



Land Use Committee Report

City of Newton In City Council

Tuesday, December 10, 2019

Present: Councilors Schwartz (Chair), Lipof, Laredo, Greenberg, Kelley, Crossley

Absent: Councilors Auchincloss, Markiewicz

City Staff Present: Assistant City Solicitor Jonah Temple, Senior Planner Neil Cronin, Planning Associate Katie Whewell, Senior Planner Michael Gleba

All Special Permit Plans, Plan Memoranda and Application Materials can be found at http://www.newtonma.gov/gov/aldermen/special_permits/current_special_permits.asp. Presentations for each project can be found at the end of this report.

#353-19 Petition to extend nonconforming FAR at 38 Fenno Road

MICHAEL ZALIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze an existing deck and construct an addition on the first floor, creating an FAR of .50 where .42 is allowed and .45 exists at 38 Fenno Road, Ward 2, Newton Centre, on land known as Section 64 Block 12 Lot 05, containing 7,413 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 6-0; Public Hearing Closed 12/10/2019**

Note: The petitioner, Mr. Michael Zalis presented the request to extend the nonconforming FAR, creating an FAR of .50 from .45 where .42 is allowed at 38 Fenno Road. The petitioner proposes to raze an existing deck and replace it with a new deck and one-story addition. It was noted that the proposed setbacks will remain approximately the same.

Senior Planner Neil Cronin reviewed the requested relief, criteria for consideration, zoning, land use and proposed plans as shown on the attached presentation. The grade of the lot slopes down from the front to the rear, so that some of the basement is exposed and half of the basement square footage counts toward the FAR. The addition is proposed at the rear of the structure, not visible from the street.

The Public Hearing was Opened. Seeing no member of the public who wished to speak, Councilor Crossley motioned to close the public hearing which carried 6-0. Councilor Crossley motioned to approve the petition. Committee members reviewed the draft finding and conditions as shown on the attached presentation. Committee members expressed no concerns relative to the petition and voted 6-0 in favor of approval.

#175-19 Special Permit to allow attached dwelling units at 145 Warren Street

145 WARREN STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four single-family attached dwellings in two buildings, to allow reduced side setbacks, to increase the allowed lot coverage, to allow a driveway within ten feet of the side lot line and to allow retaining walls greater than 4' within a setback at 145 Warren Street, Ward 6, Newton Centre, on land known as Section 61 Block 39 Lot 10, containing approximately 23,399 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.2, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

#175-19(2) Amended Petition to allow attached dwelling units at 145 Warren Street

145 WARREN STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four single-family attached dwellings in ~~two~~ one building, to allow reduced side setbacks, to allow three-stories, to increase the allowed lot coverage, to decrease the minimum open space, to allow a driveway within ten feet of the side lot line and to allow retaining walls greater than 4' within a setback at 145 Warren Street, Ward 6, Newton Centre, on land known as Section 61 Block 39 Lot 10, containing approximately 23,399 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.2, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved Withdrawal without Prejudice 6-0

Note: Committee members expressed no concerns relative to acceptance of the withdrawal without prejudice for the Special Permit Petition for the attached dwelling units at 145 Warren Street. Councilor Crossley motioned to approve the withdrawal which carried 6-0.

#318-19 Request to Rezone 15-21 Lexington Street to Multi Residence 3

DANTE CAPASSO/PICARIELLO REALTY TRUST/DSP REALTY TRUST petition for a change of zone to Multi-Residence 3 for portions of land located at 15-21 Lexington Street (currently zoned Single-Residence 3), also identified as Section 41, Block 35, Lots 2, 3, 4 and 5.

Land Use Approved 5-0 on 11/21/2019; Public Hearing Closed 11/21/2019

Motion to suspend the rules to allow the Chair of Land Use to poll his Committee Approved by Voice Vote Motion to hold in Committee 8-0

Action: Land Use Approved 5-0 (Lipof not Voting); Public Hearing Closed 11/21/2019

#319-19 Petition to allow 24-unit multi-family dwelling at 15-21 Lexington Street

DANTE CAPASSO/PICARIELLO REALTY TRUST/DSP REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a 24-unit multi-family dwelling with a below grade parking garage and surface stalls, to reduce the parking stall depth, to allow restricted end stalls in the garage parking facility, to waive the perimeter screening requirements for the outdoor parking facility, to waive interior landscaping requirements for the outdoor parking facility and to waive the minimum intensity of outdoor lighting of the parking facility on 51,870 sq. ft. of land at 15-21 Lexington Street, Ward 4, West Newton, on land known as Section 41 Block 35 Lots 2-5 in a district zoned SINGLE RESIDENCE 3 (to be rezoned to MU3). Ref: Sec. 7.3.3, 7.4, 3.4.1, 5.1.8.B.2, 5.1.13, 5.1.8.B.6, 5.1.9.A, 5.1.9.B, 5.1.10.A.1 of the City of Newton Revised Zoning Ord, 2017.

Land Use Approved Subject to Second Call 5-0; Public Hearing Closed 11/21/2019

**Motion to suspend the rules to allow the Chair of Land Use to poll his Committee
Approved by Voice Vote Motion to hold in Committee 8-0**

Action: Land Use Approved 5-0 (Lipof not Voting); Public Hearing Closed 11/21/2019

Note: Attorney Michael Peirce, offices at 60 Walnut Street, Wellesley, represented the petitioner, Dante Capasso/Picariello Realty Trust/DSP Realty Trust. Atty. Peirce explained that the petition was approved by the Land Use Committee on November 21, 2019. Due to the need for additional review by the Committee of the draft conditions related to sustainability measures, the Land Use Committee held the item in at the Council meeting on December 2, 2019. Atty. Peirce explained that the petitioner has worked with the Planning Department and the Committee to refine the draft language. The proposed language relative to sustainability is acceptable to the petitioner. The Chair read the sustainability measures shown in conditions 22-23 (shown attached). It was explained that the City Council passed an ordinance relative to the inclusion of sustainability measures (#364-19). The conditions included in the Council Order reflect conditions of the sustainability goals that the City will be looking to incorporate into Special Permit Petitions going forward.

Atty. Peirce noted that the petitioner is seeking a waiver for screening requirements for the outdoor parking facility. An abutting office building received a separate special permit in 2006. A condition of their special permit was the installation and maintenance of landscaping to shield the residential uses at 15-21 Lexington Street. Atty. Peirce questioned the necessity of requiring the petitioner to submit evidence of an easement that allows the petitioner to maintain/modify landscaping on the abutting property. Atty. Peirce suggested that the landscaping on the adjacent property is the responsibility of that property owner and is already subject to maintenance and/or replacement as a condition of the 2006 Special Permit Board Order. Atty. Peirce recommended removing the draft condition in lieu of a finding that the abutting property has heavy landscaping that must be maintained as a condition of their special permit.

The Committee questioned what happens if the abutters' landscaping is taken down. Atty. Peirce noted that the landscaping on the abutting property is governed by prior special permits and would require an amendment to the Special Permit to modify the existing landscaping. The Committee expressed no concerns relative to changing the condition regarding landscaping to a finding or the incorporation of the sustainability conditions. Councilor Laredo motioned to approve the amended petition and the request for a zone change which carried 5-0 (Lipof not Voting).

#320-19 Petition to allow four attached dwelling units at 70 Walker Street

70 WALKER STREET LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow four single-family attached dwelling units in two, three-story structures, to further extend the nonconforming height, to reduce the required side setback, to exceed maximum lot coverage and to allow a driveway within ten feet of the side lot line at 70 Walker Street, Ward 2, Newtonville, on land known as Section 21 Block 33 Lot 7, containing 21,962 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.2.4, 7.8.2.C.2, 6.2.3.B.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved Withdrawal without Prejudice 6-0 (Lipof not Voting)

Note: Attorney Terry Morris, offices at 57 Elm Road, represented the petitioner, 70 Walker Street, LLC. Atty. Morris presented updates to the request to allow four attached-dwelling units at 70 Walker Street. Since the initial public hearing on October 29, 2019, the petitioner has held two on-site meetings with neighbors to address concerns. The revised proposal reflects a reduction in the size of the buildings, a reduction in the footprint and lot coverage (28% to 25%), reduction in the volume of the proposed buildings by more than 10%, centering of the building by shifting it south on the site which increases the setback one side (to 20' from 11') and decreases the setback on the other side (to 20') where 25' is required for attached dwelling units. Atty. Morris noted that the petitioner submitted a landscape plan which identified some trees for preservation. He stated that it is the petitioner's intent to have the trees surveyed and pruned or removed if necessary. He confirmed that the petitioner will comply with the tree ordinance. The revised plan includes the substitution of some of the asphalt with pervious pavers.

Senior Planner Michael Gleba reviewed the requested relief, criteria for consideration, proposed plans and photos of the site as shown on the attached presentation.

Public Comment

Frank Ng, 74 Walker Street, believes that the size of the units is too large and the setback will be detrimental to the neighborhood. Mr. Ng noted that some modifications requested by the neighborhood have not been incorporated into the plans. He believes the proposed plans will adversely affect the neighborhood.

Peter Lewitt, 41 Brooks Avenue, noted that the neighbors did not see the revised plan until December 9, 2019. He confirmed that the petitioner has modified the proposal to reduce the impact on abutters but stated that he believes a reduction in height in unit 2 might still be possible. He expressed concerns relative to the impact on this development on the neighborhood.

The Committee shared concerns relative to lack of compliance with the required setbacks with new construction as well as the impact of four units in a neighborhood with lots containing predominantly one and two units. Atty. Morris explained that the 25' setbacks were envisioned to protect abutters from the massing of several attached dwelling units. He noted that the proposed project's massing is respectful of the neighborhood context and suggested that 20' setbacks are appropriate given the 7' setback requirement for single family dwellings. Councilors were appreciative of the changes made to the project. The Committee and Councilors from the Ward suggested that further review with the neighborhood and modification of the plans remains necessary. The Committee noted that outstanding items remain relative to; the extensive amount of paving on the site, the size and height of the proposed development and the context of the four-unit development in the neighborhood. It was noted that the Council must act on outstanding items by December 16, 2019. Councilor Crossley motioned to lay the item on the table to allow the petitioner time to identify next steps. Her motion carried unanimously. After further consideration, Atty. Morris submitted a request to withdraw without prejudice. Councilor Crossley moved approved of the withdrawal without prejudice which carried unanimously.

#268-19 **Petition to allow adult-use marijuana dispensary at 58 Cross St/1089 Washington St**
ASCEND MASS, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow retail marijuana sales and waivers to the extent necessary for minimum stall dimensions, perimeter screening requirements, interior landscaping requirements and lighting requirements at 58 Cross Street/1089 Washington Street, Ward 3, West Newton, on land known as Section 31 Block 09 Lot 07, containing approximately 25,122 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: Sec. 7.3.3, 7.4, 4.4.1, 5.1.8.A.1, 5.1.8.B.2, 5.1.9.A, 5.1.9.B, 5.1.10, 5.1.13, 6.10.3.D of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved Withdrawal without Prejudice 5-0 (Laredo Recused)**

Note: Attorneys Michael Ross and Donnalyn Kahn represented the petitioner, Ascend Mass, LLC. Attorneys Ross and Kahn presented updates to the Committee on modifications to the site plan for the proposed marijuana dispensary at 58 Cross Street/1089 Washington Street. Details of the modified site plan are shown on the attached presentation. Atty. Ross explained that in response to concerns raised by the Committee and members of the community at the prior public hearing, the petitioner evaluated options to consider elimination of the Cross Street curb cut. A “horseshoe plan” was drafted. The horseshoe plan had entry on Washington Street, a horseshoe driveway around the building and exit back onto Washington Street. After consultation with the Fire Department, Atty. Ross explained that the horseshoe driveway does not provide adequate space to allow a Fire truck to get around the building. The new plan proposes a T-shape parking lot with entry and exit from one curb cut on Washington Street and a second curb cut on Cross Street for emergency vehicles only. The Committee had also raised a concern relative to delivery vehicles backing out of the site onto Washington Street. Atty. Kahn confirmed that delivery vehicles will be guided by a member of the security team and no vehicle will backing out onto Washington Street. It was explained that deliveries to the site will be controlled by the petitioner and limited to 2-3 times a week. A staff person will be available to direct the delivery vehicle upon arrival into a secure, gated area. Staff at the facility will know when the delivery vehicle is arriving, based on GPS monitoring.

Planning Associate Katie Whewell reviewed the requested relief, criteria for consideration and updates to the plan as shown on the attached presentation.

Public Comment

Attorney Michelle Caron, 1075 Washington Street, expressed concerns relative to safety and security for clients of the businesses at 1075 Washington Street. The outstanding concerns are relative to; lack of public bathrooms at the site (Brookline and Northampton dispensaries both have bathrooms), use of private restrooms in the office building, traffic accidents and traffic, lack of a waiting area, hours of operation, the limited parking on Washington Street and the number of daily appointments. Ms. Caron urged the Committee to limit the number of people permitted in the building.

Jonathan Katz, 16 Cross Street, stated that the neighbors have firsthand knowledge of traffic operations and conflicts at the site. Mr. Katz noted that neither the petitioner or the Planning Department have communicated with the neighborhood since August. He stated that the neighborhood has tried to work collaboratively with the petitioner but do not feel like they have had sufficient time to review the latest

version of plans. Mr. Katz noted that the petitioner has dismissed the request for trip generation data as well as a parking demand evaluation.

Tim Techler, 40 Cross Street, is supportive of the revised landscape plan and plan to take down the rear portion of the building but he remains concerned about the internal configuration of the parking lot and the dimensions of some parking stalls in the parking lot. Mr. Techler has concerns that the internal parking lot will not work and the Cross Street entrance will be opened with an amendment to the Special Permit. Mr. Techler noted that the petitioner should be required to install below grade filtration systems.

Nora Wiley, 16 Cross Street, expressed concerns relative to the “first available appointment” structure. She stated that having the hours of operation from 9:00 am – 9:00 pm ensures that traffic will be busy all day and encouraged the limitation of hours on Sundays.

Sarah Arcese, 35 Cross Street, noted that issues occurring at other facilities have not been addressed at the Ascend Dispensary. Outstanding issues include; litter, public marijuana consumption, lack of a vestibule and public urination. Ms. Arcese Emphasized the importance of requiring specific measures to prevent known issues at other dispensaries.

Amanda Caruso, 1075 Washington Street, expressed concerns relative to the hours of operation and noted that Brookline recently changed NETA’s hours of operations. Ms. Caruso noted that the Flink Consulting Report used a different type of business to more accurately assess the traffic impacts, noting that the information on marijuana dispensaries is limited.

Joe Li, 53 Cross Street, echoed the concerns raised by his neighbors, particularly safety and security. Mr. Li noted that the turnaround within the driveway is not practical.

Alicia Bowman, spoke on behalf of Bike Newton. Ms. Bowman has concerns relative to potential backup traffic on Washington Street caused by the delivery vehicle. Ms. Bowman encouraged the petitioner to consider redesigning the plan to allow vehicles to go around the building and exit onto Washington Street. She noted that there are parking spaces in excess of what the Zoning Ordinance requires and expressed support for a reduction in number of parking stalls.

Atty. Ross responded to concerns raised by members of the public. He explained that the NETA facility in Brookline is the only marijuana dispensary close to Boston. He explained that the number of visitors to the site is in part due to the lack of other dispensaries in the near vicinity. Atty. Ross noted that the Ascend management team has made a business decision to not have a vestibule waiting area or bathroom, which take up additional space and increase the possibility of diversion on site. Atty. Ross noted that unique to Newton, marijuana dispensaries have agreed to the “appointment only” structure for operations, which limit the amount of time customers will need to spend at the site. It was noted that a policy of Ascend is to require customers to sign a “Good Neighbor Policy” at their first visit to the facility. If a violation of the Good Neighbor Policy is reported or found, the customer will be banned from the premises.

Fuss & O’Neill Engineer Matt Skelly spoke to concerns relative to the T-shape driveway configuration. He explained that turning around in the driveway is only problematic if the parking lot is full, which is not

anticipated. It was noted that there are six proposed point of sale stations and two “order ahead” stations. The maximum number of customers in one hour could be 65. Ascend CEO Andrea Cabral emphasized the collaboration with the neighborhood that has been ongoing since February 25, 2019. Ms. Cabral noted that the team has had several lengthy community meetings with neighbors and have responded to concerns relative to landscaping, drainage, shielding the abutting properties, the Cross Street curb cut and circulation within the site. Ms. Cabral explained that the curb cut has been the primary issue for residents and has now been eliminated for regular use. Ms. Whewell noted that the petition requires relief for the use and a reduction to the minimal lighting requirements.

The Committee remained concerned that additional outreach and communication remains necessary before the item is recommended to the full Council for a vote. Councilors encouraged the petitioner to continue to work with the neighborhood, Planning Department and Ward Councilors. With that, Atty. Ross requested withdrawal of the petition without prejudice. Councilor Kelley motioned to approve the withdrawal without prejudice which carried 5-0 (Laredo Recused).

#88-19 Petition to allow a rear-lot subdivision at 41 Washington Street

JANE O’CONNOR petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a rear lot subdivision to create two lots, abandon the two-family use in the existing structure and creating a second single-family on the rear lot, extending the existing non-conforming side setback at 41 Washington Street, Ward 1, Newton, on land known as Section 71 Block 29 Lot 07, containing approximately 25,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3, 7.4, 3.5, 3.1.10, 3.1.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved Withdrawal without Prejudice 6-0**

Note: Committee members expressed no concerns relative to acceptance of the withdrawal without prejudice for the Special Permit Petition at 41 Washington Street. Councilor Greenberg motioned to approve the withdrawal which carried 6-0.

#265-19 Petition to allow multi-family dwelling unit at 12-14 Middle Street

12-14 MIDDLE STREET, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a multi-family dwelling with three units, further extending the nonconforming frontage and to allow a retaining wall greater than four feet within a setback at 12-14 Middle Street, Ward 1, Newton, on land known as Section 12 Block 1 Lot 13, containing approximately 12,611 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.2.6, 7.8.2.C.2, 5.4.2, 3.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved Withdrawal without Prejudice 6-0**

Note: Committee members expressed no concerns relative to acceptance of the withdrawal without prejudice for the Special Permit Petition at 12-14 Middle Street. Councilor Greenberg motioned to approve the withdrawal which carried 6-0.

#140-19 Request to Rezone 4.5 acres to MU3

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for a change of zone to Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street (currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3 and 4.

Action: **Land Use Approved Withdrawal without Prejudice 6-0**

#140-19(2) Special Permit to allow Mixed Use Development at Riverside Station

MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 10 building, mixed use, transit-oriented development of not more than 1,520,000 sq. ft. and more than 20,000 sq. ft. of gross floor area including; up to 650,000 sq. ft. of office use, up to 750 residential units containing no more than 750,000 sq. ft., retail space of not more than 200,000 sq. ft., buildings up to 18-stories in height, building height of up to 230', Floor Area Ratio up to 2.7, no more than 10% beneficial open space; to permit retail and personal establishments of more than 5,000 sq. ft., for-profit educational uses, restaurants with more than 50 seats, places of amusement, open air businesses, animal services, ground floor health club establishments, hotel, banks up to and over 5,000 square feet, theatre/hall, laboratory/research facility, multi-level accessory parking facility, multi-level non-accessory parking facility, single level accessory parking facility, single level non-accessory parking facility, reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall commercial parking requirement by 1/3, a waiver of parking stalls not to exceed 750 stalls, waivers to parking facility design standards including: stall dimensions, minimum depth for handicap parking stalls, maneuvering space for end stalls, dimensions for entrance and exit driveways, waiver of layout design to permit tandem parking stalls, waiver of 5% interior landscaping requirement, waiver of the interior planting area requirements, waiver of the tree requirements, waiver of the bumper overhang requirements, waiver of the one foot candle lighting, waiver of the parking stall striping requirement, waiver of the curbing, wheel stop, guard rail or bollard requirements, waiver of off-street loading facilities requirements, waiver of the number, size location or design requirements relative to signs at 355 and 399 GROVE STREET on land known as Section 42 Block 11 Lots 3 and 4, containing approximately 14.4 acres of land in a districts zoned Mixed Use 3 Transit Oriented (MU3), BU2 (a portion to be rezoned to MU3), BU5 (to be rezoned to MU3). Ref: Sec. 7.3.3, 7.4, 4.2.2A.2, 4.2.2.B.1, 4.2.2.B.3, 4.2.2.B.3, 4.2.3, 4.2.4.A, 4.2.4.F.b, 4.2.4.F.1.b, 4.2.4.G, 4.2.4.G.1, 4.2.4.G.2, 4.2.4.G.3, 4.4.1, 5.1.4, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.D.1, 5.1.8.D.2, 5.1.8.E.1, 5.1.9.B, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1, 5.1.10.B.3, 5.1.10.B.5, 5.1.12, 5.1.13, 5.2, 5.2.13, 5.4.2.B, of the City of Newton Revised Zoning Ord, 2017. **Subject to approval of proposed zoning ordinance amendments in Sections 4.2.3 and 4.2.4.**

Action: **Land Use Approved Withdrawal without Prejudice 6-0**

Note: Committee members expressed no concerns relative to acceptance of the withdrawal without prejudice for the Special Permit Petition and request to rezone the Riverside site. Councilor Crossley motioned to approve the withdrawal for items #140-19 and #140-19(2) which carried 6-0.

#354-19 Special Permit to allow multi-family dwelling at 13-17 Gardner Street
CIVICO GARDNER, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to combine two parcels and construct a five-unit multi-family dwelling, altering and extending a nonconforming front setback, altering and extending a nonconforming side setback, to waive one parking stall and to allow a retaining wall greater than four feet within a setback at 13-17 Gardner Street, Ward 1, Newton, on land known as Section 11 Block 25 Lots 5 and 6, containing approximately 16,579 sq. ft. of total land in a district zoned MULTI RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.6, 7.8.2.C.2, 5.4.2.B, 5.1.4, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved Withdrawal without Prejudice 6-0

Note: Committee members expressed no concerns relative to acceptance of the withdrawal without prejudice for the Special Permit petition at 13-17 Gardner Street. Councilor Greenberg motioned to approve the withdrawal which carried 6-0.

#422-19 Class 1 Auto Dealer License
VILLAGE MOTORS GROUP, INC. D/B/A HONDA VILLAGE
371 Washington Street
Newton, MA. 02458

#423-19 Class 1 Auto Dealer License
NEWTON CENTRE SHELL
1365 Centre Street
Newton, MA. 02459

#424-19 Class 2 Auto Dealer License
PARAGON EXPORTS
40 Summit Street
Newton, MA. 02458

#425-19 Class 2 Auto Dealers License
VELOCITY MOTORS
14 Hawthorn Street
Nonantum, MA. 02458

#426-19 Class 2 Auto Dealers License
ROBERT'S TOWING, INC.
926r Boylston Street
Newton Highlands, MA. 02461

#427-19 Class 2 Auto Dealers License
NEWTON TRADE CENTER ASSOCIATES, INC.
103 Adams Street
Nonantum, MA. 02458

#428-19 Class 2 Auto Dealers License
LIFT THROTTLE AUTOMOTIVE, LLC

64 Hillside Avenue
West Newton, MA. 02465

- #429-19** **Class 2 Auto Dealers License**
STAN'S AUTOMOTIVE INC.
249 Centre Street
Newton Corner, MA. 02458
- #430-19** **Class 2 Auto Dealers License**
OLD TIME GARAGE LTD.
1960 Washington Street
Newton Lower Falls, MA. 02462
- #431-19** **Class 2 Auto Dealers License**
REGANS INC.
2066 Commonwealth Avenue
Auburndale, MA. 02466
- #432-19** **Class 2 Auto Dealers License**
SONOMA CLASSICS LLC.
1215 Chestnut Street/145 Wells Avenue
Newton, MA. 02464
- #433-19** **Class 2 Auto Dealers License**
NEWTON AUTO GROUP, INC.
1235 Washington Street
West Newton, MA. 02465
- #434-19** **Class 2 Auto Dealers License**
MAP DEVELOPMENT & INVESTMENTS
d/b/a CHRISTIAN TAPIA/MASTER USED
CARS of WATERTOWN
175 North Street
Newtonville, MA. 02460
- #433-19** **Class 2 Auto Dealers License**
JAPAN AUTO SERVICES
1231-2 Washington Street
West Newton, MA. 02465

Action: **Land Use Approved Items 422-19 - 6-0**

Note: It was noted that there have been no site-specific complaints reported from Police or Inspectional Services Departments and there are no outstanding taxes. Councilor Crossley motioned to approve items #422-19 through #433-19 which carried unanimously.

The Committee adjourned at 10:20 pm.

Respectfully Submitted, Greg Schwartz, Chair

Department of Planning and Development



PETITION #353-19
38 FENNO ROAD

SPECIAL PERMIT/SITE PLAN
APPROVAL TO FURTHER INCREASE
THE NONCONFORMING FLOOR
AREA RATIO



DECEMBER 10, 2019

1

Requested Relief



Special Permit per §7.3.3 of the Newton Zoning Ordinance to:

- Further increase the nonconforming Floor Area Ratio (§3.1.9 and §7.8.2.C.2).

2

Criteria to Consider



When reviewing this request, the Council should consider whether:

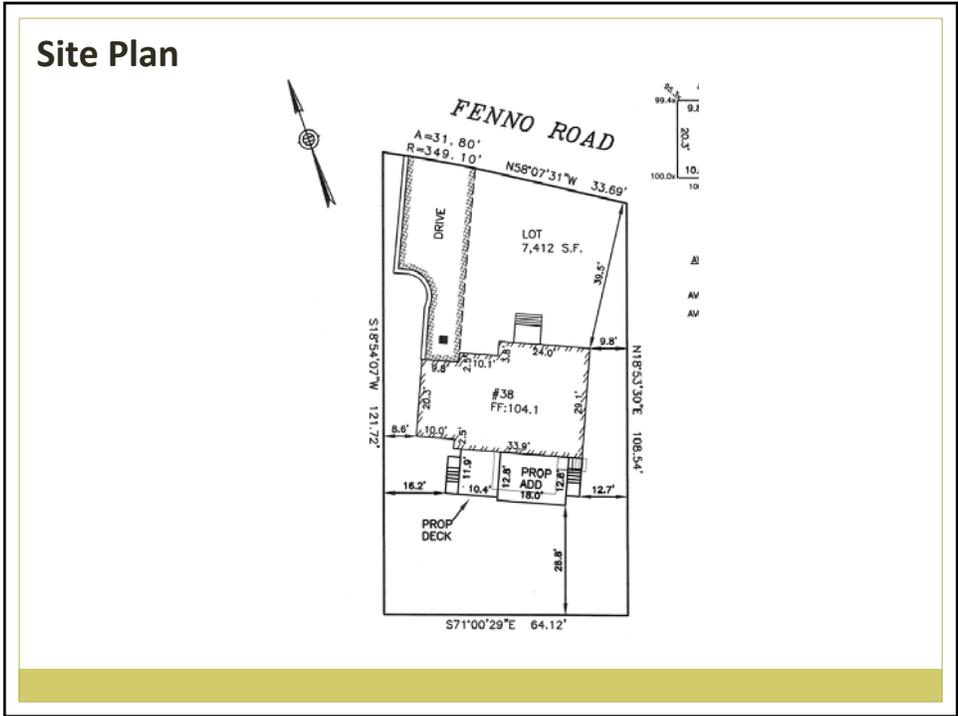
- The proposed increase in the nonconforming FAR from .45 to .50, where .42 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood. (§3.1.9 and §7.8.2.C.2)
- The proposed increase in the nonconforming FAR from .45 to .50, where .42 is maximum allowed as of right is substantially more detrimental than the existing nonconforming structure is to the neighborhood. (§3.1.9 and §7.8.2.C.2)

3

Aerial/GIS Map



4



5



6

Proposed Findings

1. The proposed increase in FAR from .45 to .50, where .42 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and the enlarged structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is contained to one story and is located to the rear of the structure, not visible to the street. (§3.1.9, §7.8.2.C.2)

7

Proposed Conditions

1. Plan Referencing Condition.
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.

8

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 further increase the floor nonconforming area ratio (the "FAR") from .45 to .50, where .42 is the maximum allowed as of right, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Gregory Schwartz:

1. The proposed increase in FAR from .45 to .50, where .42 is the maximum allowed as of right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood and the enlarged structure will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is contained to one story and is located to the rear of the structure, not visible from the street. (§3.1.9, §7.8.2.C.2)

PETITION NUMBER: #353-19

PETITIONER: Mike Zalis

LOCATION: 38 Fenno Road, on land known as Section 64, Block 12, Lot 05, containing approximately 7,413 square feet of land

OWNER: Mike Zalis

ADDRESS OF OWNER: 38 Fenno Road
Newton, MA 02459

TO BE USED FOR: Rear Addition to Single-Family Dwelling

CONSTRUCTION: Wood frame

EXPLANATORY NOTES: §3.1.9 and §7.8.2.C.2 to further increase the nonconforming floor area ratio

ZONING: Single Residence 2 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:
 - a. Plot Plan showing Proposed Conditions, prepared by Everett M. Brooks Co., signed and stamped by Bruce Bradford, Professional Land Surveyor, dated July 17, 2019, Revised September 26, 2019 and November 4, 2019.
 - b. Architectural Plans, prepared by SteveWorks LLC., unsigned and unstamped, dated September 9, 2019, consisting of three (3) sheets.
2. 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.
3. 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 council 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 board 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. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. 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 land surveyor certifying compliance with Condition #1 as well as the as-built floor area ratio of the structure.
 - 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 professional land surveyor.
 - c. Filed with the Clerk of the Council, 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.

ATTACHMENT A

DRAFT- #319-19
15-21 Lexington Street

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 allow a multi-family dwelling (§3.4.1); grant exceptions to certain parking facility requirements so as to allow reduced parking stall depths (§5.1.8.B.2, §5.1.13) and to waive perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13), interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13), and minimum intensity requirements for outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed twenty-four-unit dwelling as it is located on street with a mix of uses and adjacent to commercial uses (§7.3.3.C.1)
2. The proposed twenty-four unit dwelling as developed and operated will not adversely affect the neighborhood as it is located on street with a mix of uses and adjacent to commercial uses (§7.3.3.C.2)
3. There will be no 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 planning building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy as it will have features including high efficiency electric heat pumps to handle the heating and cooling of the building, “Energy Star”-rated windows and two electric vehicle (EV) charging stations; further a buffer of mature trees will be maintained pursuant to the project (§7.3.3.C.5)
6. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) 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: #319-19

PETITIONER: Dante Capasso

ADDRESS OF PETITIONER: 5 Ionia Street
Newton, MA 02466

LOCATION: 15-21 Lexington Street, Ward 4, West Newton, on land known as
Section 41 Block 35 Lots 2-5, containing approximately 51,870
square feet of land

OWNER: Picariello Realty Trust / DSP Realty Trust

ADDRESS OF OWNER: c/o Dante Capasso
5 Ionia Street
Newton, MA 02466

TO BE USED FOR: A 24-unit multi-family development with associated garage
parking.

EXPLANATORY NOTES: Special permits per §7.3.3:
– to reduce parking stall depth (§5.1.8.B.2, §5.1.13)
– to waive the perimeter screening requirements for the outdoor
parking facility (§5.1.9., §5.1.13)
– to waive the interior landscaping requirements for the outdoor
parking facility (§5.1.9.B, §5.1.13)
– to waive the minimum intensity of outdoor lighting of the parking
facility (§5.1.10.A.1, §5.1.13)

ZONING: Multi-Residence 3 (MR3)

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 engineering plans entitled “Site Plan of Land in Newton MA, 15-21 Lexington Street,” prepared by Everett M. Brooks Co., consisting of the following sheets:
 - i. Existing Conditions (Sheet 1 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019 and Bruce Bradford, Professional Land Surveyor on October 30, 2019;

- ii. Proposed Layout (Sheet 2 of 4), dated October 30, 2019, as revised through November 12, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on November 12, 2019 and Bruce Bradford, Professional Land Surveyor on November 12, 2019;
 - iii. Proposed Utilities and Grading and Drainage Plan (Sheet 3 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019;
 - iv. detail sheet (Sheet 4 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019.
- b. A set of architectural plans entitled “CityLine, 15 & 21 Lexington, Newton, MA,” prepared by Reisen Design Associates, signed and stamped by Erik P. Miller, Registered Architect, dated November 12, 2019, consisting of the following sheets:
- i. Project Cover Sheet & Drawing List (G-0);
 - ii. Front Elevation (A-1);
 - iii. Left Side Elevation (A-2);
 - iv. Rear Elevation (A-3);
 - v. Right Side Elevation (A-4);
 - vi. Basement Plan (A-5);
 - vii. 1st Floor Plan (A-6);
 - viii. 2nd Floor Plan (A-7);
 - ix. 3rd Floor Plan (A-8);
 - x. Roof Plan (A-9);
 - xi. Site & Parking Plan (L-1).
- c. A Landscape Plan entitled “Landscape Plan for : 15-21 Lexington Street, Newton MA 02465,” prepared by The Garden Artisan Co., Antonio Mariano MCLP, consisting of the following sheets:
- i. untitled key sheet (P1);
 - ii. A Side Right (East) (P2);
 - iii. A Side Left (East) (P3);
 - iv. B Side (South) (P4);
 - v. C Side (West) (P5);
 - vi. D Side (North) (P6);
 - vii. C Side Rear Boarder (*sic*) (P7).
- d. A photometric plan entitled “Project: 15-21 Lexington Ave, Location: Newton, MA,” prepared by Illuminate, dated August 29, 2019.
2. In accordance with the City’s Inclusionary Zoning Ordinance, §5.11.4, the Project shall include five (5) affordable housing units (the “Inclusionary Units”), as follows:
- a. Four (4) of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA (“Tier 1 Units”).

The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.

- b. One (1) of the residential units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA (“Tier 2 Unit”).
3. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City’s Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
4. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR
Tier 1 Units	1	2	1
Inclusionary Units			
Tier 2	0	1	0
Inclusionary Units			

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
6. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
7. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD’s guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD’s current guidelines, the units will be affirmatively marketed and leased through a lottery.

8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Unit in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
11. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
12. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
13. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
14. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
15. The petitioner shall comply with the City's Tree Preservation Ordinance.
16. With the exception of those spaces associated with the Inclusionary Units, charges for parking stalls shall be separate and in addition to ("unbundled") from rent and other charges for residential tenants.
17. The Petitioner is required to plant and maintain the plantings and vegetation shown on Sheet P7 of the Landscape Plan referenced in Condition #1 that are located on an abutting property. Prior to the issuance of any building permit pursuant to this special permit, the petitioner shall submit to the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a certified copy of an easement recorded at the Registry of Deeds for the Southern District of Middlesex County providing the petitioner with all necessary property rights to enter and use the abutting land for this purpose.
18. Prior to the issuance of any building permit pursuant to this special permit, the petitioner shall submit to the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a certified copy of an easement agreement or similar

agreement recorded at the Registry of Deeds for the Southern District of Middlesex County requiring and providing for the continuous maintenance by the petitioner of the plantings and vegetation shown on Sheet P7 of the Landscape Plan referenced in Condition #1 that are located on an abutting property.

19. The Petitioner shall contribute funding towards the City's Inflow and Infiltration Reduction Program to cover improvements to the sanitary sewer system at a 4:1 replacement ratio. The contribution shall be based on a formula of flow rate x number of bedrooms x 4 x \$19.77. The flow rate shall be set by the City Engineer based upon the actual flow rate anticipated due to the proposed fixtures, to be submitted by the petitioner. The payments shall be made as follows:
 - a. Prior to the issuance of any building permit, the first payment shall be submitted. The payment shall be $\frac{1}{2}$ of the total payment calculated above.
 - b. The second and final payment shall be determined by the actual water and wastewater flow into the City's sewer system from the stabilized project, defined as 95% occupancy. This payment will be based on the actual flow per day per bedroom for one month, which may be a number different to that used above to calculate the initial payment. The City Engineer will review and approve the methodology used to measure and calculate the actual flow per day per bedroom. The actual flow per bedroom per day will be applied to the number of bedrooms at \$19.77 per gallon multiplied by a ratio of 4:1.
 - c. The Petitioner shall receive a credit for the initial payment and shall pay the balance, if any within 30 days of the date the City accepts the calculation of the amount of the second payment. The Petitioner shall not be entitled to receive any refund of the first payment in the event that the calculation of the amount of the second payment shows that the petitioner has overpaid its I&I payment.
 - d. The second payment will be due after the project reaches 95% occupancy or within 2 years following the Project's final Certificate of Occupancy, whichever comes first. Once the Project is at 95% occupancy, the Petitioner shall notify the City Engineer and promptly undertake measurement of the actual flow. If the project does not achieve 95% occupancy before two years from the final Certificate of Occupancy, the petitioner shall notify the City Engineer and undertake measurement of the actual flow and the second payment will be prorated to reflect 95% occupancy.
20. All new residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the new units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.

21. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance
22. The Petitioner shall consult with an independent sustainability building professional/LEED Associate on the design and construction of the building, and achieve and/or implement the following measures which shall be incorporated into the Project:
 - a. the majority of the exterior façade will be composed of durable low maintenance materials (such as brick and cementitious panels) that will increase the longevity and minimize maintenance in the future;
 - c. only LED lighting will be used throughout the project;
 - d. high efficiency electric air source heat pumps shall be used to handle the heating and cooling of the building in order to reduce fossil fuel use;
 - e. all HVAC and appliances shall be electric, and appliances shall be "Energy Star"-rated (or functional equivalent), (except that domestic hot water equipment may utilize natural gas as an energy source);
 - f. all residential units will be thermally and acoustically separated with individual thermostats;
 - g. Exterior building insulation and air barriers shall be continuous;
 - h. the underground parking garage will be outfitted with two (2) electric vehicle (EV) charging stations. in addition, conduit will be installed to facilitate future installation of EV charging stations for all garage parking stalls;
 - i. drought tolerant and indigenous plants will be the predominant species installed in the landscape;
 - j. roof areas shall be mapped so as to consolidate rooftop HVAC equipment and penetrations to the greatest degree possible to maximize potential for solar PV installation, and, ensure the roof is solar ready;
 - k. a rooftop solar energy system shall be installed that, as a minimum, satisfies the building's common areas' electric demand.
 - l. fundamental commissioning tests shall be performed to assure continuous air, vapor and water barriers;
 - n. all dwelling units shall be sealed and thermally isolated from one another and have separate utility meters.
23. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
 - a. installing rooftop solar photovoltaic panels to offset building electrical usage;
 - b. installing parking canopies with solar panels to offset building electrical usage;
 - c. installing additional exterior insulation beyond Stretch Code requirements;

- d. maximizing the use where appropriate for low embodied carbon materials and rapidly renewable materials;
 - e. commissioning HVAC systems at substantial building completion.
24. 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. Said stormwater management system shall be designed to capture 100% of runoff generated in 1% storm condition for all impervious areas of the project. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
25. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
26. Prior to the issuance of any building permit for the Project 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 6:00 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 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 materials and construction and delivery vehicles and equipment, 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;
 - construction materials,
 - parking of construction workers' vehicles,
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties;
 - proposed method of noise and vibration control.
27. 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.
28. 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 Council order with the Middlesex South Registry of Deeds.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.8. of the Zoning Ordinance.
 - e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approvals shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

- f. Submitted a final plan of land, to the Engineering Division of Public Works in accordance with Condition #25.
 - g. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the City Engineer, and the Director of Transportation.
29. 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.
30. Prior to the issuance of any Certificate of Occupancy pursuant to this Special Permit/Site Plan Approval, the Petitioner, City, and DHCD will enter into, and record at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department and DHCD, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
31. 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 by a registered architect and civil engineer certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
 - d. Filed with 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 consistent with the plans referenced in Condition 1.
 - e. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Conditions #8 and #9.
 - f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex

- District Registry of Deeds, as appropriate.
- g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed. The petitioner shall complete and occupy at least one Inclusionary Unit for every five market rate units completed and occupied.
32. Notwithstanding the provisions of Condition #31d above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping/exterior hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.
33. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased and/or dies shall be replaced on an annual basis with similar material.

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 allow a multi-family dwelling (§3.4.1); grant exceptions to certain parking facility requirements so as to allow reduced parking stall depths (§5.1.8.B.2, §5.1.13) and to waive perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13), interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13), and minimum intensity requirements for outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13), as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Gregory Schwartz:

1. The specific site is an appropriate location for the proposed twenty-four-unit dwelling as it is located on street with a mix of uses and adjacent to commercial uses. (§7.3.3.C.1)
2. The proposed twenty-four unit dwelling as designed, developed and operated will not adversely affect the neighborhood as it is located on street with a mix of uses and adjacent to commercial uses. (§7.3.3.C.2)
3. The proposed twenty-four unit dwelling 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 planning building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy as it will have features including high efficiency electric heat pumps to handle the heating and cooling of the building, Energy Star-rated appliances and two electric vehicle (EV) charging stations; further a buffer of mature trees will be maintained pursuant to the project. (§7.3.3.C.5)
6. Literal compliance with the parking requirements of the Newton Zoning Ordinance (NZO) 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)

7. The Council finds that the requested exceptions to parking facility perimeter landscape requirements for the south and rear of the site are appropriate in light of the fact that the property immediately abutting the site in those locations is heavily landscaped with mature plantings which were installed pursuant to Special Permit # 19-06 (the second office park special permit) and under the terms of that special permit, as incorporated from Special Permit # 194-99 (the first office park special permit) the owners of the office park property, or their successors and assigns, are responsible for maintenance of all landscaping in good condition and, at least annually, are required to replace plant material that dies, is damaged or is diseased.

PETITION NUMBER: #319-19

PETITIONER: Dante Capasso

ADDRESS OF PETITIONER: 5 Ionia Street
Newton, MA 02466

LOCATION: 15-21 Lexington Street, Ward 4, West Newton, on land known as Section 41 Block 35 Lots 2-5, containing approximately 51,870 square feet of land

OWNER: Picariello Realty Trust / DSP Realty Trust

ADDRESS OF OWNER: c/o Dante Capasso
5 Ionia Street
Newton, MA 02466

TO BE USED FOR: A 24-unit multi-family development with associated garage parking.

EXPLANATORY NOTES: Special permits per §7.3.3:
– to reduce parking stall depth (§5.1.8.B.2, §5.1.13)
– to waive the perimeter screening requirements for the outdoor parking facility (§5.1.9., §5.1.13)
– to waive the interior landscaping requirements for the outdoor parking facility (§5.1.9.B, §5.1.13)
– to waive the minimum intensity of outdoor lighting of the parking facility (§5.1.10.A.1, §5.1.13)

ZONING: Multi-Residence 3 (MR3)

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 engineering plans entitled "Site Plan of Land in Newton MA, 15-21 Lexington Street," prepared by Everett M. Brooks Co., ,consisting of the following sheets:
 - i. Existing Conditions (Sheet 1 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019 and Bruce Bradford, Professional Land Surveyor on October 30, 2019;
 - ii. Proposed Layout (Sheet 2 of 4), dated October 30, 2019, as revised through November 12, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on November 12, 2019 and Bruce Bradford, Professional Land Surveyor on November 12, 2019;
 - iii. Proposed Utilities and Grading and Drainage Plan (Sheet 3 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019;
 - iv. detail sheet (Sheet 4 of 4), dated October 30, 2019, signed and stamped by Michael S. Kosmo, Registered Professional Engineer on October 30, 2019.
 - b. A set of architectural plans entitled "CityLine, 15 & 21 Lexington, Newton, MA," prepared by Reisen Design Associates, signed and stamped by Erik P. Miller, Registered Architect, dated November 12, 2019, consisting of the following sheets:
 - i. Project Cover Sheet & Drawing List (G-0);
 - ii. Front Elevation (A-1);
 - iii. Left Side Elevation (A-2);
 - iv. Rear Elevation (A-3);
 - v. Right Side Elevation (A-4);
 - vi. Basement Plan (A-5);
 - vii. 1st Floor Plan (A-6);
 - viii. 2nd Floor Plan (A-7);
 - ix. 3rd Floor Plan (A-8);
 - x. Roof Plan (A-9);
 - xi. Site & Parking Plan (L-1).
 - c. A Landscape Plan entitled "Landscape Plan for : 15-21 Lexington Street, Newton MA 02465," prepared by The Garden Artisan Co., Antonio Mariano MCLP, consisting of the following sheets:
 - i. untitled key sheet (P1);
 - ii. A Side Right (East) (P2);
 - iii. A Side Left (East) (P3);

- iv. B Side (South) (P4);
 - v. C Side (West) (P5);
 - vi. D Side (North) (P6);
 - vii. C Side Rear Boarder (*sic*) (P7).
- d. A photometric plan entitled "Project: 15-21 Lexington Ave, Location: Newton, MA," prepared by Illuminate, dated August 29, 2019.
2. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, the Project shall include five (5) affordable housing units (the "Inclusionary Units"), as follows:
- a. Four (4) of the residential units in the Project shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 1 Units"). The AMI used for establishing rent and income limits for the Tier 1 Units must average no more than 65% AMI. Alternatively, at least 50% of the Tier 1 Units may be priced for households having incomes at 50% of AMI and the remaining Tier 1 Units priced for households at 80% of AMI.
 - b. One (1) of the residential units in the Project shall be affordable to households earning greater than 80%, but at or below 110% of AMI, as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA ("Tier 2 Unit").
3. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
4. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	Studio	1BR	2BR
Tier 1 Units Inclusionary Units	1	2	1
Tier 2 Inclusionary Units	0	1	0

The final bedroom mix shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and

shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.

6. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
7. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 1 Inclusionary Units in perpetuity.
9. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner and the City will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Tier 2 Inclusionary Unit in perpetuity.
10. To the extent permitted by applicable regulations of DHCD, the Tier 1 Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
11. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
12. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
13. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the Project Master Plans referenced in Condition #1.
14. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
15. The petitioner shall comply with the City's Tree Preservation Ordinance.

16. With the exception of those spaces associated with the Inclusionary Units, charges for parking stalls shall be separate and in addition to (“unbundled”) from rent and other charges for residential tenants.
17. All exterior lighting fixtures shall be residential in scale and not cause light pollution, and shall be subject to review and approval by the Director of Planning and Development before any Building Permit may be issued pursuant to this Special Permit/Site Plan Approval.
18. The Petitioner shall contribute funding towards the City’s Inflow and Infiltration Reduction Program to cover improvements to the sanitary sewer system at a 4:1 replacement ratio. The contribution shall be based on a formula of flow rate x number of bedrooms x 4 x \$19.77. The flow rate shall be set by the City Engineer based upon the actual flow rate anticipated from the proposed fixtures, to be submitted by the petitioner. The payments shall be made as follows:
 - a. Prior to the issuance of any building permit, the first payment shall be submitted. The first payment shall be 50% of the total payment calculated above.
 - b. The second and final payment shall be determined by the actual water and wastewater flow into the City’s sewer system from the stabilized project, defined as 95% occupancy or within 2 years following the Project’s final Certificate of Occupancy, whichever comes first. This payment will be based on the actual flow per day per bedroom for one month, which may be a number different to that used above to calculate the initial payment. The City Engineer will review and approve the methodology used to measure and calculate the actual flow per day per bedroom. The actual flow per bedroom per day will be applied to the number of bedrooms at \$19.77 per gallon multiplied by a ratio of 4:1. Once the Project is at 95% occupancy, the Petitioner shall notify the City Engineer and promptly undertake measurement of the actual flow. If the project does not achieve 95% occupancy before two years from the final Certificate of Occupancy, the petitioner shall notify the City Engineer and undertake measurement of the actual flow and the second payment will be prorated to reflect 95% occupancy.
 - c. The second payment shall be due within 30 days of the date the City accepts the calculation of the amount of the second payment as set forth above. In making the second payment, the Petitioner shall receive a credit for the first payment and shall pay the balance, if any. The Petitioner shall not be entitled to receive any refund of the first payment in the event that the calculation of the amount of the second payment shows that the petitioner has overpaid it’s I&I payment.
19. All new residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for “Group 1” units. In addition, per MAAB guidelines, 5% of the new units shall be designed as “Group 2A” units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.

20. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking and shall comply with the City's Noise Control Ordinance
21. The Petitioner shall consult with an independent sustainability building professional/LEED Associate on the design and construction of the building, and achieve and/or implement the following measures which shall be incorporated into the Project:
 - a. the majority of the exterior façade will be composed of durable low maintenance materials (such as brick and cementitious panels) that will increase the longevity and minimize maintenance in the future;
 - b. only LED lighting will be used throughout the project;
 - c. high efficiency electric air source heat pumps shall be used to handle the heating and cooling of the building in order to reduce fossil fuel use;
 - d. all HVAC and appliances shall be electric, and appliances shall be "Energy Star"-rated (or functional equivalent), (except that domestic hot water equipment may utilize natural gas as an energy source);
 - e. all residential units will be thermally and acoustically separated with individual thermostats and have separate utility meters;
 - f. exterior building insulation and air barriers shall be continuous;
 - g. the underground parking garage will be outfitted with two (2) electric vehicle (EV) charging stations. in addition, conduit will be installed to facilitate future installation of EV charging stations for all garage parking stalls;
 - h. drought tolerant and indigenous plants will be the predominant species installed in the landscape;
 - i. roof areas shall be mapped so as to consolidate rooftop HVAC equipment and penetrations to the greatest degree possible to maximize potential for solar PV installation, and, ensure the roof is solar ready;
 - j. a rooftop solar energy system shall be installed that, as a minimum, satisfies the building's common areas' electric demand;
 - k. fundamental commissioning tests shall be performed to assure continuous air, vapor and water barriers.
22. The Petitioner has committed to analyze, review and discuss with the Director of Planning and Development the following sustainability strategies, prior to the issuance of any building permit for the Project, in order to determine their feasibility and the possible return on investment if they were to be implemented:
 - a. installing rooftop solar photovoltaic panels to offset building electrical usage;
 - b. installing parking canopies with solar panels to offset building electrical usage;

- c. installing additional exterior insulation beyond Stretch Code requirements;
 - d. maximizing the use where appropriate for low embodied carbon materials and rapidly renewable materials;
 - e. commissioning HVAC systems at substantial building completion.
23. 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. Said stormwater management system shall be designed to capture 100% of runoff generated in 1% storm condition for all impervious areas of the project. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
24. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
25. Prior to the issuance of any building permit for the Project 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 6:00 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 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 materials and construction and delivery vehicles and equipment, 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;
 - construction materials,
 - parking of construction workers' vehicles,
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties;
 - proposed method of noise and vibration control.
26. 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.
27. 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 Council order with the Middlesex South Registry of Deeds.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.8. of the Zoning Ordinance.
 - e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approvals shall have been filed with the City

Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.

- f. Submitted a final plan of land, to the Engineering Division of Public Works in accordance with Condition #24.
 - g. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the City Engineer, and the Director of Transportation.
28. 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.
29. Prior to the issuance of any Certificate of Occupancy pursuant to this Special Permit/Site Plan Approval, the Petitioner, City, and DHCD will enter into, and record at the Middlesex South Registry of Deeds, a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department and DHCD, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
30. 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 by a registered architect and civil engineer certifying compliance with Condition #1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
 - d. Filed with 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 consistent with the plans referenced in Condition 1.
 - e. Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Conditions #8 and #9.

- f. Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex District Registry of Deeds, as appropriate.
 - g. Inclusionary Units shall be completed and occupied no later than the completion and occupancy of the Project's market-rate units. If the Inclusionary Units are not completed as required within that time, temporary and final occupancy permits may not be granted for the number of market-rate units equal to the number of Inclusionary Units that have not been completed. The petitioner shall complete and occupy at least one Inclusionary Unit for every five market rate units completed and occupied.
31. Notwithstanding the provisions of Condition #31(d) above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping/exterior hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.
32. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased and/or dies shall be replaced on an annual basis with similar material.

Department of Planning and Development



**PETITION #320-19
70 WALKER STREET**

SPECIAL PERMIT/SITE PLAN APPROVAL TO ALLOW FOUR SINGLE FAMILY ATTACHED DWELLING UNITS IN TWO, THREE-STORY STRUCTURES, TO FURTHER EXTEND THE NONCONFORMING HEIGHT, TO REDUCE THE REQUIRED SIDE SETBACK, TO EXCEED MAXIMUM LOT COVERAGE AND TO ALLOW A DRIVEWAY WITHIN TEN FEET OF THE SIDE LOT LINE



DECEMBER 10, 2019

1

Requested Relief



Special permit per §7.3.3 to:

- allow attached single-family dwellings in an MR1 zoning district (§3.2.4)
- allow attached single-family dwellings with three stories (§3.2.4)
- further extend nonconforming height (§3.2.4, §7.8.2.C.2)
- reduce required side setback (§3.2.4)
- ~~exceed maximum lot coverage (§3.2.4)~~
- allow a driveway within 10 feet of the side lot line (§6.2.3.B.2)

2

Criteria to Consider

When reviewing the requested special permits the Council should consider whether:

- The site in a Multi-Residence 1 (MR1) district is an appropriate location for the proposed four single-family attached dwellings in two structures as designed (§7.3.3.C.1);
- The proposed four single-family attached dwellings in two structures as designed will adversely affect the neighborhood (§7.3.3.C.2);
- The proposed four single-family attached dwellings in two structures as designed 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);
- The further extension of the existing dwelling's nonconforming height would be substantially more detrimental than the existing nonconforming height to the neighborhood (§7.8.2.C.2);

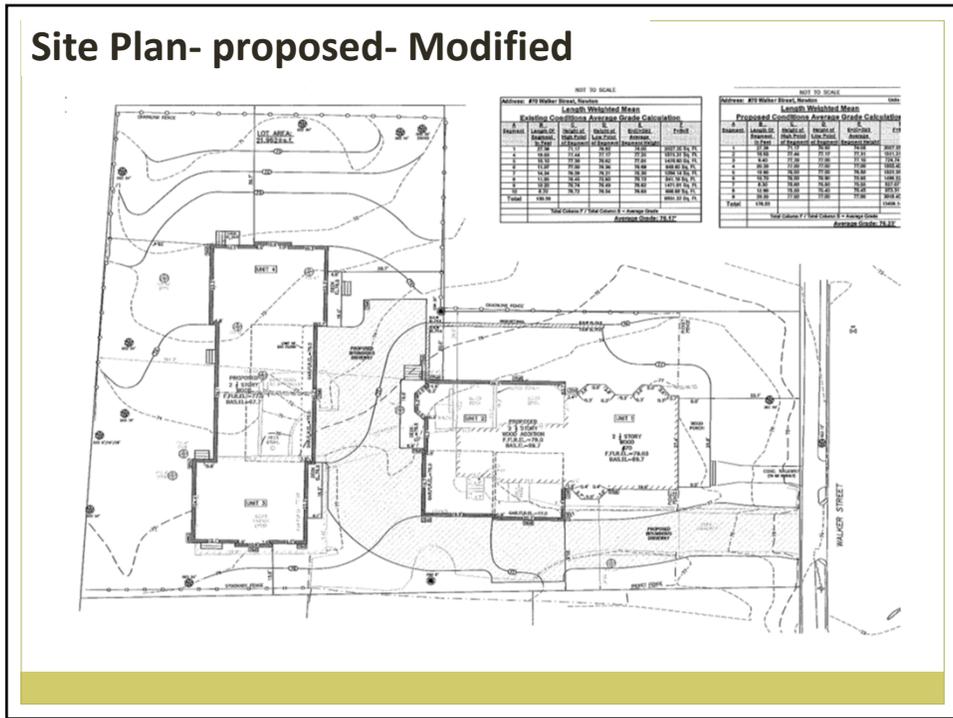
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Criteria to Consider (cont.)

- *Granting exceptions to the provisions of §3.2.4 requiring 25 foot side setbacks is appropriate as literal compliance with the side setback requirements is impractical due to the nature of the use, or the location, size, frontage, 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.*
- Granting an exception to the provisions of Sec 6.2.3.B.2 requiring that no driveway shall be located within 10 feet of a side or rear lot line is appropriate as literal compliance is impractical due to the nature of the use, or the location, size, frontage, 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.

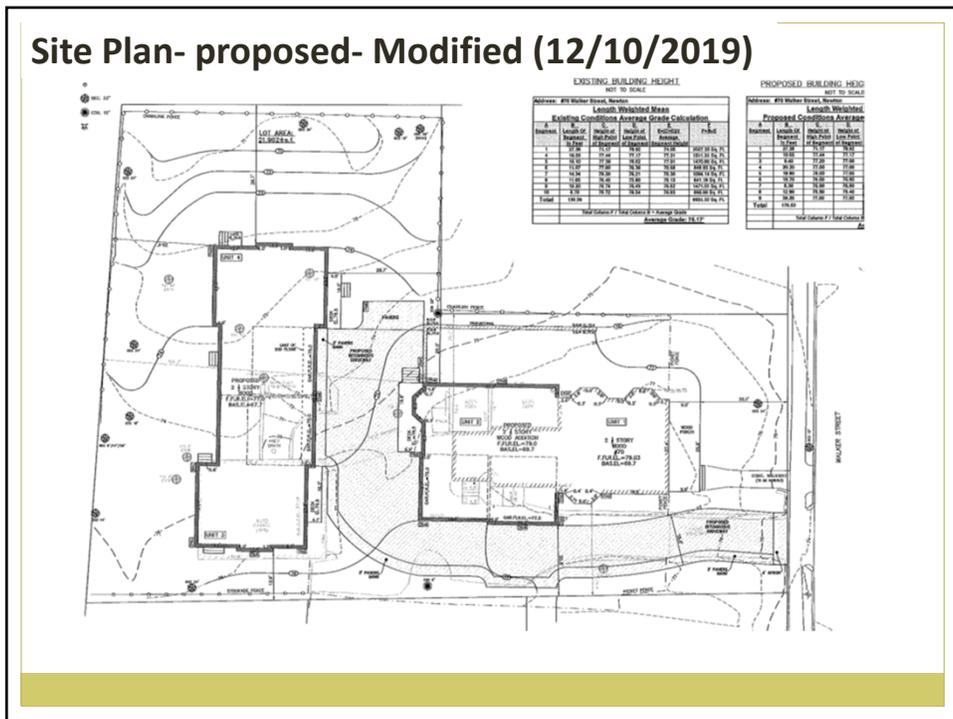
4

Site Plan- proposed- Modified

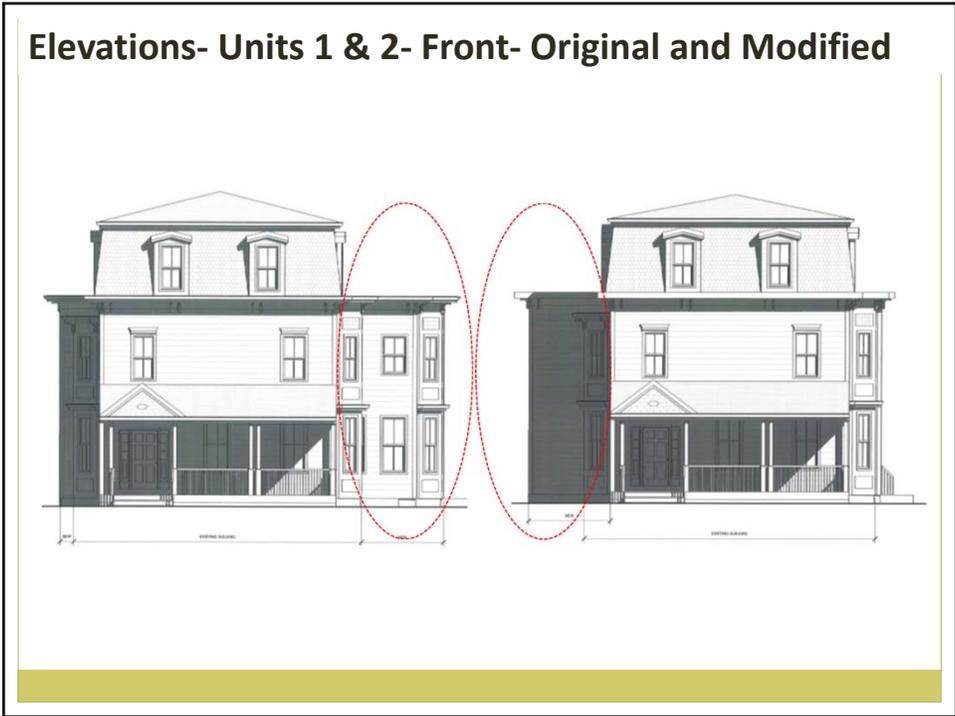


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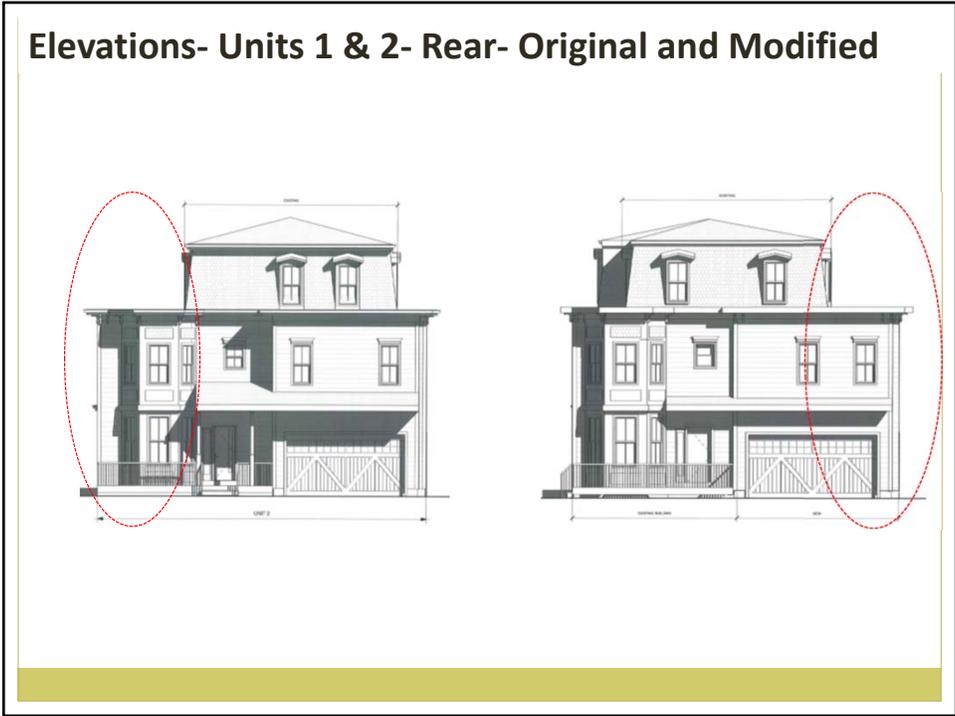
Site Plan- proposed- Modified (12/10/2019)



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11



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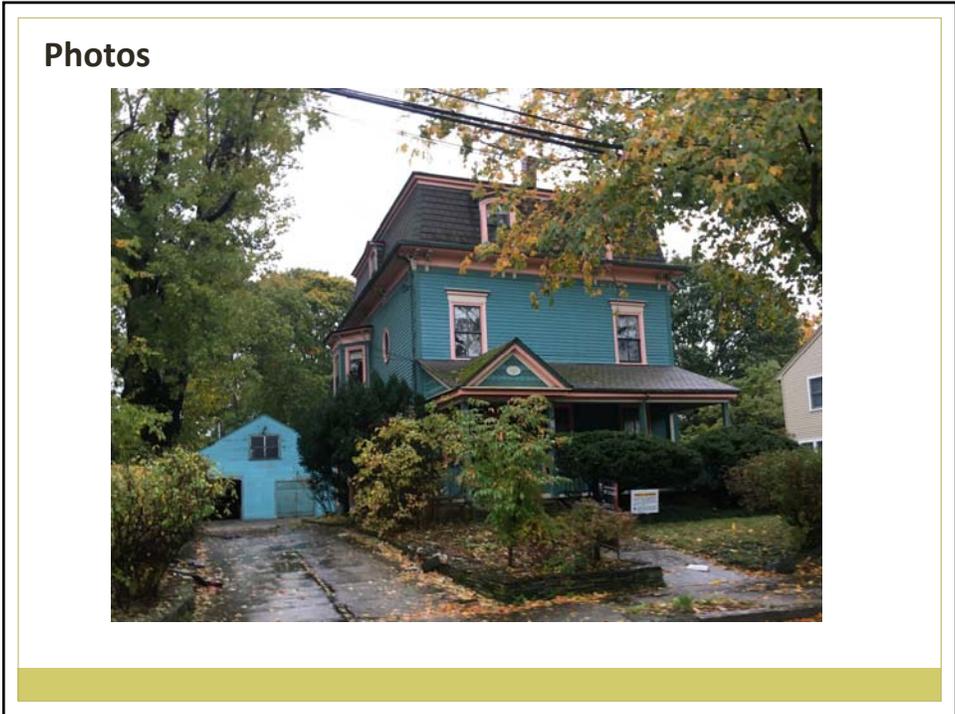
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14



15



16

Perspectives- Original



17

Perspectives- Modified



18

Photos



19

Perspectives- Original



20

Perspectives- Modified



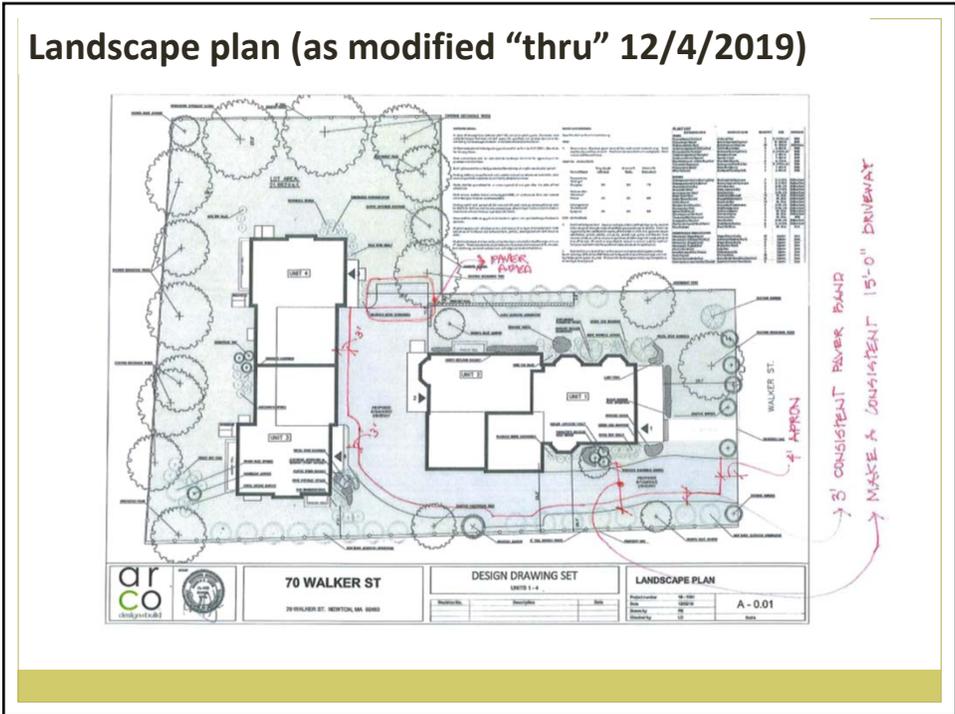
21

Landscape plan (rec'd 10/29/2019)

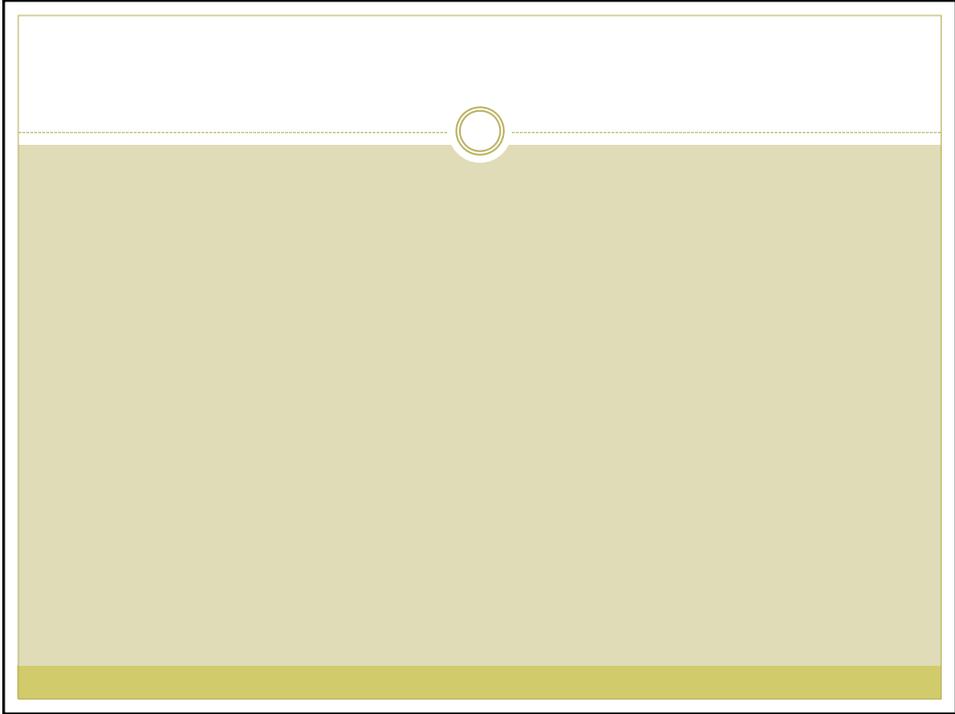


22

Landscape plan (as modified "thru" 12/4/2019)



23



24

Department of Planning and Development



**PETITION #268-19
58 CROSS ST./
1089 WASHINGTON ST.**

SPECIAL PERMIT TO ALLOW A MARIJUANA RETAILER, WAIVE MINIMUM PARKING STALL DIMENSIONS, ALLOW PARKING WITHIN THE FRONT SETBACK, AND WAIVE LANDSCAPING AND LIGHTING REQUIREMENTS



DECEMBER 10, 2019

1

Requested Relief



Special Permit per §7.3.3 of the Newton Zoning Ordinance to:

- To allow a Marijuana Retailer (§4.4.1, §6.10.3.D)
- To allow parking within the front setback (§5.1.8.A.1)
- To waive perimeter and interior screening requirements (§5.1.9.A, §5.1.9.B)
- To waive the lighting requirements (§5.1.9.A)
- Waiver for minimum stall dimensions (§5.1.8.B.2)

2

Criteria to Consider

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the proposed Marijuana Retailer (§7.3.3.C.1).
- The Marijuana Retailer, as developed and operated, will not adversely affect the neighborhood (§7.3.3.C.2).
- There will be no 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).
- Literal compliance with the lighting requirements is impracticable due to the nature of the use, 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)

3

Criteria to Consider Continued

- The lot is designed such that it provides convenient, safe and secure access and egress for clients and employees arriving to and leaving from the site, whether driving, bicycling, walking or using public transportation. (§6.10.3.G.1.a)
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses. (§6.10.3.G.1.b)
- The Marijuana Retailer is designed to minimize any adverse impacts on abutters. (§6.10.3.G.1.c)
- The Marijuana Retailer is not located within a 500-foot radius of a public or private K-12 school. (§6.10.3.G.2.a)
- Traffic generated by client trips, employee trips, and deliveries to and from the marijuana retailer will not create a significant adverse impact on nearby uses. (§6.10.3.G.2.b)

4

Criteria to Consider Continued

- The building and site have been designed to be compatible with other buildings in the area and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior. (§6.10.3.G.2.c)
- The building and site are accessible to persons with disabilities. (§6.10.3.G.2.d)
- The lot is accessible to regional roadways and public transportation. (§6.10.3.G.2.e)
- The lot is located where it may be readily monitored by law enforcement and other code enforcement personnel. (§6.10.3.G.2.f)
- The marijuana retailer's hours of operation will have no significant adverse impact on nearby uses. (§6.10.3.G.2.g)

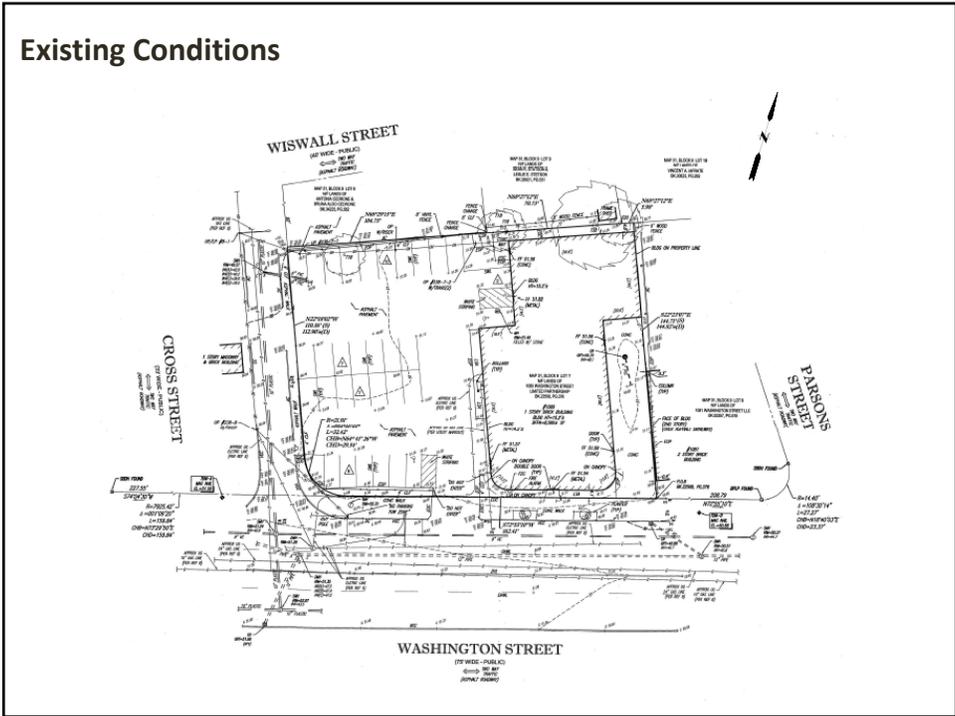
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AERIAL/GIS



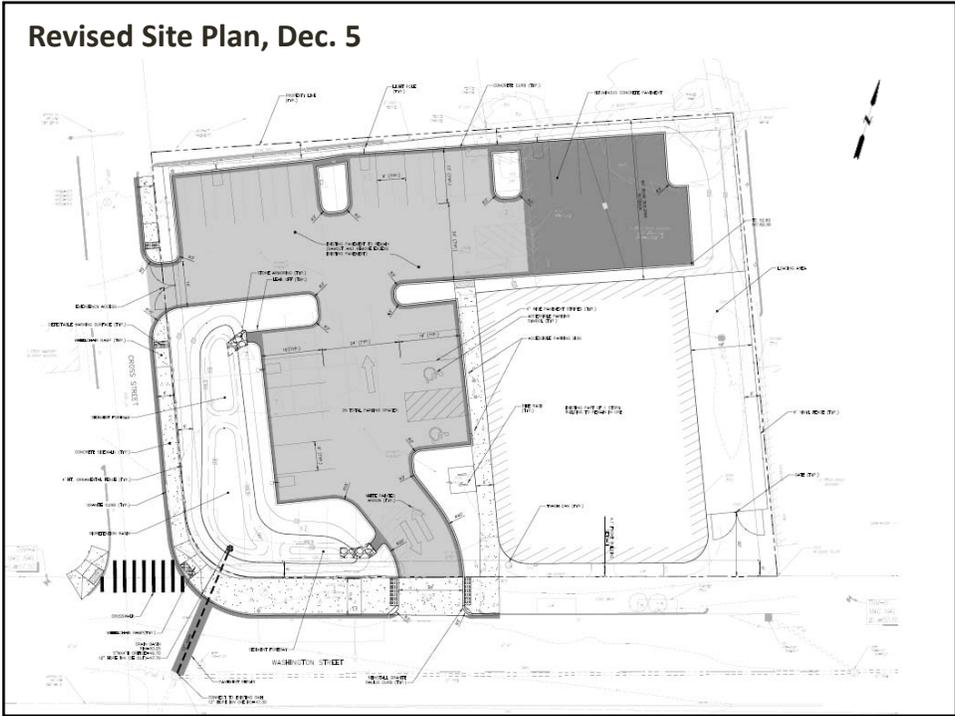
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Existing Conditions

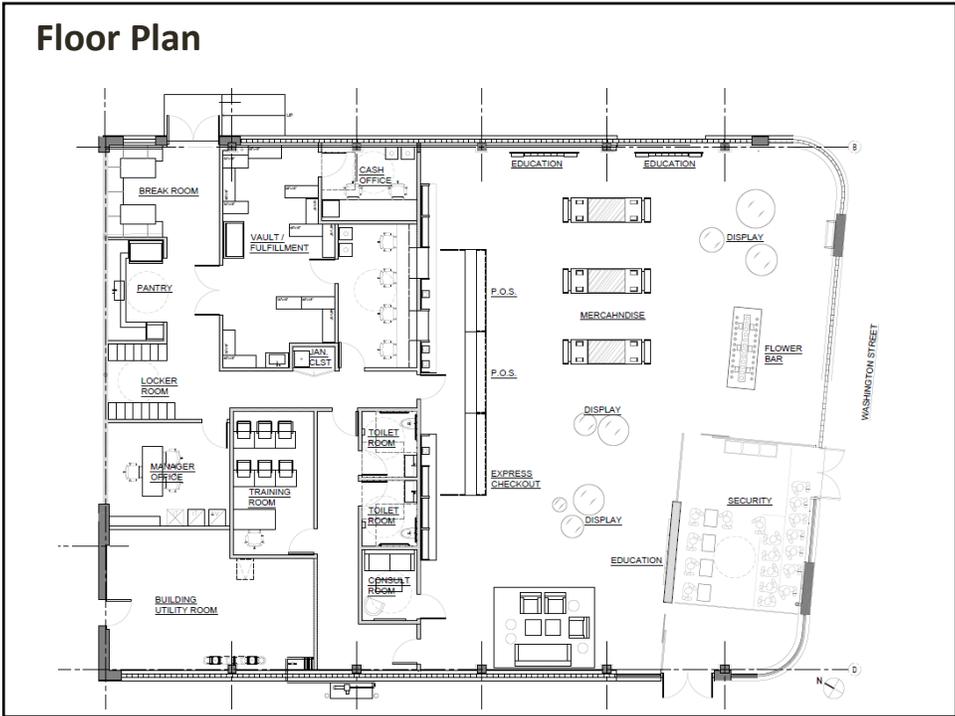


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Revised Site Plan, Dec. 5



8



9