

CITY OF NEWTONIN 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 construct a 29,952 square foot mixed use development including bank, office, and retail use and a restaurant with 120 seats, three stories, and 40 feet high, extend height and setback nonconformities, reduce the number of required parking stalls, waive certain parking facility dimensional, screening and landscaping requirements, and waive certain off-street loading facility requirements, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

- 1) the site in a Business 1 (BU1) district is an appropriate location for the proposed mixed use development as designed given the adjacent neighborhood's mix of residential and commercial land uses and structures of varying scales and heights (§7.3.3.C.1);
- 2) the proposed mixed use development as designed, developed, and operated will not adversely affect the neighborhood (§7.3.3.C.2);
- 3) the proposed mixed use development as designed, developed, and operated 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) the site in a Business 1 (BU1) district is an appropriate location for a restaurant with 120 seats (§7.3.3.C.1);
- 6) the proposed restaurant with 120 seats will not adversely affect the neighborhood (§7.3.3.C.2);
- 7) the proposed restaurant with 120 seats will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- 8) access to the site over streets is appropriate for the types and numbers of vehicles involved for the proposed restaurant (§7.3.3.C.4);

- 9) the proposed extension of the existing structure's nonconformities with regard to height and side setback would not be substantially more detrimental to the neighborhood than the existing nonconforming structure (§7.8.2.C.2);
- 10) literal compliance with the parking facility requirements of §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 (§5.1.13).

PETITION NUMBER: #294-18

PETITIONER: HQ, LLC and its successors and/or assigns

ADDRESS OF PETITIONER: 57 River Street
Suite 106
Wellesley, MA 02481

LOCATION: 1314 Washington Street, 31 Davis Street, 33 Davis Street, Ward 3,
on land known as Section 33, Block 10, Lots 1, 11, and 12,
containing approx. 30,301 sq. ft. of land

OWNER: HQ, LLC

ADDRESS OF OWNER: 57 River Street
Suite 106
Wellesley, MA 02481

TO BE USED FOR: Bank, restaurant or retail, and office use

EXPLANATORY NOTES: Special permit per §7.3.3 to:

- allow a building in excess of 20,000 square feet (§4.1.2.B.1)
- allow a three-story building in the BU1 district (§4.1.2.B.3, §4.1.3)
- Extend a nonconforming structure with regard to height (4.1.3, §7.8.2.C.2)
- extend a nonconforming structure with regard to side setback (§4.1.3, §7.8.2.C.2)
- allow a restaurant with more than 50 seats (§4.4.1, §6.4.29.C.1)
- waive the requirement of using the A-B+C parking formula (§5.1.3.B, §5.1.13)
- allow a 1/3 reduction in overall parking (§5.1.4.C)

- waive 24 required parking stalls (§5.1.4, §5.1.13)
- allow parking in the front and side setbacks (§5.1.8.A.1, §5.1.13)
- allow reduced parking stall dimensions (§5.1.8.B.2, §5.1.13)
- waive end stall maneuvering space requirements (§5.1.8.B.6, §5.1.13)
- allow reduced aisle width (§5.1.8.C.1, §5.1.8.C.2, §5.1.13)
- waive perimeter screening requirements (§5.1.9.A, §5.1.13)
- waive interior landscaping requirements (§5.1.9.B, §5.1.13)
- waive lighting requirements (§5.1.10.A, §5.1.13)
- waive the off-street loading facility requirements (§5.1.1, §5.1.13)

ZONING: Business 1 (BU1)

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 "ALTA/NSPS Title Survey, Mark Development, LLC, 31 & 33 Davis Street & 1314 Washington Street, City of Newton, Middlesex County, Commonwealth of Massachusetts," prepared by Control Point Associates, Inc., dated August 1, 2017 as revised through August 3, 2018, signed and stamped by Gerry L. Holdright, Registered Land Surveyor.
 - b. A set of site plans entitled "Site Development Plans for Proposed Mixed Use Development for Mark Development, Location of Site Map #33, Block # 10, Lots # 1, 11 & 12, 31 & 33 Davis Street and 1314 Washington Street, City of Newton, Middlesex County, Massachusetts," prepared by Bohler Engineering, as revised through September 10, 2018, signed and stamped by J.G. Swerling, Registered Professional Engineer, consisting of the following sheets:
 - i. Cover Sheet (Sheet Number 1 of 15);
 - ii. General Notes Sheet (Sheet Number 2 of 15);
 - iii. Demolition Plan (Sheet Number 3 of 15);
 - iv. Site Plan (Sheet Number 4 of 15);
 - v. Grading & Drainage Plan (Sheet Number 5 of 15);
 - vi. Utility Plan (Sheet Number 6 of 15);
 - vii. Soil Erosion and Sediment Control Plan (Sheet Number 7 of 15);
 - viii. Soil Erosion Control Notes and Details Sheet (Sheet Number 8 of 15);
 - ix. Landscape Plan (Sheet Number 9 of 15);

- x. Landscape Notes and Detail Sheet (Sheet Number 10 of 15);
 - xi. Lighting Plan (Sheet Number 11 of 15);
 - xii. Construction Detail Sheet (Sheet Number 12 of 15);
 - xiii. Construction Detail Sheet (Sheet Number 13 of 15);
 - xiv. Construction Detail Sheet (Sheet Number 14 of 15);
 - xv. Construction Detail Sheet (Sheet Number 15 of 15).
- ii. A set of architectural plans entitled "1314 Washington, Special Permit Submission," prepared by Elkus Manfredi Architects, dated March 19, 2018, signed and stamped by John Hall Martin, Registered Architect, consisting of the following sheets:
- i. Conceptual Site Plan (p. 2)
 - ii. Basement Level Comparison (p. 3);
 - iii. Ground Level Comparison (p. 4);
 - iv. Second Level Comparison (p. 5);
 - v. Third Level Comparison (p. 6);
 - vi. Washington Street Elevation (North) (p. 7);
 - vii. Highland Street Elevation (West) (p. 8);
 - viii. Davis Street Elevation (South) (p. 9);
 - ix. Alley Elevation (East) (p. 10);
 - x. Context Section (p. 11).
2. The petitioner shall comply with the City's Noise Control Ordinance, Sections 20-13 et seq of the Revised Ordinances 2017, 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 to comply with the provisions of said Ordinance.
3. All utilities shall be located underground from the property line.
4. Deliveries to the property 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 by the Inspectional Services Department). All deliveries to the property shall be made on the site and delivery trucks shall not park or unload from any street.
5. Prior to the issuance of any Certificate of Occupancy 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 applicant and recorded at the Middlesex South District Registry of Deeds herewith. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
6. 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.

7. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall
 - a. 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 has the effect of combining the three separate lots that are the subject of this special permit (land presently known as Section 33, Block 10, Lots 1, 11, and 12) into one lot as well as all required documents evidencing such combination of the lots and their conveyance into common ownership; and
 - b. file certified copies of such recorded documents with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
8. 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. 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.
 - 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.
9. 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.
10. 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.
11. 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.
12. 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. 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.
 - e. Filed with Department of Planning and Development, a statement evidencing the project's compliance with the standards for LEED Silver Certification.
 - f. Recorded the approved Operations and Maintenance Plan ("O & M") referred to in Condition #5, above, with the Middlesex South District Registry of Deeds, and 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 #5.
13. Notwithstanding the provisions of Condition #12 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 providing 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.
14. All landscaping and fencing on the site shall be maintained in good condition and shall be replaced with similar materials as necessary.
15. Upon occupancy of the mixed-use project authorized by this Special Permit/Site Plan Approval by the petitioner and/or any tenants, 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 mixed-use project and bear any and all costs associated with said plan.

At its sole expense and within 12 months of the issuance of a final certificate of occupancy, the petitioner shall conduct a post-occupancy study of on-site parking at the premises. The scope of the study, which shall be determined by the Director of Planning and Development in consultation with the Director of Transportation and the petitioner, shall include but not be limited to detailing the commuting modes and methods of all persons employed on-site and the usage of the property's on-site parking stalls on several weekday and weekend days and evenings. The Director of Planning and Development shall have the sole discretion to delay the post-occupancy study if the building has not reached a level of occupancy sufficient in the opinion of the Director to provide accurate information for the on-site parking study.

If the results of the study suggest the TDM Plan is insufficient and/or elements of the TDM Plan should be modified or expanded in order to encourage increased use of public transportation and/or other alternatives to single occupancy automobile travel, the Director of Planning and Development shall, in consultation with the Director of Transportation and

the petitioner, identify revisions to the TDM Plan and/or reasonable additional measures to be implemented in a timely fashion by the petitioner to the satisfaction of the Director of Planning and Development and the Director of Transportation.

In the event the petitioner is ever required to revise the TDM Plan and/or implement additional measures, the petitioner shall be required to meet with the Director of Planning and Development and the Director of Transportation (or their designees) 12 months after the implementation of such revisions and/or additional measures to assess the effectiveness of such changes and identify, if necessary, any further TDM Plan revisions or additional measures to be undertaken by the petitioner, including but not limited to increasing the annual subsidy for transit passes beyond the \$5,000 annual cap and/or the \$25,000 lifetime cap referenced in Exhibit A to encourage increased use of public transportation and/or other alternatives to single occupancy automobile travel.

HQ, LLC (the "Petitioner")

Petition #294-18

1314 Washington Street, 31 Davis Street, and 33 Davis Street, Newton

Date: October 23, 2018

TRANSPORTATION DEMAND MANAGEMENT PROGRAM (TDM)

The Petitioner agrees to adopt the following measures to encourage alternative forms of transportation and to reduce the number of automobile trips made to and from the site.

Transit Passes

The Petitioner will provide a \$5,000.00 annual subsidy for a period of five years (i.e., maximum subsidy of \$25,000.00 in total) for the cost of transit passes for employees of the Petitioner and other tenants of the building.

Bicycle Services

- **Secure Bicycle Parking.** Covered and secure bicycle parking will be provided on-site in a bike room. These spaces will encourage employees to purchase and utilize bicycles by treating the mode as a legitimate alternative to the private motor vehicle.
- **Bike Share.** Newton is exploring participation in a regional bike share program. Employees of the Petitioner will be encouraged to participate in this program. The Petitioner will also purchase three bikes to be parked on-site for the use of employees of the Petitioner and other tenants of the building for free.

Shared Vehicle Services

Carpool Matching: MassDOT's MassRIDES administers NuRide, a ride matching program that helps people with similar commutes find one another. All employees of the Petitioner will have the option to join this service. The site's user interface is relatively easy to use and helps users identify people with extremely similar commutes by crowdsourcing information.

Marketing and Education

A key element of all TDM programs is letting potential users know that they exist. To that end, the Petitioner will provide information to its employees through channels such as:

- **Annual Mobility Education Meeting.** All employees will be invited to attend a Mobility Education meeting to learn about options once every year.

- The Petitioner's employees will be distributed information packets, both paper and digital, including:
 - Carshare membership information;
 - Bikeshare membership information;
 - Local bicycle map; and
 - Local transit map.
- The Petitioner will also post the aforementioned information.

Qualified Transportation Fringe Benefits

The Federal Commute Benefit program (as of September 2017) allows employees to receive a discount on commute costs through a pre-tax purchase program. This discount encourages employees to carefully consider transportation options, including cost rather than time. Ideally, the benefit "tips the scale" in favor of transit or bicycling by making these options even more affordable as compared to car ownership, insurance, and paying for parking.

The Petitioner's employees will have the opportunity to enroll in Federally designated Commute benefit programs as current legislation allows.¹ In 2018, this means that employees are eligible for:

- Pre-tax payment of \$20 per month for employees who commute by bicycle
- A pre-tax transit pass up to \$260 monthly
- Pre-tax parking payment up to \$260 monthly
- Vanpool fees (including UberPOOL and LyftLine) up to \$260 monthly

¹ IRS Publication 15-8 provides a recent review of benefits. <https://www.irs.gov/pub/irs-prior/p15b-2108.pdf>