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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	September 20, 2018
Land Use Action Date:	December 11, 2018
City Council Action Date:	December 17, 2018
90-Day Expiration Date:	December 19, 2018

DATE: September 14, 2018

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner
Michael Gleba, Senior Planner

SUBJECT: **Petition #422-18** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Orders #162-88, #199-99(2), and #175-12 to change the existing non-conforming restaurant use to allow a non-conforming salon use in Ward 1, Newton, at **148 California Street/171 Watertown Street**, Section 11 Block 12 Lot 11, containing approximately 523,642 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017.

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.



148 California Street

EXECUTIVE SUMMARY

The subject parcel located at 148 California Street is a 231,486 square foot portion of a 523,642-square foot property that straddles the Newton and Watertown border and is zoned Manufacturing (MAN). The site is currently improved with a mixed-use development that includes a shopping center with various retail, restaurant and personal service uses as well as office space and surface parking.

The petitioner proposes to locate a salon in a 2,100 square feet space currently occupied by a restaurant. As the parcel is located in a Manufacturing district, neither the proposed salon nor the existing legally nonconforming restaurant use is allowed by right. The petitioner is seeking a special permit, per sections 4.4.1 and 7.8.2.C.2, to allow the conversion of one nonconforming use to another. No other changes are contemplated by this petition.

By way of background, there are three existing special permits on the property relative to uses and parking. Special Permit #162-88 authorized the expansion of the existing commercial center. A 1999 special permit, #199-99(2), authorized the change of a nonconforming retail use to a nonconforming health club and set the overall parking supply at 706 pre-existing nonconforming stalls. In 2012, Special Permit #175-12 authorized the change of a nonconforming retail use to a 92-seat restaurant. There is also a restrictive covenant on the property that gives the City of Newton certain rights if further development of the property in Watertown would reduce the parking supply.

The Planning Department is generally not concerned with the proposed conversion of the existing nonconforming restaurant use to the proposed nonconforming salon use.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- When reviewing this request, the Board should consider whether the change from a nonconforming restaurant use to a nonconforming salon use will be substantially more detrimental than the existing nonconforming use to the neighborhood

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the south side California Street just west of the Newton-Watertown boundary line. The surrounding neighborhood consists of a mix of uses, including one-, two- and multi- family dwellings, commercial, manufacturing as well as park and fast food uses (**Attachment A**). The subject property, several abutting properties to the west and those directly across California Street to the north and northwest are zoned Manufacturing (MAN); properties to the west along the south side of California Street are zoned Business 1 (BU1). Those other properties generally to the west and southwest are zoned Multi-Residence 2 (MU2) (**Attachment B**).

B. Site

The lot is an approximately 231,486 square foot portion of a 523,642-square foot property

located on and along the Newton-Watertown boundary. The site, which is accessed from both California Street in Newton and Watertown Street in Watertown, slopes down from Watertown Street northward towards the shopping center structure and California Street. It is improved with a mixed-use development built c. 1963 that includes shopping center with supermarket, gym, retail, restaurant, and service uses, as well as office space and surface parking. Most of the retail is located in a one story masonry building primarily accessed from Watertown Street. A three-story brick building containing several other uses is primarily accessed from California Street. The majority of the parking is located on the Watertown side of the property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The existing legally nonconforming 48-seat restaurant use of a 2,100 square foot section of the shopping center would be replaced with a nonconforming salon use.

B. Building and Site Design

No changes are proposed to the exterior of the building or the site.

C. Parking and Circulation

No changes to parking or circulation are proposed.

Per section 5.1.4, the existing 48-seat, 5 employee restaurant requires a total of 18 parking stalls (one parking stall per three seats, plus one stall per every three employees at the busiest shift). The salon use, as proposed with a maximum of 14 employees at any one time, would require 12 parking stalls (one for every 300 square feet, plus one stall for every three employees at the busiest shift). As the existing restaurant use provides a credit of 18 stalls, thus, no relief is required to allow for the salon use's lower parking requirement of 12 stalls.

D. Landscape, Lighting and Signage

No changes to landscape screening or lighting are proposed. Any new signage must be reviewed by the Urban Design Commission.

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:

- Special Permit per §7.3.3 to allow the conversion of one nonconforming use to another (§4.4.1, §7.8.2.C.2).

B. Other Reviews

No other reviews were required for this petition.

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

ATTACHMENT A









Land Use

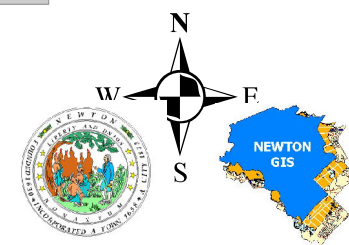
148 California St.

*City of Newton,
Massachusetts*

Land Use

Land Use

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



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

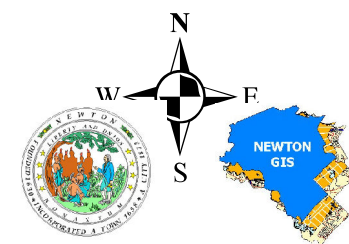
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Feet

Map Date: September 12, 2018

Zoning

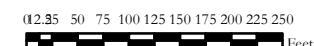
*City of Newton,
Massachusetts*

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

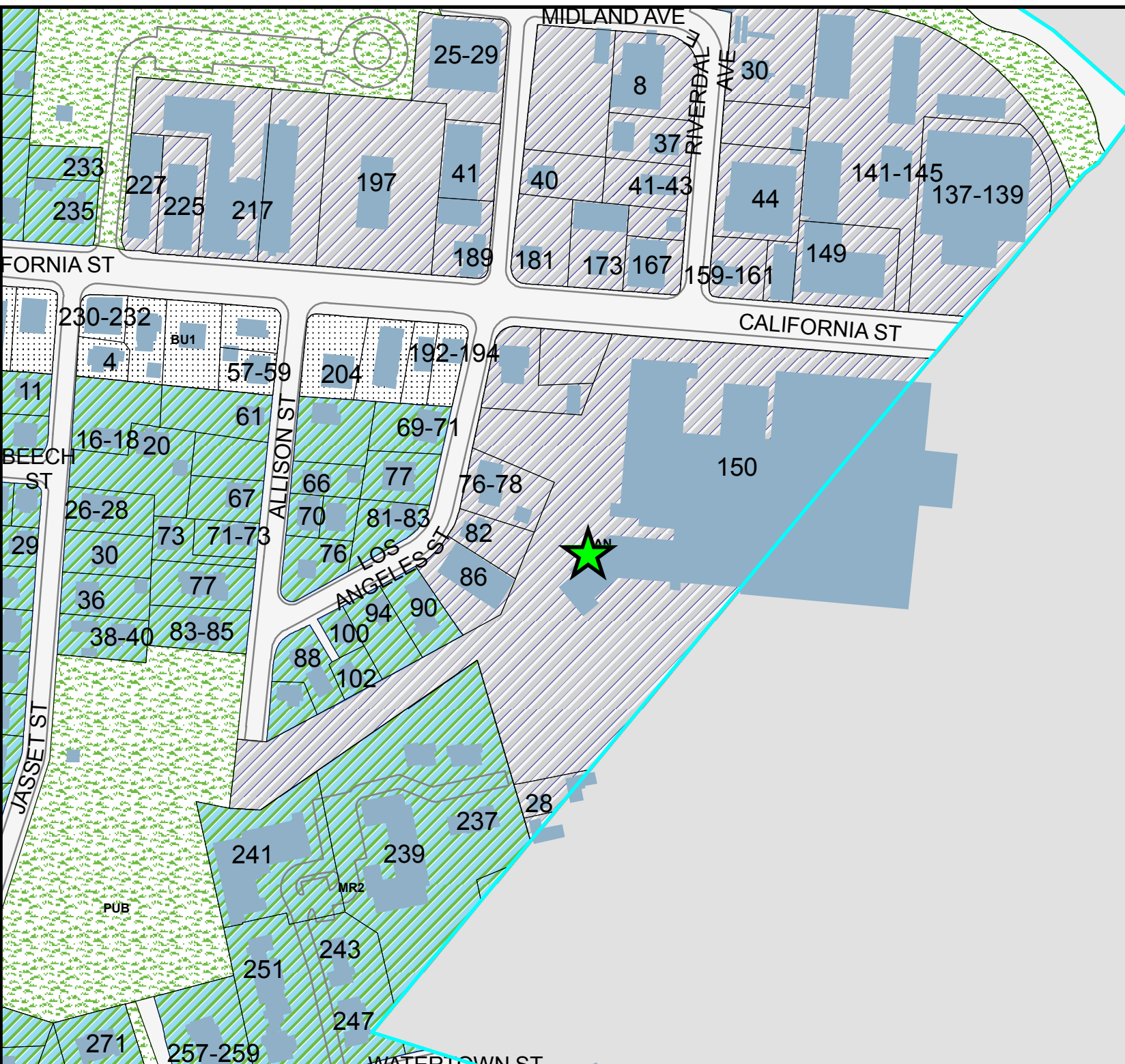


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CITY OF NEWTON, MASSACHUSETTS
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Map Date: September 12, 2018





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: July 19, 2018

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: KF Realty Associates, Applicant
Frank Stearns, Attorney
Barney S. Heath, Director of Planning and Development
Ouida Young, Acting City Solicitor

RE: **Request to allow for a change from one nonconforming use to another and to amend special permits #162-88, 199-99(2) and 175-12**

Applicant: KF Realty Associates	
Site: 148 California Street (171 Watertown Street, Watertown, MA)	SBL: 11012 0011
Zoning: MAN	Lot Area: 523,642 square feet (231,486 square feet in Newton)
Current use: Restaurant	Proposed use: Salon

BACKGROUND:

The property located at 148 California Street consists of a 231,486 square foot lot straddling the border between Newton and Watertown. Approximately 45% of the lot is located in Newton and is zoned Manufacturing (MAN); the remainder is located in Watertown at 171 Watertown Street. The site is currently improved with several buildings with various office, retail, restaurant and personal service uses and surface parking. The petitioner proposes to locate a salon in a space currently occupied by a restaurant.

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

- Zoning Review Application, prepared by Frank Stearns, attorney, submitted 5/22/2018
- Special Permits #162-88, 199-99(2) and 175-12
- 2012 Zoning Review Memo, prepared by Seth Zeren, Chief Zoning Code Official, dated 6/11/2012

- Planning Department Memo, dated 7/6/2012
- 1999 Parking Plan
- Restrictive Covenant, dated 9/1/1999
- Current Proposed Parking Calculations

ADMINISTRATIVE DETERMINATIONS:

1. There are three existing special permits on the property relative to uses and parking. Special permit #162-88 authorized the expansion of the existing commercial center. A second special permit was issued in 1999, #199-99(2), authorizing the change from a nonconforming retail use to a nonconforming health club. Special permit #175-12 authorized the change from a nonconforming retail use to a 92-seat restaurant. It appears that each special permit was issued independent of the previously issued special permits.
2. The property is located in the Manufacturing district. Per section 4.4.1, a salon is a prohibited use in the Manufacturing district. However, the existing restaurant use is also a legally nonconforming use. Per sections 4.4.1 and 7.8.2.C.2, a special permit is required to change the existing nonconforming restaurant use to a salon.
3. Per section 5.1.4, a restaurant use must provide one parking stall per three seats, plus one stall per every three employees at the busiest shift. The existing 48-seat restaurant has five employees, requiring a total of 18 parking stalls. The proposed salon use requires one stall for every 300 square feet, plus one stall for every three employees at the busiest shift. The commercial space is 2,100 square feet, and the salon intends to operate with 14 employees at a time, requiring a total of 12 parking stalls. The existing restaurant use provides a credit of 18 stalls, thus, no relief is required to allow for the salon use's parking requirement of 12 stalls. No changes are proposed to the parking areas.
4. There is a Restrictive Covenant that exists on the property, which is intended to give Newton rights if there is ever proposed development of the site solely in Watertown which would reduce the parking supply. The 1999 special permit sets the overall parking supply at 706 pre-existing nonconforming stalls. No changes are proposed by this special permit request.

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§4.4.1 §7.8.2.C.2	Request to allow the conversion of one nonconforming use to another	S.P. per §7.3.3

ATTACHMENT D

DRAFT #442-18
148 California Street

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City 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 *allow the change of use of a 2,100 square foot portion of the existing shopping area from a nonconforming restaurant use to a salon use with a maximum of 14 employees*, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed nonconforming salon use will not be substantially more detrimental to the neighborhood than the existing nonconforming restaurant use as:
 - a) The site is an existing shopping center and is an appropriate location for a salon use;
 - b) The site is well contained and the use will not have any impacts on the surrounding neighborhood;
 - c) Access to the site is appropriate and there is sufficient parking to accommodate the use.

PETITION NUMBER: #442-18

PETITIONER: United Properties Group

ADDRESS OF PETITIONER: 1330 Boylston St.
Newton, MA 02467

LOCATION: 148-50 California Street/171 Watertown Street,
Section 11, Block 12, Lot 11 containing approximately
231,486 square feet of land

OWNER: KF Realty Associates

ADDRESS OF OWNER: c/o United Properties

1330 Boylston St.
Newton, MA 02467

TO BE USED FOR: Salon in a 2,100 square foot portion of an existing shopping center with up to 14 employees on-site at any one time

CONSTRUCTION: Interior renovations only

EXPLANATORY NOTES: Special permit per §7.3.3 to allow the conversion of one nonconforming use to another (§4.4.1, §7.8.2.C.2)

ZONING: Manufacturing District

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 following plans:
 - a) A plan entitled "Parking Plan, 150 California Street, Newton/Watertown, Mass.," dated June 10, 1999, as revised through June 23, 2010, signed and stamped by Thomas M. Killion, Surveyor, dated 6/23/99, as amended to show 706 parking stalls;
 - b) A document entitled "148 California Street/171 Watertown Street, Site Wide Parking Calculations (2018)."
2. The salon staff is limited to fourteen employees on the largest shift.
3. Any changes to signage shall be subject to review by the Urban Design Commission and approval of the Commissioner of Inspectional Services.
4. 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 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; and
 - c. obtained a statement from the Director of Planning and Development that all plans are consistent with Condition #1.
5. No 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 certifying compliance with Condition #1.