

431 Washington Street, 29 Hovey Street, and adjacent unnumbered lot

CITY OF NEWTON

IN CITY COUNCIL

October \_\_, 2017

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 construct a 76,843 square foot, 85 unit elderly housing with services facility of four stories and 47.4 feet in height and a floor area ratio (FAR) of 1.15, allow a retaining wall greater than four feet within a side setback, and the extension of a nonconforming front setback, as recommended by the Land Use Committee ("LUC") for the reasons given by the Committee through its Chairman, Councilor Marc Laredo.

**Procedural Background**

The proposed development (the "Project") for 431 Washington Street, 29 Hovey Street, and the adjacent unnumbered lot (the "Site") was submitted by Sunrise Development, Inc. (the "Petitioner").

The Petitioner filed a request to re-zone 29 Hovey Street and the adjacent unnumbered lot from MR2 to BU2 and simultaneously filed a special permit/site plan application for the Project with the City Clerk on March 3, 2017 *i.e.*, Docket ## 60-17 and 61-17. Notice of the public hearing was published on March 21, 2017 and March 28, 2017 in *The Boston Globe*, and on March 29, 2017, in the *Newton Tab*, and mailed to all parties in interest in compliance with the Newton Zoning Ordinance and M.G.L. c. 40A §11. The Land Use Committee ("LUC") of the City Council opened the public hearing on April 4, 2017 and continued the public hearing on May 23, 2017, June 22, 2017, August 8, 2017, and September 26, 2017.

Over the course of the public hearings on Docket # 61-17 presentations were made by the Petitioner and its Project team including its attorney, Stephen J. Buchbinder of Schlesinger and Buchbinder, LLP; its architect, Mark Moeller of JSA ; its landscape architect, Connie Fan of LSG Landscape Architecture; and its transportation consultant, Randy Hart of Vanasse Hangen Brustlin, Inc. ("VHB"). Presentations were also made by City staff Michael Gleba, Senior Planner of Current Planning for the Planning and Development Department.

The LUC received extensive oral and written testimony from the public and written reports from the City's professional consultants and various City boards, commissions, and departments, including the Planning and Development Department, the Department of Public Works, the Planning and Development Board which recommended that the requested rezoning be approved, and the Urban Design Commission. During the review process, supplemental materials and testimony have been submitted in response to requests by the Council and the public. All testimony, written reports, and supplemental materials prepared by the Petitioner and its consultants, and the City and its staff, consultants, boards, and commissions, as well as public testimony and supplemental materials submitted by the public, are included in the record of the Council's proceedings, and provide factual and technical background for the Findings and Conditions set forth within the body of this order.

Following a final presentation by the Petitioner and City staff, as well as public testimony, the public hearing was closed on September 26, 2017. On October 10, 2017 the LUC voted to recommend approval of the Project to the Council as follows:

Finding that all applicable provisions of the Zoning Ordinance have been complied with and taking into consideration the testimony and evidence provided by all interested parties, the Council GRANTS approval of this Special Permit/Site Plan Approval based on the following findings, as recommended by the LUC of the Council:

With regard to the special permit criteria under §7.3.3. C.1.-5.:

1. The Site is an appropriate location for the building and proposed use as designed, given the adjacent neighborhood's mix of residential and commercial land uses and structures of varying scales and heights. The Project will serve as a transitional use along Washington Street from the commercial uses to the east and the residential uses to the west and north. (§4.1.2.B.1; §4.1.3; and §7.3.3.C.1)
2. The Project as designed, developed and operated will not adversely affect the neighborhood as it is residential in nature and will be less traffic intensive than the Site's previous use as a car dealership. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians as the main entrance to the Project will be located at a signalized intersection that will be improved as a condition of this special permit approval. Further, the Project will reduce the number of curb cuts and generate significantly fewer vehicle trips than the previous use of the Site. (§7.3.3.C.3)
4. Access to the Site over the streets is appropriate for the types and numbers of vehicles coming to and going from the Project. (§7.3.3.C.4)
5. The site planning, building design, construction, maintenance or long-term operation of the Project will contribute significantly to the efficient use and conservation of natural resources and energy as it is located near a village center and close to transit options and

the Petitioner has represented that the Project will be operated so as to qualify for "Energy Star" certification by the United States Environmental Protection Agency (EPA). (§7.3.3.C.5)

6. The Site is an appropriate location for a retaining wall greater than four feet as the proposed wall will facilitate access to an underground parking garage reducing the amount of surface parking. Any portion of the wall above grade will be landscaped. (§5.4.2.B ; §7.3.3.C.1)
7. Extending the nonconforming front setback along Hovey Street by allowing the building to have a front setback of 5.6 feet where 10 feet is required will not be substantially more detrimental than the existing nonconforming structure to the neighborhood as the existing structure has no setback and is built to the property line along Hovey Street. (§ 7.8.2.C.2)
8. The Petitioner will provide three affordable beds on-site for the life of the Project. (§5.11.11)
9. The Project will include publically accessible open space amenities.
10. Consistent with Newton's Comprehensive Plan, the Project will address some of the needs of the City's large and growing elderly population.

With regard to the site plan approval criteria under §7.4.5.B.1.-7.:

1. The Project has been designed to ensure the safety of vehicular and pedestrian movement within the Site and in relation to adjacent streets, properties, and improvements, including regulation of the number, design and location of the access driveway and the location and design of handicap parking. (§7.4.5.B.1)
2. The method for disposal of sewage, refuse and other wastes , and the methods of regulating surface water drainage, are adequate for the following reason:
  - a) The City Engineering Division has reviewed submitted plans and raised no concerns with respect to this Project. The Engineering Division will review all plans submitted for building permits for compliance with City of Newton Engineering Division design standards prior to the issuance of any building permits. (§7.4.5.B.2)
3. The provisions for on-street and off-street loading facilities are sufficient to service the Project. (§7.4.5.B.3)
4. The screening of parking areas and structures on the site from adjoining premises is sufficient based on the landscape plans referenced in General Condition #1. (§7.4.5.B.4)
5. The Project avoids unnecessary topographical changes. (§7.4.5.B.5)
6. All utility service lines on site will be underground. (§7.4.5.B.6)
7. The proposed site design and massing is appropriate in the context of the Newton Corner commercial village center location and will serve as a transitional use from the commercial village center to the east of the Site and the residential uses to the west of the Site. The Petitioner has incorporated a number of building treatments and design elements that enhance the appearance of the building. (§7.4.5.B.6)

8. The Project will not cause the removal or disruption of any historic resources on or off-site. (§7.4.5.B.7)
9. The Project contributes significantly to the efficient use and conservation of natural resources and energy as it is located near a village center and close to transit options. The Petitioner has represented that the Project will be operated so as to qualify for "Energy Star" certification by the United States Environmental Protection Agency (EPA). (§7.4.5.B.8)

In light of the findings set forth above and the following conditions imposed by this Council Order, the City Council finds that the public convenience and welfare of the City will be served, and the criteria of §4.4.1; §6.2.10; §6.2.10.B; §4.1.2.B.1; §4.1.2.B.3; §4.1.3; §7.8.2.C.2; §5.4.2.B; §5.11.11; §7.3.3.C.1.-5. and §7.4.5. B. 1.-8. for granting special permits/site plan approval will be satisfied.

**PETITION NUMBER:** #61-17

**PETITIONER:** Sunrise Development, Inc. and its successors and/or assigns

**ADDRESS OF PETITIONER:** 7902 Westpark Drive  
McLean, VA 22102

**LOCATION:** 431 Washington Street, 29 Hovey Street and an adjacent unnumbered lot on Hovey Street, , Ward 1, on land known as Section 12, Block 6, Lots 3, 4, and 5, containing approx. 66,909 sq. ft. of land

**OWNER:** 431 Washington Street, LLC

**ADDRESS OF OWNER:** 391 Providence Highway  
Norwood, MA 02062

**TO BE USED FOR:** Elderly Housing with Services

**EXPLANATORY NOTES:** Special permit per §7.3.3:

- To allow an Elder Housing with Services facility (§4.4.1; §6.2.10)
- Development of 20,000+ square feet of gross floor area (§4.1.2.B.1)
- To allow a building with four stories (§4.1.2.B.3; §4.1.3)
- To extend a nonconforming front setback (§4.1.3, §7.8.2.C.2)

- To allow a retaining wall in excess of 4 feet in a setback (§5.4.2.B)
- Inclusionary housing provisions (§5.11.11)

Site Plan per §7.4.5

ZONING: Business 2(BU2)

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 set of site plans entitled "Sunrise of Newton, 431 Washington St, Newton, Massachusetts, Special Permit Application," consisting of the following sheets:
    - i. Site/Civil plans, prepared by VHB, dated March 3, 2017 as revised through September 12, 2017, signed and stamped by Curtis R. Quitzau, Professional Engineer:
      - Legend and General Notes (C-1);
      - Area Plan (C-2);
      - Zone Change Plan (C-3);
      - Zoning Assessment Plan (C-4);
      - Layout and Materials Plan (C-5);
      - Grading and Drainage Plan (C-6);
      - Utility Plan (C-7);
      - Erosion and Sediment Control Plan (C-8);
      - Site Details (C-9.1);
      - Site Details (C-9.2);
      - Fire Access Plan (C-10);
      - Existing Conditions Plan of Land (SV-1).
    - ii. Architectural plans, entitled "Sunrise of Newton, Washington & Hovey Streets, Newton, MA 02458," prepared by JSA Inc., dated June 13, 2017, as revised through September 12, 2017, consisting of the following sheets:
      - Floor Plans- Parking and First Floor (A0.01);
      - Floor Plans- Second and Third Floors (A0.02);
      - Floor Plans- Fourth Floor and Roof (A0.03);
      - Exterior Elevations (A2.01);

- Rendered Site Plan (L1);
  - Landscape Plan (L1.1);
  - Fencing / Paving Details (L2.2);
  - Planting Details (L2.3);
  - Front View from Washington Street;
  - View from Hovey Street;
  - View from Jewett Street;
  - Roof Comparison.
2. The Petitioner shall comply with the City's Noise Control Ordinance, § 20-13 et seq of the Revised Ordinances 2012, at all times, which may require among other measures, the installation and maintenance of acoustical treatments of any and all Heating, Ventilation and Air Conditioning (HVAC) units.
  3. All on-site utilities shall be located underground on the property.
  4. All lighting fixtures shall be residential in scale.
  5. Deliveries to the facility shall be limited to 8:00 AM – 5:00 PM; deliveries shall be made only with so-called "box trucks" or smaller vehicles (excepting only in the event of emergencies where additional supplies are required, such as a storm or flood, and as approved in advance by the Commissioner of Inspectional Services).

***Note:** The above condition restricting the size of the delivery trucks and the times for deliveries was drafted when the loading dock was on Hovey Street. The Petitioner has requested the following language replace these restrictions given that the loading dock has been relocated to Washington Street:*

*Deliveries to the facility shall be limited to 6:30 AM – 8:30 PM.*

6. Affordability requirements:

The Petitioner shall at all times provide beds with attendant services (which shall include three meals per day, snacks and beverages, housekeeping services, laundry, educational and recreational programs, transportation to and from appointments, and at least 45 minutes of care per day) within the facility to at least three residents at its sole cost. Such residents shall be responsible for the cost of care beyond the initial 45 minutes per day. The provision of such beds shall be compliant with the income, resident selection and reporting requirements of §5.11.11.C, D and E of the Newton Zoning Ordinance.

Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall enter into a Memorandum of Understanding (MOU) with the City of Newton, acting through its Department of Planning and Development, that defines the administration, management and reporting requirements for these beds,

including but not limited to resident selection, resident income verification and procedures and timing for the enrollment of such residents.

7. The Petitioner shall operate and maintain a park as shown on the Landscape Plan (Sheet L1.1) referenced above in Condition 1 located on the northern portion of the property on Hovey Street, labeled "Public Area" and shown to include a "natural play area," "public picnic area (mulch)" and "labyrinth (permeable paving)". These areas shall be open to the public from dawn to dusk every day.
8. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by Petitioner and recorded at the Middlesex South District Registry of Deeds herewith. Evidence that the O&M has been recorded shall be submitted to the Engineering Division of Public Works.
9. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, 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.
10. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval the Petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer.
11. The Construction Management Plan shall be consistent and not in conflict with relevant conditions of this 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 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. The petitioner shall consider local traffic and pedestrian activity relating to the nearby public school in determining hours and routes for construction vehicles. In accordance with the Noise Ordinance, interior construction work may occur at times outside the hours specified above, but only after the building is fully enclosed, and only if the work complies with the requirements of the Noise Ordinance of the City of Newton.
  - c. The proposed schedule of the Project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - 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 construction and delivery vehicles, and location of any security fencing.
  - e. 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.

- f. 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.
  - g. Tree preservation plan to define the proposed method for protection of any existing trees to remain on the site.
  - h. A plan for rodent control during construction.
  - i. The CMP shall also address the following:
    - safety precautions;
    - anticipated dewatering during construction;
    - site safety and stability;
    - impacts on abutting properties.
12. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
13. Not less than two (2) months prior to the commencement of any Site Work and/or other construction activities related to the work approved through this Special Permit, a Construction Liaison Committee shall be established consisting of two (2) designees of the Petitioner, two (2) immediate abutters, one (1) resident from each of the following streets: Hovey Street and Jewett Street, and Washington Street, as well as the Ward 2 Councilors. The City Council shall appoint the resident neighborhood members, provided that the Liaison Committee can meet without residents from the identified streets if no resident is willing to serve. Meetings of the Liaison Committee will be open to the public, and the Liaison Committee will establish such agenda and procedures as it shall see fit.
- The purposes of the Liaison Committee shall be:
- To enhance and ensure communication as to the status and progress of the construction of the Project by the Petitioner.
  - To provide a forum for initial presentation of a construction schedule and any significant changes to the schedule or changes of plans for which public review is appropriate.
  - To provide a public forum for presentation of supplementary permit requests to the extent required;
  - To receive and deal with construction-specific issues including, without limitation, noise, dust, parking and traffic; to monitor implementation of the final Construction



Management Plan; and to receive notices and communications from the Department of Inspectional Services and the Planning and Development Department.

The Liaison Committee shall meet regularly (monthly for the first six (6) months of the construction period, and thereafter, every three (3) months, unless there is consensus within the Liaison Committee that no meeting is necessary, until at least six (6) months after the initial occupancy of the final building to be completed. The first meeting shall be convened jointly by the Petitioner and the Ward 1 Councilors. The Liaison Committee shall work by consensus, but nothing in the establishment of the Liaison Committee shall inhibit any member, including the Petitioner, from engaging in any lawful activities.

The Liaison Committee shall, at a minimum, give written notice to the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development of its meetings, and such notice shall be posted on the construction activity website that the Petitioner shall be required to establish pursuant to its Construction Management Plan.

14. 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 Order for the approved Special Permit/Site Plan Approval 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. 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.
  - d. Provided a Final Landscape Plan showing all new plantings for review and approval by the Director of Planning and Development.
  - e. Obtained a written statement from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1.
  - f. Obtained a written statement from the Engineering Division of Public Works that confirms the receipt of a certified copy of the recorded O&M in accordance with Condition #8.
  - g. Record at the Middlesex South District Registry of Deeds an Approval Not Required (ANR) plan duly approved in accordance with Massachusetts General Laws Chapter 41 Section 81P that combines the three separate lots that are the subject of this Special Permit/Site Plan Approval (land presently known as Section 12, Block 6, Lots 3, 4, and 5) into one lot as well as all required documents evidencing such combination of the lots and their conveyance into common ownership. Certified copies of such recorded document shall be filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.

15. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
16. Prior to occupancy by any residents the Petitioner shall provide a certificate from a Licensed Site Professional to the Director of Planning and Development certifying that the property is in full compliance with all applicable state and local statutes and regulations for hazardous waste cleanup and disposal.
17. Prior to the issuance of any Final Occupancy Permit for the Project authorized by this Special Permit/Site Plan Approval, the Petitioner shall, at its sole cost and expense and in coordination with the Department of Public Works, complete the Intersection Improvements described in Schedule A attached hereto and subject to inspection and approval by the City Engineer upon their completion, provided, however, if such Intersection Improvements cannot be completed prior to the issuance of any Final Occupancy Permit due to weather conditions or for other reasons beyond the control of the Petitioner, the Petitioner shall be required to post a bond in a form satisfactory to the Commissioner of Public Works and the City Solicitor in an amount not less than 135% of the value of the any Incomplete Intersection Improvements to secure completion of such Improvements .
18. Prior to the issuance of any Final Occupancy Permit for the Project authorized by this Special Permit/Site Plan Approval, the Petitioner shall install, or arrange for the installation of, a covered bus shelter in the vicinity of the project, the design and location of which has been reviewed and approved by the Director of Transportation, the cost of which shall not exceed \$25,000, provided, however, if such bus shelter cannot be completed prior to the issuance of any Final Occupancy Permit due to weather conditions or for other reasons beyond the control of the Petitioner, the Petitioner shall be required to post a bond in a form satisfactory to the Commissioner of Public Works and the City Solicitor in an amount of \$37,250.
19. No Final Inspection/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 a registered architect or engineer certifying compliance with Condition #1.
  - b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in paper and digital format.
  - c. Filed with the City Clerk, the Commissioner of Inspectional Services, and the Department of Planning and Development a statement from the Engineering

Division certifying that the final site construction details have been constructed as required in Condition #1.

- d. Recorded the approved Operations and Maintenance Plan for Storm water Management on file with the City Clerk's Office into the chain of title of the property and proof of recording shall be submitted to the Engineering Division.
  - e. Filed with the City Clerk and the Commissioner of Inspectional Services a statement from the Planning Department approving final location, number and type of plant materials and final landscape features.
  - f. Record at the Middlesex South District Registry of Deeds a deed restriction subject to review and approval by the City Solicitor that shall prohibit for the life of the Project authorized by this Special Permit/Site Plan Approval the construction of any building(s) within the 15,754 square foot lot on Hovey Street currently identified by the Assessors' Office and in the above-referenced plans as Section 12, Block 6, Lot 3, certified copies of which shall be filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development, and shall require that the Petitioner maintain and keep such park open to the public in accordance with the requirements of this Special Permit/Site Plan Approval.
20. Notwithstanding the provisions of Condition #19e above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the buildings 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.
21. All landscaping and fencing shall be maintained in good condition and shall be replaced with similar materials as necessary.
22. Upon occupancy of the Project, the Petitioner shall institute a Transportation Demand Management Plan ("TDM Plan"), the details of which are set forth in Schedule A attached hereto. The Petitioner shall be obligated to continue such TDM Plan for the life of the Project and bear any and all costs associated with said plan.