

CITY OF NEWTON

IN CITY COUNCIL

September 6, 2016

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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to modify Special Permit #501-94(2), construct six parking stalls in a side setback, waive aisle width requirements, waive screening requirements, waive security lighting requirements and allow a retaining wall greater than 4 feet in height within the side and rear setbacks, as per the provisions of this Order; as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. The site in a Business 1 (BU1) district is an appropriate location for the proposed six additional parking stalls within a side setback and the requested waivers of parking regulations related to aisle width, screening and lighting requirements, as such approvals and waivers are granted subject to conditions included herein that address site-specific issues, including the site's adjacency to both residences and businesses, and the topography of the site in relation to abutting properties (§7.3.3.C.1).
2. The construction of the proposed six parking stalls and the granting of the requested waivers of parking regulations and requirements will not adversely affect the neighborhood as they are granted subject to conditions included herein that address site-specific issues, including the site's adjacency to both residences and businesses and the topography of the site in relation to abutting properties (§7.3.3.C.2).
3. The construction of the proposed six parking stalls and the granting of the requested waivers of parking regulations and requirements will not create a nuisance or serious hazard to vehicles or pedestrians as they will not require or create any new access point or overburden the existing curb cut on Elliot Street (§7.3.3.C.3).
4. The requested waivers and exceptions to the above-referenced parking regulations and requirements are appropriate because literal compliance with them is impracticable due to the size of the lot, and granting them is in the public interest as they will facilitate the creation of six additional off-street parking spaces for the

- associated restaurant, reducing demand for on-street parking in the adjoining neighborhood (§5.1.13).
5. The site in a Business 1 (BU1) is an appropriate location for a retaining wall within a setback as it serves to maintain the current, existing grades (§7.3.3.C.1).
 6. The retaining wall will not adversely affect the neighborhood as it is currently in place and will only become located within a setback upon the proposed subdivision of an existing lot that will create two new lots, the shared boundaries of which will generally reflect the location of this already existing wall (§7.3.3.C.2).
 7. The retaining wall will not create a nuisance or serious hazard to vehicles or pedestrians as conditions included herein require its inspection and testing for the projected use and the installation of safety fencing along its entire alignment (§7.3.3.C.3).
 8. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

PETITION NUMBER: #215-16(2)

PETITIONER: Seana R. Gaherin

LOCATION: 342, 342A, 344-346 Elliot Street, Newton Upper Falls, on land known as Section 51 Block 41 Lots 10, 11 and 12

OWNER: D&G Realty Trust/342A Elliot Street Realty Trust

ADDRESS OF OWNER: 344 Elliot Street, Newton, MA 02464

TO BE USED FOR: Parking and associated restaurant/pub

CONSTRUCTION: Paving and installation of related fencing and landscaping

EXPLANATORY NOTES: Special Permits per §7.3.3:

- modify special permit Order #501-94(2);
- to allow parking in a side setback (§5.1.8.A.1, §5.1.13);
- to waive aisle width requirements (§5.1.8.C.1, §5.1.8.C.2, §5.1.13);
- to waive certain parking lot screening requirements (§5.1.9.A, §5.1.13);
- to waive parking lot security lighting requirements (§5.1.10, §5.1.13);

- allow a retaining wall greater than 4 feet within a setback (§5.4.2.B).

ZONING: Business 1 (B1) District

Prior special permits for this property as follows: Board Order #501-94(2) and Board Order #501-94.

This special permit supersedes said prior special permits and consolidates and incorporates herein by reference the findings of those prior special permits, and incorporates those conditions and provisions from such prior special permits that remain applicable, are still in full force and effect, and are set forth in this special permit. Any conditions in such prior special permits not set forth in this special permit are null and void.

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:
 - a. a plan entitled "342, 342A and 344 Elliot Street, Proposed Parking and Dumpster Location, Newton, Massachusetts," prepared by Verne T. Porter Jr., PLS, dated November 16, 2015, as revised through August 3, 2016, signed and stamped by Verne T. Porter Jr., Professional Land Surveyor on August 3, 2016.
 - b. Dunn Gaherin's, Alterations and Additions, 344 Elliot Street, Newton, MA 02464 all bearing the stamp and signature of Registered Architect Donald Lang and all dated 6/20/08:
 - Sheet EX-1 - "Existing Basement & First Floor Plans"
 - Sheet EX-2 - "Existing Second Floor Plan, Existing North & South Elevations"
 - Sheet EX-3 - "Existing East and West Elevations"
 - Sheet A-1 - "Proposed Basement Floor Plan"
 - Sheet A-2 - "Proposed First and Second Floor Plan"
 - Sheet A-3 - "Proposed North and South Elevations"
 - Sheet A-4 - "Proposed East and West Elevations"
 - "Partial Site Plan" dated October 15, 2008 by Donald Lang Architects, Inc.

344 Elliot Street, Newton, Massachusetts all bearing the stamp and signature of Verne T. Porter, Jr P.L.S. and dated as noted:

- Sheet 1 of 5 -"Proposed Additional Plan -Existing Parking," dated May 19, 2008
 - Sheet 2 of 5 -"Existing Parking and Building Location," dated March 4, 2008
 - Sheet 3 of 5 - "Area Plan," dated March 4, 2008
 - Sheet 4 of 5 - "Area Plan," dated March 4, 2008
 - Sheet 5 of 5 -"Zoning District Plan," dated March 4, 2008
 - "Plot Plan of Existing Parking, Elliot St., Chestnut St., and Hale Street" dated June 10, 2008
 - "Proposed Conditions Plan" dated May 19, 2008, revised October 21, 2008.
- c. That for the purpose of showing potential parking space layouts for both four vehicles and ten vehicles, plans entitled "Site Plan of Land, Newton, Mass. to Accompany the Petition of Robert Dunn & Seana Gaherin - 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing four parking spaces and "Site Plan of Land in Newton, Mass to Accompany the Petition of Robert Dunn & Seana Gaherin 342 & 344 Elliot Street", dated December 12, 1994 and revised January 6, 1995, showing parking spaces have been submitted. and for purposes of showing landscaping only, a "Site Plan of Land, Newton Mass." dated December 12, 1994 and revised through January 31, 1995 shall be followed.
2. Prior to the issuance any building permit pursuant to this special permit, the petitioner shall:
- a. record a duly-approved lot division plan showing the division of the parcel at 342A Elliot Street (land presently known as Section 51 Block 41 Lot 11) to create the parcel indicated with the notation "2951 sf (Part of 342A Lot)" on the site plan referenced in Condition #1.a with the Middlesex South Registry of Deeds;
 - b. convey said parcel into common ownership with the parcels located at 342 and 344-346 Elliot Street (land presently known as Section 51 Block 41 Lots 10 and 12);
 - c. record all required documents evidencing such subdivision and conveyance with the Middlesex South Registry of Deeds; and
 - d. file certified copies of such recorded documents with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
3. The waiver of six parking stalls granted under the provisions of special permit #501-94(2) is hereby terminated and extinguished.
4. The petitioner shall not operate the restaurant with more than 69 seats.
5. Prior to the issuance of any building permit, the petitioner shall provide an independent structural evaluation by a licensed engineer of the concrete block retaining wall's stability against overturning, settling, and sliding resistance for review and approval by the Engineering Division of Public Works; no building permit shall be issued without the written approval by the Engineering Division of the Department of Public Works of a

retaining wall in the locations shown in the plan referenced in Condition #1.a as "Existing Concrete Block Wall."

6. Prior to the issuance of any building permit, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for storm water management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
7. Prior to the issuance of any building permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
8. Prior to the issuance of any building permit, the petitioner shall provide a Final Landscape Plan for review and approval by the Director of Planning and Development. This plan shall show the location of safety fencing along the eastern, southern, and western boundaries of the new additional parking area and show the number, location and type of proposed plantings, including sufficient evergreen trees along the eastern boundary of the new parking area, and within the "Proposed Landscape Area" indicated on the Site Plan, that would be expected to reach a height at maturity above the height of the proposed fencing so as to provide appropriate year-round screening of the proposed parking spaces from adjacent residential properties.
9. Prior to the issuance of any building permit, the petitioner shall submit a final Construction Management Plan (CMP) to the Commissioner of Inspectional Services, the Director of Urban Forestry, the Engineering Division of Public Works, the Director of the Department of Planning and Development, the Newton Fire Department and Newton Police Department, which plan should shall include at a minimum:
 - 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 5:00 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. 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.
 - d. A tree preservation plan to define the proposed method for protection of existing trees to remain on the site and on abutting properties during construction.
 - e. A plan for rodent control during construction

- f. If blasting of on-site ledge is required, the petitioner shall obtain a Blasting Permit from the Newton Fire Department.
10. No building permit shall be issued pursuant to this special permit/site plan approval in accordance with the plans referenced in Condition #1.a until the petitioner has:
 - a. Complied with Conditions #2-#9.
 - b. Received final approval from the Director of Planning and Development and the Commissioner of Inspectional Services for the Construction Management Plan.
 - c. 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.
 - d. Filed a copy of such recorded order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - e. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development, a statement from the Engineering Division approving the final site plan.
 - f. Filed a Final Landscape Plan to the Director of Planning and Development for review and approval.
 - g. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.a.
 11. No final inspection and/or occupancy permit for the use covered by this special permit/site plan approval and depicted on the plans referenced in Condition #1.a 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 a registered architect or engineer certifying compliance with Condition #1.a.
 - b. Filed with the Clerk of the Board, the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that improvements authorized by this Order have been constructed to the standards of the City of Newton Engineering Department.
 - c. 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 land surveyor.
 - d. 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 and fencing.
 12. Notwithstanding the provisions of Condition #11 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for the subject property prior to installation of final landscaping provided that the petitioner shall first have filed 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 landscaping to secure installation of such landscaping.

13. The landscaping shown on the plans referenced in Conditions #1.a, #1.b and #1.c, shall be maintained in good condition by the petitioner and any plant material that becomes diseased or dies shall be replaced with similar material annually.
14. Parking spaces shall be striped and maintained at 9.5 feet in width in the areas depicted on the plans referenced in Condition #1.b.
15. Appropriate signage will be maintained near the entrance to the parking lot that directs drivers to back into the parking spaces and to the location of the handicapped parking stall at the rear of the parking lot in the areas depicted on the plans referenced in Condition #1.b.
16. The petitioner shall continue use best efforts to assist and encourage restaurant customers to comply with all parking and other traffic safety regulations, especially on Elliot Street and Hale Street, and not to obstruct driveways.
17. All deliveries to the restaurant shall occur from the parking area and at off-peak hours during the day.
18. To the extent necessary to implement the parking layout shown on plans cited in Condition #1.c. only, all other dimensional and design requirements of Section 5.1, formerly Section 30-19, not specifically referred herein are hereby waived.
19. After consultation with the Department of Planning and Development as to location, the Petitioner shall install a bike rack in a suitable location.