



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**#159-22**

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Barney S. Heath  
Director

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## PUBLIC HEARING MEMORANDUM

Public Hearing Date: March 8, 2022  
Land Use Action Date: May 24, 2022  
City Council Action Date: June 6, 2022  
90-Day Expiration Date: June 6, 2022

DATE: March 4, 2022

TO: City Council

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

SUBJECT: **Petition #159-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Order #58-21 to allow additional seats and seek an additional waiver of parking stalls at **1241 Centre Street (1239-1243)**, Ward 6, Newton Centre, on land known as Section 64 Block 28 Lot 24, containing approximately 9,000 sq. ft. in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 5.1.4, 5.1.13 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 for consideration at a subsequent working session by the Land Use Committee of the City Council.



**1241 Centre Street (1239-1243)**

### EXECUTIVE SUMMARY

The property at 1241 Centre Street consists of a 9,000 square foot lot in a Business 1 (BU1) zoning district improved with an approximately 11,599 square foot multi-tenant commercial building constructed in 1920.

The restaurant use at this location was established pursuant to Special Permit #242-09 that allowed the expansion of the nonconforming structure, permitted a restaurant of more than 50 seats (with nine employees), and granted a parking waiver of 14 stalls from November through April, and 23 stalls from May through October (the latter to accommodate seasonal outdoor seating).

In 2021 the petitioner was granted an amendment to the special permit to waive an additional parking stall, bringing the total up to 24, to allow an increase in the number of employees allowed on the largest shift from nine to 12. It also allowed a maximum of 80 interior seats and 25 exterior patio seats (105 total seats), with a waiver of nine additional stalls related to the 25 outdoor patio seats.

When the petitioner sought a certificate of occupancy for the new restaurant pursuant to Special Permit #58-21, a review by the Inspectional Services Department (ISD) determined that as every 18 inches of banquette seating counts as one "seat," the restaurant as built contained 99 interior seats per ISD's definition, thus exceeding the 80 interior seats allowed per the special permit (the petitioner had calculated the number of seats based on every 24 inches of banquette seating as one seat). In response the petitioner removed 19 chairs from its interior floor plan to comply with the Special Permit and to obtain a certificate of occupancy.

The petitioner now requests an amendment to the previously granted special permit to allow a total of 124 restaurant seats (99 interior seats and 25 exterior patio seats). As Sec. 5.1.4 of the Newton Zoning Ordinance (NZO) provides that one parking stall is required per every three seats for a restaurant, the petitioner also seeks to amend the special permit to waive an additional seven parking stalls to allow for the additional 19 seats per Sec. 5.1.13.

The Planning Department is generally not concerned with the requested increase in the number of restaurant seats and the associated waiver of a seven additional parking spaces given the location and availability of public parking, both on-street and in public parking areas, including the lot abutting the property to the rear.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

*To amend Special Permit #58-21-*

- The specific site in a Business 1 (BU1) district is an appropriate location for a restaurant with 124 seats (99 interior and 25 outdoor) (§7.3.3.C.1)
- The proposed restaurant with 124 seats (99 interior and 25 outdoor) will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed restaurant with 124 seats (99 interior and 25 outdoor) 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)

*To waive seven additional parking stalls -*

- Literal compliance with the parking requirements per Sec. 5.1 is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§5.1.4, §5.1.13)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property is located on the west side of Centre Street between Pelham and Beacon streets.

The site is developed with a commercial structure similar to those located throughout the surrounding Newton Centre commercial area; public parkland is located across Centre Street to the east and the area to the west is largely occupied by single- and multi- family dwellings, as well as religious uses and a municipal parking area directly to the rear of the subject property (**Attachment A**). The site and other properties along the west side of Centre Street are zoned Business 1 (BU1) as are those to the east beyond Public Use (PU) zoned properties along the east side of the street; the public parking to the rear is zoned PU; and the area west of Centre Street is largely zoned Single Residence 2 (SR2) **Attachment B**).

### B. Site

The property consists of a 9,000 square foot lot improved with an approximately 11,599 square foot multi-tenant commercial building. The structure occupies most of the parcel, with the exception being seasonal outdoor seating space at the rear of the lot (abutting the public parking lot).

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the approximately 3,825 square foot portion of the building that is the subject of the present petition would continue to be used as a restaurant.

### B. Building and Site Design

No changes to the exterior of the building, or to the site, are contemplated by the present petition.

### C. Parking and Circulation

The existing special permit requires that six on-site parking stalls available for use by employees and two on-site parking stalls available for short-term parking for the retail customers (these

spaces are located on an adjacent parcel also owned by the owner of the parcel). No changes to this arrangement have been proposed.

Regarding the proposed waiver of seven additional parking stalls, which would raise the total waiver to 31 (22 stalls waived for 99 interior seats, 9 additional waived for the 25 outdoor patio seats), while recognizing the demand for parking in Newton Centre, the Planning Department is generally not concerned given the location and availability of public parking, both on-street and in public parking areas, including the lot abutting the property to the rear.

D. Landscaping and Lighting

No changes to the site's landscaping or lighting are contemplated by the present petition.

IV. TECHNICAL REVIEW

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

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

- S.P. per §7.3.3 to:
  - amend Special Permit #58-21
  - waive additional parking stalls (§5.1.4, §5.1.13)

B. Engineering Review

Review by the Engineering Division is not required.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

**ATTACHMENTS:**

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








## Land Use

1241 Centre St.

*City of Newton,  
Massachusetts*

## Land Use

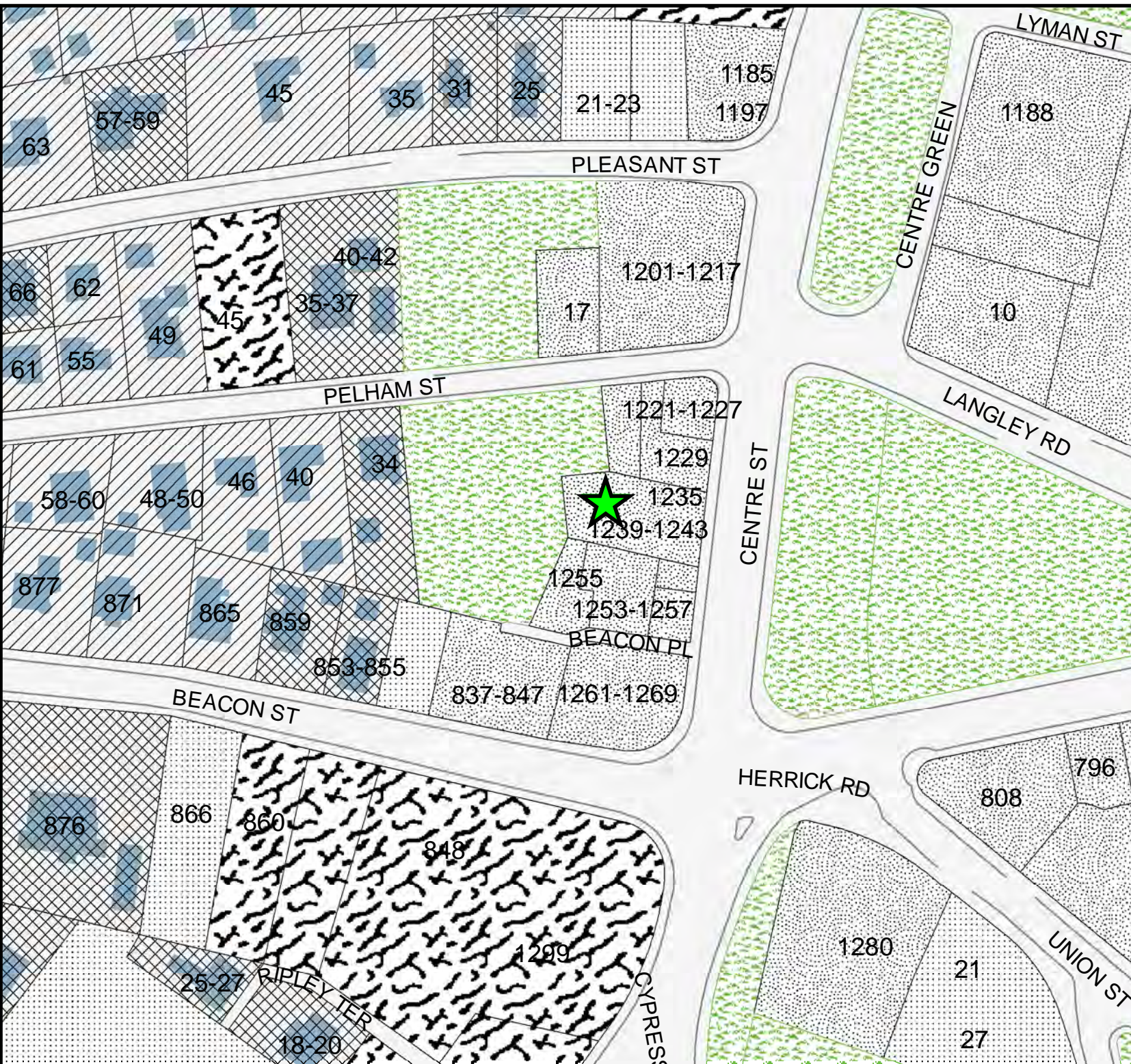
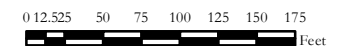
### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Mixed Use
-  Open Space
-  Private Educational
-  Nonprofit Organizations



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

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



Zoning

1241 Centre St.

City of Newton,  
Massachusetts

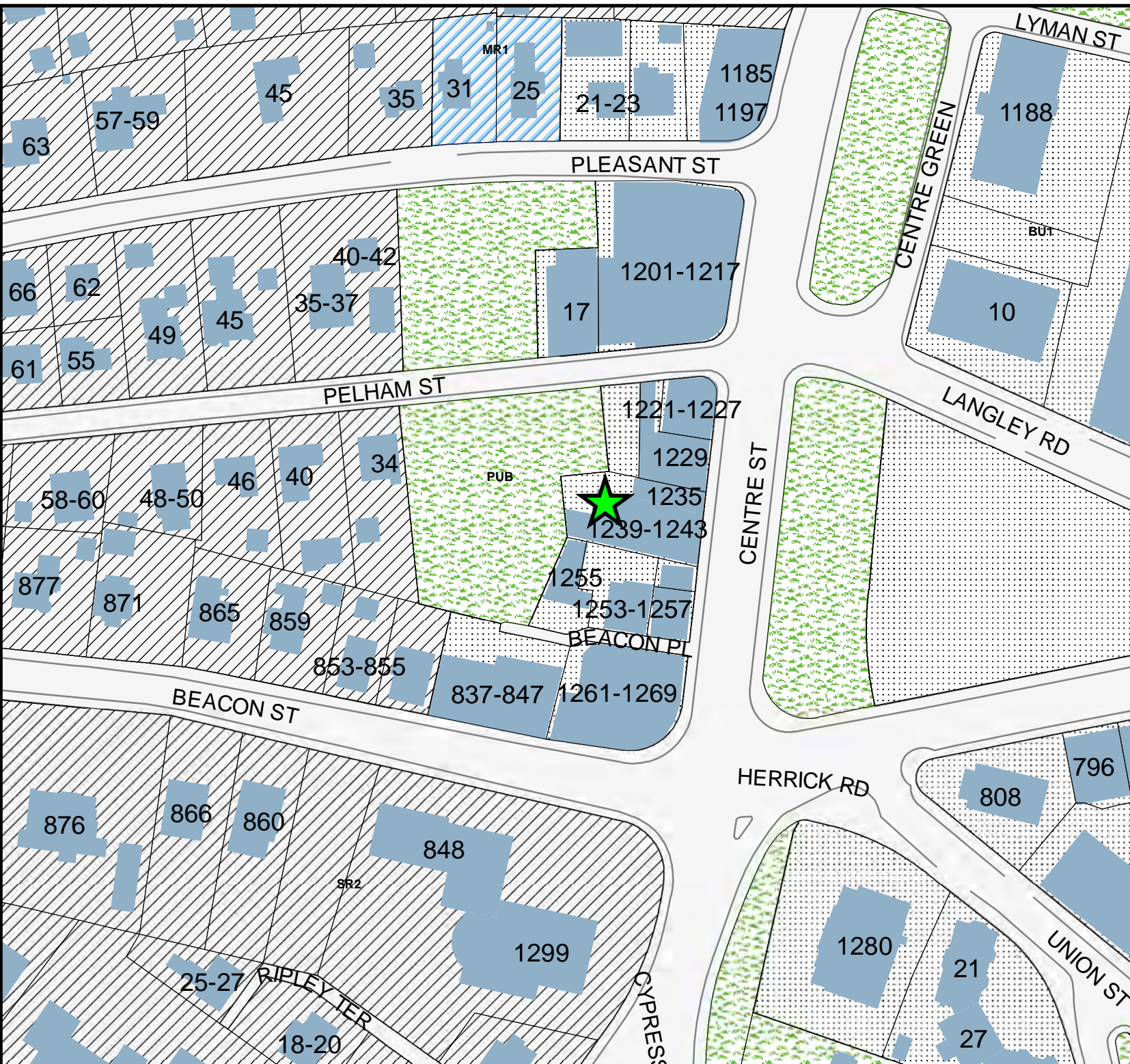
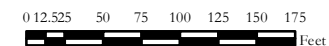
Legend

-  Single Residence 2
-  Multi-Residence 1
-  Business 1
-  Public Use



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Barney S. Heath  
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## ZONING REVIEW MEMORANDUM

Date: February 1, 2022

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Stephen J. Buchbinder, Attorney  
Joel Kadis, Linear Retail Newton 1 LLC  
Brendan Boyle, Tatte Bakery and Café  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Assistant City Solicitor

RE: **Request to amend Council Order #58-21 and to waive parking stalls**

Applicant: Tatte Bakery and Café	
Site: 1241 Centre Street (1239-1243 Centre St)	SBL: 64028 0024
Zoning: BU1	Lot Area: 9,000 square feet
Current use: Restaurant	Proposed use: No change

### BACKGROUND:

The property at 1241 Centre Street consists of a 9,000 square foot lot improved with a multi-tenant commercial building constructed in 1920. Special Permit #242-09 was granted in 2009 to allow a waiver of 23 parking stalls, a restaurant with more than fifty seats and to expand a nonconforming structure. An amendment was granted in 2021 to increase the seating and the parking waiver, and to eliminate certain conditions relative to the use of the site. The petitioner now seeks to amend the special permit to waive seven additional parking stalls.

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

- Zoning Review Application, prepared Stephen J. Buchbinder, attorney, dated 12/22/2021
- Special Permits #58-21 and 242-09
- Floor Plan, signed and stamped by David R. McMahon, architect, submitted 12/22/2021

**ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioner received a special permit in 2021 waiving 24 parking stalls allowing for a maximum of 80 interior seats and 25 exterior seats, and 12 employees at the largest shift. When the certificate of occupancy was sought, the Inspectional Services Department explained that for the purposes of measuring the number of seats, every 18 inches of banquette seating counts as one seat. Based on the floor plan, the seat count was measured at 99 seats, rather than the approved 80. The petitioner seeks to amend the special permit to increase the number of seats and the parking waiver. Per section 5.1.4 one parking stall is required per every three seats for a restaurant. The petitioner seeks an additional waiver of seven stalls to allow for the additional 19 seats per section 5.1.13.

See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
	Request to amend Special Permit #58-21	
§5.1.4 §5.1.13	Request to waive parking stalls	S.P. per §7.3.3



### **Next Steps**

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

### **The following must be included when filing a Special Permit Application:**

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
  - Site Plans showing existing and proposed conditions (including topography as applicable)
  - Architectural plans showing existing and proposed conditions (including façade materials)
  - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

### **Incomplete applications will delay the intake and review of your project.**

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N

CITY OF NEWTON

IN CITY COUNCIL

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 amend Special Permits #242-09 and #52-21 to increase the number of restaurant seats allowed onsite to 124 seats (99 interior and 25 outdoor) and to waive an additional seven parking stalls (§5.1.4, §5.1.13), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- 1) The specific site ins a Business 1 (BU1) district is an appropriate location for a restaurant with 124 seats (99 interior and 25 outdoor) as it is located in a mixed-use business area with on- and off- street parking facilities (§7.3.3.C.1)
- 2) The proposed restaurant with 124 seats (99 interior and 25 outdoor) will not adversely affect the neighborhood given the mixed-use nature of the surrounding area and the presence of nearby on- and off- street parking (§7.3.3.C.2)
- 3) The proposed restaurant with 124 seats (99 interior and 25 outdoor) will not create a nuisance or serious hazard to vehicles or 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)
- 5) Literal compliance with the parking requirements per Sec. 5.1 that require seven parking stalls for the proposed 19 additional interior restaurant seats is impracticable due to the nature of the use and the location and size of the lot (§5.1.13)

PETITION NUMBER: #159-22(amending Special Permits #242-09 and #58-21)

PETITIONER: Tatte Bakery & Cafe

ADDRESS OF PETITIONER: 101 Main Street  
Cambridge, MA 02142

LOCATION: 1241 Centre Street (1239-1243 Centre Street), Ward 6, on land  
known as Section 64, Block 28, Lots 21 and 24, containing  
approximately 9,000 square feet of land

OWNER: Linear Retail Newton LLC

ADDRESS OF OWNER: 5 Burlington Woods Drive, Suite 107  
Burlington, MA 01803

TO BE USED FOR: Restaurant in excess of 50 seats

EXPLANATORY NOTES: Special Permit per § 7.3.3 to:

- amend Special Permits #242-09 and #58-21
- waive seven parking stalls (§5.1.4, §5.1.13)

ZONING: Business 1 (BU1) district

The conditions set forth in a prior special permit for this property, Special Permits #242-09 and #58-21 remain in full force and effect except as modified herein.

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 cited in Condition 1 of Special Permit#242-09, with the exception that the plan identified as “Proposed Panera Bread, Proposed Floor Plan, 1241 Centre Street, Newton, MA” shall be replaced with the following plan:
  - a. a floor plan entitled “Tatte Bakery, 1241 Centre St, Newton, MA 02459- Job No. 2020-3903, First Floor Plan (A100),” prepared by McMahon Architects, undated, Signed and stamped by David R. McMahon, Registered Architect
2. The following replaces Condition 2 of Special Permit #58-21: The petitioner may operate a bakery/café restaurant with a maximum of 99 interior seats and **12** employees on the largest shift, with a parking waiver of **22** parking stalls. The petitioner may locate an additional 25 seats on an outdoor patio, with an additional parking waiver of **9** parking stalls for such use, provided, however, that the total number of seats shall not exceed 124 and the total number of outdoor patio seats shall not exceed 25.
3. Condition 10 of Special Permit #242-09 is deleted.
4. 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 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 order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
  - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
5. No Final Inspection/Occupancy Permit for the use covered by this special permit/site plan approval shall be issued until the petitioners have made a one-time payment of \$6,000 to the City of Newton to be applied to the maintenance of the Newton Centre green.
6. 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 an architect 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 licensed architect.