stamped by Joe Porter, Professional Land Surveyor, dated January 19, 2021.
  - b. Fiorella’s Tent Plan, prepared by Neon Company, signed and stamped by Frederick Vincent Cowen, Professional Engineer, dated October 5, 2020.
2. Prior to the issuance of any building permit, the petitioners shall obtain a variance from the Zoning Board of Appeals to reduce the side yard setback.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan approval until the petitioners have:
  - a. Recorded a certified copy of this council order with the Registry of Deeds for the Southern District of Middlesex County.
  - 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. Provided a copy of the recorded variance from the Zoning Board of Appeals to the Commissioner of Inspectional Services and Director of Planning and Development in accordance with Condition #2 above.
  - d. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with the plans approved in Condition #1.

4. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have:
  - a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by professional land surveyor certifying compliance with Condition #1.
  - b. Submitted to the Director of Planning and Development and Commissioner of Inspectional Services final as-built plans in paper and digital format signed and stamped by a professional land surveyor.