



City of Newton, Massachusetts

Department of Planning and Development

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Ruthanne Fuller
Mayor

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

DATE: January 16, 2020

MEETING DATES: January 22, 2020

TO: Zoning Board of Appeals

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

COPIED: Mayor Ruthanne Fuller
City Council

SUBJECT: **Application #09-19** Mark Development, LLC, applying to the Zoning Board of Appeals of the City of Newton, Massachusetts, pursuant to General Laws, Chapter 40B, Sections 20 through 23, as amended, for the issuance of a Comprehensive Permit authorizing the applicant to construct a mixed-use project with three separate buildings with a total of 244 units of rental housing, approximately 12,141 square feet of retail space, and a total of 291 parking stalls within two subterranean garages at a site encompassing the following properties: 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street; 32-34 Dunstan Street; and 12, 18, 24, and 25 Kempton Place in Newton, Massachusetts ("Dunstan East"). Sixty-one (61) of the units (25%) will be deed restricted to remain permanently affordable to households at up to 80 percent of Area Median Income (AMI). The property is located in a Business 2 (BU2) Zoning District.

The purpose of this memorandum is to provide the Zoning Board of Appeals and the public with technical information and planning analysis which may be useful in the comprehensive permit decision-making process. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning Board of Appeals will want to consider in its discussion at a subsequent Public Hearing/Working Session.



"Dunstan East"

EXECUTIVE SUMMARY

The Applicant, Dunstan East, LLC, is seeking a Comprehensive Permit pursuant to Massachusetts General Laws Chapter 40B, Sections 20 through 23, for the construction of a mixed use project consisting of three buildings along the south side Washington Street in West Newton. The subject property comprises approximately 138,142 square feet on twelve lots in a Business 2 (BU2) zoning district: 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street; 32-34 Dunstan Street; and 12, 18, 24, and 25 Kempton Place in Newton, Massachusetts (“Dunstan East”).

Together, the three proposed buildings, which range from three to six stories in height, would contain 244 rental residential units (including studios and one-, two- and three- bedroom units), approximately 12,141 square feet of ground-floor retail space along Washington Street, and 291 parking stalls in two underground garages. The total area of the project, excluding parking, would be approximately 296,040 square feet. Sixty-one (61) of the units (25%) will be deed restricted to remain permanently affordable to households at up to 80 percent of Area Median Income (AMI).

The Applicants have submitted a list of waivers requested for this project that is attached hereto as **Exhibit A**. The Chief Zoning Code Official has completed a memorandum which outlines the required relief that the Zoning Board of Appeals must grant in order to approve the project as proposed (**Attachment A**).

I. ZONING BOARD OF APPEALS

The ZBA is required to render a decision, based on a majority vote, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the ZBA and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the ZBA has been submitted.

The ZBA may dispose of the application in one of the following ways:

- approve a comprehensive permit on the terms and conditions set forth in the application;
- deny a comprehensive permit; or
- approve a comprehensive permit with conditions.

II. REVIEW CRITERIA

Pursuant to Massachusetts General Laws, Chapter 40B, the comprehensive permit process

is designed to increase the supply and improve regional distribution of affordable housing by allowing a limited suspension of existing local regulations and expediting the local approval process for the construction of such housing. The general principle governing consideration of a comprehensive permit application is that the ZBA's decision must be "consistent with local needs."

Statutory Safe Harbors

If the City has created its fair share of affordable housing by meeting one of the statutory safe harbors, the ZBA's decision will be unassailable as a matter of law. As a result, the decision to deny a comprehensive permit or to impose conditions will automatically qualify as "consistent with local needs," and must be upheld on appeal, if the City has achieved one of the following criteria as of the date of the project's application: (1) more than 10% of housing units are utilized for affordable housing; (2) 1.5% or more of the land area zoned for residential, commercial or industrial use contains affordable housing; or (3) the proposed project would lead to construction of affordable housing on sites comprising more than .03% of the total land area zoned for residential, commercial or industrial use or ten acres, whichever is larger, in one calendar year.

At the time of filing of this application the City had not met any of the safe harbor criteria.

Standard of Review

If one of the statutory safe harbors described above has not been met, the ZBA must engage in a balancing test that weighs the regional need for affordable housing against local health, safety, open space, and site and building concerns. The denial of a comprehensive permit will be "consistent with local needs" only when a valid local concern outweighs the regional need for affordable housing. Such local concerns should be verifiable concerns about the health and safety of residents of the proposed housing, surrounding neighborhood or community as a whole, or serious building and site design deficiencies that cannot be rectified with conditions of approval.

In the case of conditional approval of a comprehensive permit, the conditions or requirements imposed should not make the building or operation of the project uneconomic. However, conditions that do make the project uneconomic may still be imposed if they are reasonable and necessary to protect valid health, safety, design, environmental or open space concerns.

III. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property has frontages on several streets, Washington Street to the south, Dunstan Street to the west, and Kempton Place which largely bisects the site. A

commercial property at the northeast corner of Washington Street and Kempton Place, 1157 Washington Place, is surrounded by, but not included in, the subject property.

The Massachusetts Turnpike is south of (and parallel to) Washington Street, and the West Newton Armory abuts the property to the west, as does an approx. 120 unit assisted living facility. The surrounding neighborhood is a mix of commercial and residential uses, with the former predominating along Washington Street and latter to the north along Dunston and Watertown streets. The residential properties are a mix of one-, two- and multi-family dwellings, including a six-unit dwelling directly to the north of the property across Cheesecake Brook (**Attachment B**).

The site and surrounding area to the east and west along the north side of Washington Street are within a Business 2 (BU2) district. The area immediately to the north is zoned Multi-Residence 1 (MR1) and a Single Residence 3 (SR3) zoning district is located to the north of Watertown Street (**Attachment C**).

B. Site

The Property is comprised of twelve lots totaling 138,142 square feet of land on two blocks separated by Dunstan Place currently improved with a mix of residential and commercial (including office and retail spaces) structures and paved parking areas (one lot is vacant). The Property slopes downward approximately 18 feet from Washington Street to Cheesecake Brook to the north. There are some lawn area and mature trees, generally on the residentially used parcels. Vehicular access to the Property is provided by numerous curb cuts along Washington Street, Dunston Street, and Kempton Place.

IV. **ANALYSIS**

A. The Health and Safety of the Residents of the Proposed Housing and the Current Residents of the City

1. Structural soundness of the proposed buildings

The Planning Department has no concerns with the structural soundness of the proposed building at this time. Prior to the issuance of any building permits, the applicant will be required to file final construction drawings and details, for review and approval by the Fire Department, Inspectional Services Department and the Engineering Division of Public Works.

2. Adequacy of sewage disposal

The applicant has submitted a Utility Plan prepared by VHB. This document will be reviewed by the City's Engineering Division, and the Planning Department recommends that a consultant peer reviewer also be engaged to fully and appropriately assist the ZBA in its review of the proposed project's utilities, including

the adequacy of its sewerage disposal system.

3. Adequacy of handling water runoff

The applicant has submitted a Stormwater report prepared by VHB. This document will be reviewed by the City's Engineering Division, and the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately assist the ZBA in its review of the proposed project.

4. Adequacy of fire protection

The Project is being reviewed by the City's Fire Department at the time of the writing of this memorandum. Should the Board choose to approve this project, final plans will need to be reviewed and approved by the Fire Department prior to the issuance of any building permits.

5. Adequacy of handling traffic generated by the project on adjacent streets

The applicant has submitted a Transportation Impact and Access Study prepared by VHB. Based upon its initial review of this document, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review this aspect of the proposal so as to assist the ZBA in its review of the proposed project. The Project is also currently under review by City Transportation staff.

6. Proximity of the site to industrial activities which might affect the health of the proposed residents

The site is not proximate to any known industrial activities that may affect the health of future residents to the Planning Department's knowledge at this time.

B. Site and Building Design

1. Height, bulk and placement of the proposed buildings, accessory structures and improvements

As detailed in the attached Zoning Review (**Attachment A**), the Project would considerably exceed many applicable zoning controls and regulations in its BU2 zoning district. Therefore, based upon this and its initial review of the project application, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review these aspects of the proposal so as to assist the ZBA in its review of the proposed project.

The Urban Design Commission (UDC) held a meeting on December 11, 2019 to review the Project. The UDC's comments can be found in its attached memorandum (**Attachment D**).

Of the structures on the site, only 1173 Washington Street has been previously reviewed by the Newton Historical Commission (NHC). Regarding that property, on August 8, 2017 found the structure “Preferably Preserved” and imposed an 18-month demolition delay that expires on January 27, 2020 (**Attachment E**).

2. Physical characteristics of the surrounding land

As referenced above, Washington Street and the Massachusetts Turnpike is south of the site and Cheesecake Brook is located along the northern boundary of the site and the West Newton Armory abuts the property to the east, as does an approx. 120 unit assisted living facility. The surrounding neighborhood is developed with a mix of commercial and residential uses, with the former predominating along Washington Street and latter to the north along Watertown Street. The residential properties are a mix of one-, two- and multi- family dwellings, including a six-unit dwelling directly to the north of the property across Cheesecake Brook.

3. Adequacy of access to the site and adequacy of parking arrangements

Vehicular access to the Project would be provided via the existing Washington Street, Dunstan Street and Kempton Place, as well as a new street, identified as “Brook Road” on submitted plans, which would be constructed along the project’s northern boundary, just south of, and parallel to, Cheesecake Brook, and link Dunstan Street and Kempton Place. Sidewalks would be provided along the streets around and within the project site, and 291 parking stalls would be located in two below surface parking garages.

The Transportation Impact and Access Study submitted by the applicant includes Site Access and Circulation and Site Parking analyses of the project. Based upon its initial review of this document, and given the size and scale of the project and range of zoning relief it requires, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review these aspects of the proposal so as to assist the ZBA in its review of the proposed project. The Project is also currently under review by City Transportation staff.

4. Adequacy of open areas

The applicant has submitted a Site and Landscape Plans prepared by VHB. Based upon its initial review of these documents, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review the adequacy of the extent and usefulness of the proposed open spaces and related aspects of the proposal so as to assist the ZBA in its review of the proposed project.

It should be noted, for example, that the project is directly abutted by Cheesecake Brook and the applicant is proposing a pathway along that waterway as well as several other open space areas distributed around the site.

C. Economic Need for Housing Units

1. General feasibility of the project

The Massachusetts Housing Finance Agency (MassHousing) has provided preliminary determination of project eligibility, dated October 28, 2019, that qualifies this proposal for comprehensive permit consideration (**Attachment F**) The preliminary determination is based, in part, on DHCD's analysis at that point in time and that the project is eligible under the NEF housing subsidy program. In addition, the preliminary determination indicated that the "Site is suitable for residential use and development and that such use would be compatible with surrounding uses."

2. Limitations imposed by the financing agency with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant limits

MassHousing's preliminary determination of Project Eligibility/Site Approval does not appear to impose any such limits on the proposed Project. It does state that its preliminary determination is limited to a project of no more than 243 units, no fewer than 61 of which must be affordable under applicable guidelines.

3. Changes in rents and units' sizes of the development which would be necessary to accommodate the requirements and regulations sought to be imposed

MassHousing's preliminary determination of Project Eligibility/Site Approval does not appear to impose any such requirement(s) regarding rents and unit sizes limits on the project. The determination does note that the proposed rents are within, but at the upper end, of the relevant ranges of adjusted comparable market rents, and that it is "unclear" whether the project will "be offering the completed range of amenities/services necessary to attract renters willing to pay at or above the existing range of comparable rents."

D. Landscaping, Lighting, and Fencing

As referenced above, the applicant has submitted Landscape plans prepared by VHB. Based upon its initial review of these documents, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review the proposed landscaping, lighting, and fencing and related aspects of the proposal so as to assist the ZBA in its review of the proposed project.

V. ADDITIONAL INFORMATION AND MATERIALS

The Planning Department notes that, based on its initial review of the applicant's submissions, additional material and documentation should be submitted by the applicant.

This additional material includes:

- a) the "Cover Page for Application for Comprehensive Permit" signed and certified by the applicant and/or the owner(s) of the subject property;
- b) a shadow study for the project;
- c) a photometric study/plan of the project;
- d) a three dimensional (3D) model of the project;
- e) a sign plan for the project;
- f) Indication of the location of proposed on-site loading facilities.

The Planning Department notes that based on its initial assessment of the project and the supporting submission materials, it is expected that as review of the proposal proceeds additional material and documentation might be required and requested of the applicant to facilitate the ZBA's review.

VI. CONCLUSION AND NEXT STEPS

The Planning Department will continue to review the proposal and as, where appropriate and authorized, coordinate reviews of the project by City agencies and consultant peer reviewers and provide updated and expanded memoranda in advance of future ZBA hearings.

ATTACHMENTS

- Attachment A:** Zoning Review Memorandum, dated December 19, 2019
- Attachment B:** Land Use Map
- Attachment C:** Zoning Map
- Attachment D:** Urban Design Commission Memorandum, dated January 16, 2020
- Attachment E:** Newton Historical Commission's Record of Action re 1173 Washington Street, dated August 8, 2017
- Attachment F:** Massachusetts Housing Finance Agency Determination of Project Eligibility/Site Approval, dated October 28, 2019
- Attachment G:** City of Newton Project Eligibility Comment Letter, dated September 6, 2019

EXHIBIT A

SUMMARY OF RELIEF AND WAIVERS REQUESTED

The Applicant requests that the Zoning Board of Appeals grant a comprehensive permit in lieu of the following special permits, variances, licenses, and/or approvals in accordance with the provisions of M.G.L. Chapter 40B §20 et seq. Ordinance references herein are to the Newton Revised Ordinances of 2017, as amended, of which Chapter 30 is the Zoning Ordinance.

ZONING ORDINANCE

- A. Use: The Applicant seeks a comprehensive permit in lieu of special permits, variances, and/or approvals to allow the property to be used for the Project, including without limitation:
1. Special Permit under Section 4.1.2.B to permit a development of over 20,000 square feet.
 2. Waiver of the requirements of Section 5.11 to conform the provisions for affordable housing to the terms of the application, if and to the extent necessary.
 3. Waiver of the procedural requirement of a model as provided in Section 7.3.1.B and for the obligation to provide plans prepared as provided in Section 7.4.3 in connection with the application for a special permit under Section 7.3.1.
 4. Special Permit under Section 4.4.1 for residential use at ground floor.
 5. Special Permit under Section 4.4.1 for parking facility, accessory, multi-level.
 6. Special Permit under Section 4.4.1 and Section 6.4.29 for restaurant having over 50 seats.
 7. Special Permit under Section 4.4.1 for fast food establishment.
 8. Special Permit under Section 4.4.1 for school or other educational purposes, for-profit.
 9. Special Permit under Section 4.4.1 for ATM, standalone.
 10. Waiver of the sustainable development design standards of Section 5.12
- B. Density and Dimensional Controls: The Applicant seeks a comprehensive permit in lieu of such special permits, variances, and/or approvals as may be required from or under Sections 4.1.2 and 4.1.3 for construction of the Project in the Business 2 District including without limitation:

1. Variances from the dimensional requirements of Section 4.1.2, 4.1.2.A.2, 4.1.2.B.3, and 4.1.3 as follows (**in bold**):

<u>Dimension</u>	<u>Required/Allowed</u>	<u>Provided</u>
Lot Area	10,000 sf minimum	138,142 sf
Lot Area Per Unit:	1,200 sf minimum	566 sf (244units)
Frontage:	N/A	373.3 ft
Front Setback:	5 ft minimum ¹	2.4 ft
Side Setback:	40.5 ft minimum ²	5.0 ft
Rear Setback:	40.5 ft minimum ²	64.7 ft
FAR:	2.0 maximum	2.59
Stories:	4 by special permit	7³
Building Height:	48 ft	81.10 ft⁴

C. Parking/Loading Requirements:

The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Section 5.1.13 to permit a parking facility in accordance with the submitted plans and to deviate from, *inter alia*, the following requirements under Section 5.1:

1. To the extent that Section 5.1.3.E prevents assignment of parking spaces to tenants, a waiver is sought from that provision.
2. Number of parking stalls under Section 5.1.4.A from 2 per unit to 1 per unit for multi-family dwelling.
3. Number of parking stalls under 5.1.4.A from 176 stalls to 47 parking stalls for the proposed retail, personal service, restaurant, health club, office, and similar commercial uses.

¹ Based on Average Setback as described in Section 1.5.3 and Section 4.1.3 of the Newton Zoning Ordinance.

² One-half of building height.

³ Based on definition of basement, story and average grade plane in the Newton Zoning Ordinance, Parking Level 1 is considered a story under the Newton Zoning Ordinance. Parking Level 1 will not be visible from Washington Street for Buildings 1, 2, or 3.

⁴ Based on definition of Building Height and Average Grade Plane per Section 1.5.4 of the Newton Zoning Ordinance. Actual Height measured relative to Washington Street is approximately 74 feet.

4. To the extent the plans provided do not comply, waiver from the obligation to provide an off-street parking or loading plan under Section 5.1.5.
 5. Under Section 5.1.7.A. to permit parking spaces to be within setback areas from a street and sidelines.
 6. Under Section 5.1.7.B.1 and B.2 to reduce the width and depth of parking stalls.
 7. Under Section 5.1.7.C to permit entrance and exit drives of over 20 feet.
 8. Under Section 5.1.8.A.1 to permit parking spaces to be within setback areas from a street and sidelines.
 9. Under Section 5.1.8.B.1 and B.2 to reduce the width and depth of parking stalls.
 10. Under Section 5.1.8.B.6 to reduce end aisle maneuvering space.
 11. Under Sections 5.1.8.C.1 and C.2 to reduce minimum maneuvering aisle dimensions.
 12. Under Section 5.1.12.B for a plan for loading requirements.
 13. Under Section 5.1.12.C to reduce the number of off-street loading facilities for Buildings 1 and 2 to 0.
 14. Under Section 5.1.3.B to waive the application of the A-B+C parking formula.
 15. Under Section 5.1.12.D.3 a waiver is sought in lieu of any consent of the City Engineer as to drainage of the parking facility.
 16. To the extent necessary, a waiver of the requirement that the building(s) will contribute significantly to the efficient use and conservation of natural resources under Section 7.3.3.C.5.
 17. Any other relief which may be necessary or appropriate and may be granted by the City Council under Section 5.1.13 in order to conform the waivers sought to the plan submitted.
- D. Signage: The Applicant seeks a waiver of the requirements for the number, size, location, and types of signs of Section 5.2, the sign permit procedures under Section 5.2.4, and, insofar as applicable, any hearing or procedure before the Urban Design and Beautification Commission.

- E. Retaining Wall. To the extent applicable, the Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Section 5.4.2.B to permit a retaining wall of up to 5 feet within a setback for the existing channel wall on the bank of Cheesecake Brook.
- F. Site Plan Approval: The Applicant requests a comprehensive permit in lieu of site plan approval required under Section 7.4 in connection with special permits granted under Section 7.3.

NON-ZONING ORDINANCES

- G. Consent of the Planning Board

To the extent any consent or review of the Planning Board is required under the Planning Board rules, including for the definitive subdivision of land, an ANR plan, the construction of ways, and the installation of municipal services therein, a comprehensive permit in lieu of such approval is sought.

- H. Curb Cut Permit (Chapter 26)

The Applicant requests a comprehensive permit in lieu of any sidewalk crossing permits or consent of the Commissioner of Public Works to the extent necessary to comply with the requirements of Revised Ordinances §26-65.

- I. Utility Connection Permits (Chapters 23, 26, and 29)

The Applicant seeks a comprehensive permit in lieu of such local approvals as are required under Chapters 23, 26, and 29 of the Revised Ordinances or otherwise to (i) open streets, (ii) make utility connections for water, sewer, stormwater, gas, electric, cable, or other utilities or (iii) cross sidewalks from time to time.

- J. Floodplain, Watershed Protection Ordinance (Chapter 22)

A portion of the property is located within the City of Newton Floodplain/Watershed Protection District governed by § 22-22 et seq. To the extent that any relief is necessary for the project from the Conservation Commission under the Floodplain/Watershed Protection Ordinance, the Applicant seeks a comprehensive permit in lieu of such approvals.

- K. Outdoor Lighting (Chapter 20)

§20-23 through §20-28 provide limitations on certain light sources which do not conform to the stated criteria. §20-26 provides for a waiver from the Planning and Development Board. To the extent that any light source does not conform to the requirements of these sections, the Applicant seeks a comprehensive permit in lieu of any waiver under §20-26.

- L. Fences (Chapter 5)

To the extent needed, the Applicant seeks a comprehensive permit in lieu of obtaining a fence permit from the Commissioner of Inspectional Services under §5-30.

M. Demolition Delay (Chapter 22)

§22-50 provides for a review by the Newton Historical Commission and the possible imposition of a demolition delay for demolition of historically significant buildings. To the extent any elements of the property are deemed to fall within the jurisdiction of the Newton Historical Commission under §22-50 and such elements will be demolished, the Applicant seeks a comprehensive permit in lieu of demolition review or a determination that such structures are preferably preserved.

N. Public Tree Ordinance (Chapter 21 and M.G.L. c. 87)

§21-72, §§21-80 through 21-90, and M.G.L. c. 87 require a permit and payment of fees for the removal of certain trees, and in some instances, a contribution to the tree replacement fund. To the extent that any permit, fee payment, or contribution would otherwise be required under §21-72, §§21-80 through 21-90, or M.G.L. c. 87, the Applicant requests a comprehensive permit in lieu of such permit, fee payment, or contribution.

O. Amended Relief

The Applicant seeks a comprehensive permit for such amendments to the relief sought herein as may be required to conform the relief sought to the plans as filed or to any amendments thereof filed in connection with the actions of the Zoning Board of Appeals or the Housing Appeals Committee.

P. Additional Relief

The Applicant seeks a comprehensive permit in lieu of all other permits, licenses, or approvals as may be issued by the City of Newton as necessary to conform the relief sought to the plans filed with the application, as the same may be amended from time to time. Included within the relief sought are all ancillary, subsidiary, usual, customary, or necessary local permits, variances, licenses, or approvals in lieu of which the Board may grant a Comprehensive Permit to the extent necessary to conform to the relief required for construction of the plans submitted herewith, as amended from time to time.

ATTACHMENT A



Ruthanne Fuller
Mayor

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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: December 19, 2019

To: John Lojek, Commissioner of Inspectional Services

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

Cc: Mark Development
Stephen Buchbinder, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: **Request for a Comprehensive Permit to construct a mixed-use development with 244 residential units, 20,363 square feet of commercial space and 288 on-site parking stalls**

Petitioner: Mark Development	
Site: 1149-1151, 1169, 1171-1173, 1179 & 1185 Washington Street; 12, 18, 24 & 25 Kempton Place; 32 & 34 Dunstan Street	SBL: 31007 0028, 31007 0028A, 31007 0030, 31007 0032, 31007 0033, 31007 0035, 31007 0036, 31007 0037, 31007 0038, 31007 0040, 31007 0041, 31007 0042
Zoning: BU2	Lot Area: 138,142 square feet
Current use: Mixed office, retail and residential	Proposed use: No change

BACKGROUND:

A Comprehensive Permit under MGL Chapter 40B is requested for the project known as "Dunstan East" which consists of eleven lots to be combined into one parcel bordered by Dunstan Street to the west and the Armory to the east. The existing lots are currently improved with a mix of uses including office, retail and residential units. The petitioner intends to raze all of the existing structures and construct a 420,364 square foot mixed use development consisting of three buildings (two will share a two-level underground garage) with 244 residential units, 20,363 square feet of commercial space and 291 parking stalls.

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

- Comprehensive Permit Application, prepared by Stephen J. Buchbinder, attorney, dated 8/21/2019, revised 11/25/2019
- Schedule A Property Location Information, submitted 8/21/2019
- West Newton-Residential Development, Zoning Plan, prepared by VHB, dated 7/29/2019 revised 11/25/2019
- Site Plan Levels P2, P1, 1, 2, 3, 4, 5 & 6, prepared by Elkus Manfredi, architects, dated 7/22/2019, revised 11/25/2019
- Elevations, submitted 8/21/2019

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to construct a 420,364 square foot mixed use development with 244 residential units, 12,141 square feet of retail space, 8,222 square feet of office and 291 garaged parking stalls on the newly created lot. Per section 4.1.2.B, a special permit is required for any development in the business district of 20,000 square feet or more of new gross floor area. The petitioner seeks relief from the special permit requirements through a Comprehensive Permit.
2. Section 4.1.2.A.2 requires 1,200 square feet of lot area per each dwelling unit in the Business 2 zoning district. The petitioner proposes to construct 244 dwelling units, producing a lot area per unit of 566 square feet. The petitioner requires a Comprehensive Permit in lieu of a variance for relief from the lot area per unit requirements of section 4.1.2.A.2.
3. Buildings 1 and 2 are proposed with seven stories. Building 3 is proposed with six stories. Per sections 4.1.2.B.3 and 4.1.3, the maximum number of stories allowed in the Business 2 district is two by right, and four by special permit. The petitioner's requested seven stories in Buildings 1 and 2, and six stories in Building 3 require relief from the maximum number of stories for both lots through a Comprehensive Permit in lieu of a variance.
4. The required front setback is taken by averaging the adjacent lots, producing a requirement of 5 feet per sections 4.1.3 and 1.5.3. The petitioner proposes a front setback of 2.8 feet from Washington Street for Building 1 and 3.2 feet for Building 2, requiring relief through the Comprehensive Permit in lieu of a variance. The existing office building at 1149-1151 Washington Street is situated at 8.15 feet from the front lot line and will remain unchanged.
5. Per section 4.1.3, the side setback requirement is one-half the Building height or equal to the abutting side yard setback. The adjacent parcel is vacant. Building 3 is proposed at 68.2 feet in height, creating a required side yard setback minimum of 34.1 feet. The building is proposed at 5 feet from the side lot line, requiring relief from section 4.1.3 through the Comprehensive Permit.
6. The maximum height allowed in the Business 2 district is 48 feet per section 4.1.3. The proposed height of Buildings 1 and 2 is 80.7 feet, and the proposed height of Building 3 is 68.2 feet. To exceed 48 feet requires relief from section 4.1.3 through the Comprehensive Permit in lieu of a variance.
7. The maximum FAR allowed per section 4.1.3 is 2.00 for a building with four stories in the BU2 zoning district. The petitioner proposes an FAR of 2.59 for the three new buildings and the existing office

building at 1149 Washington Street. To exceed the allowable FAR of 2.00 requires relief from section 4.1.3 through the Comprehensive Permit in lieu of a variance.

8. Section 4.4.1 requires a special permit for residential uses on the ground floor. The petitioner proposes residential units on the ground floor, requiring relief through the Comprehensive Permit in lieu of a special permit.
9. Per section 4.4.1, a special permit is required to allow a multi-level accessory parking facility. The petitioner proposes to construct multi-level accessory parking facilities under Buildings 1 and 2, requiring relief through the Comprehensive Permit in lieu of a special permit.
10. Section 4.4.1 requires a special permit to allow for fast food establishments. The petitioner requests relief through the Comprehensive Permit to allow for fast food establishments in lieu of a special permit.
11. Per sections 4.4.1 and 6.4.29, a special permit is required to allow restaurants with more than 50 seats. The petitioner requests relief through the Comprehensive Permit to allow for restaurants with more than 50 seats in lieu of a special permit.
12. Per section 4.4.1 a special permit is required for a school or other educational purpose. The petitioner requests relief through the Comprehensive Permit to allow for a for-profit school and other for-profit educational uses in lieu of a special permit.
13. Per section 4.4.1 a special permit is required for a stand-alone ATM. The petitioner requests relief through the Comprehensive Permit to allow for stand-alone ATMs in lieu of a special permit.
14. Per section 5.1.3.B, whenever there is an extension of gross floor area or change of use which increases the parking requirements, the parking is to be complied with per the formula found in this section of A-B+C to equal the number of stalls required, where “A” is the proposed number of parking stalls required, “B” is the number of stalls currently required and “C” is the number of stalls that physically exist. The petitioner seeks a Comprehensive Permit in lieu of a special permit to waive this requirement.
15. Section 5.1.3.E requires a special permit to allow for assigned parking stalls. To the extent that parking stalls will be assigned to individual unit owners, a waiver through the Comprehensive Permit is required in lieu of a special permit.
16. The petitioner proposes to construct 281 parking stalls, with 254 located on two garage levels in Buildings 1 and 2, and an additional 32 located in Building 3. The stalls will be available for use between the two buildings. The existing office building at 1149 Washington Street will maintain 5 parking stalls after construction, creating a total of 291 parking stalls for the site. There are 244 residential units proposed, as well as 20,363 square feet of commercial space. While no commercial tenants have been confirmed, based on the available information included in the application, the following parking calculation is presumed per the requirements found in section 5.4.1:

Use	Parking Regulation	Parking Required
244 Residential units	2 stall per unit	488 stalls
Restaurant 295 seats 23 employees	1 stall per 3 seats 1 stall per 3 employees	107 stalls
Retail 4,106 square feet 10 employees	1 stall per 300 square feet 1 stall per 3 employees	18 stalls
Health Club 2,150 square feet 9 employees	1 stall per 150 square feet 1 stall per 3 employees	18 stalls
Office Use (Existing at 1149-1151 Washington St) 8,222 square feet	1 stall per 250 square feet	33 stalls
TOTAL		662 stalls

With a proposed parking requirement of 662 stalls, a waiver of 371 parking stalls is required through the Comprehensive Permit in lieu of a special permit.

17. Section 5.1.5 requires that parking facilities with more than five stalls and any loading facility provide to the Commissioner of Inspectional Services an off-street parking and loading plan for review. The petitioner seeks to waive the provisions of this section through the Comprehensive Permit in lieu of a special permit.
18. Section 5.1.8.A.1 requires that no parking locate within a required setback from a front or side lot line. The reconfigured parking behind the existing building at 1149-1151 Washington Street is within five feet of the side lot line, where 40.5 feet is the required side setback, requiring a Comprehensive Permit in lieu of a special permit.
19. Per section 5.1.8.B, parking stalls must be 9 feet wide and must be at least 19 feet in depth for all angle parking and 21 feet for parallel parking. All angle stalls are proposed at 18 feet in depth, and five parallel stalls are proposed at 18 feet, requiring a waiver through the Comprehensive Permit in lieu of a special permit.
20. Section 5.1.8.B.6 requires that end stalls restricted on one or both sides by curbs, walls, fences or other obstructions must have a maneuvering space at the aisle end of at least 5 feet in depth and 9 feet in width. The petitioner requests a Comprehensive Permit in lieu of a special permit to waive this requirement.
21. Sections 5.1.8.C.1 and 2 require that 90-degree parking stalls in two-way traffic have a minimum maneuvering aisle width of 24 feet. The petitioner proposes 22-foot wide aisles in the parking under Buildings 1 and 2, special permit relief through the Comprehensive Permit.
22. To the extent that the existing parking facility behind 1049-1051 Washington Street is altered out of compliance, or that the proposed reconfigured parking does not meet the any of the requirements of

section 5.1, the special permit relief allowed by section 5.1.13 is requested through the Comprehensive Permit.

23. Section 5.1.12.B.1 requires that a development provide a plan for off-street loading facilities prior to approval of a building permit application. The petitioner seeks a Comprehensive Permit to waive this provision in lieu of a special permit.
24. Section 5.1.12.C provides the off-street loading facility requirements. Per this table, one bay is required for the 12,521 square feet of commercial space, where the petitioner proposes to provide none. A Comprehensive Permit is requested to waive this provision in lieu of a special permit.
25. The petitioner seeks a waiver of sign permit procedures and dimensional requirements under section 5.2 through the exceptions provided in special permit provisions of section 5.2.13 through the Comprehensive Permit.
26. Section 5.4.2 requires a special permit for a retaining wall in excess of 4 feet in height within a setback. The petitioner requests a Comprehensive Permit in lieu of the special permit for a wall of up to 5 feet in height within a setback for the existing channel wall on the bank of Cheese Cake Brook.
27. Section 5.11 of the Zoning Ordinance provides requirements for providing affordable units for private residential developments. To the extent that Section 5.11 of the Zoning Ordinance is applicable to the project, a comprehensive permit is requested in lieu of a variance or cash payment under Section 5.11 to conform to the affordability elements of the proposed development to the requirements of the Zoning Ordinance.
28. Section 5.12 requires that any development in excess of 20,000 square feet must meet green building standards. To the extent necessary, the petitioner seeks a Comprehensive Permit in lieu of a special permit waiving this requirement.
29. The Petitioner seeks a waiver from the site plan approval requirements of Section 7.4 in connection with special permits granted under Section 7.3.
30. Section 7.3.1.B requires that a petitioner submit a 3D computer-generated model of a proposed multi-family project with more than 20,000 square feet. The petitioner requests a waiver from this provision through the Comprehensive Permit.
31. Revised Ordinances Sections 20-23 to 20-28 provide limitations on installation of light sources which do not conform to the criteria of the Ordinances. Section 20-26 provides for waivers to be granted by the Planning Board to the extent that any light source does not conform to the requirements of Section 20-24. To the extent that any light source may not conform to these requirements, or that these requirements may be inconsistent with Section 5.1.10.A, the Petitioner seeks a waiver.
32. To the extent necessary, the petitioner seeks a Comprehensive Permit in lieu of meeting the provisions of section 5-30, Article III pertaining to fences.

33. To the extent that any consent or review by the Planning Board is required under Planning Board rules, or that the submission of an Approval Not Required plan is needed, a waiver is requested through the Comprehensive Permit.
34. The Petitioner seeks a permit to cross the sidewalk under the provisions of Section 26-65 Construction of Sidewalks, Driveways and Driveway Entrances.
35. The petitioner seeks a Comprehensive Permit in lieu of such local approvals as are required under Chapters 23, 26 and 29 or otherwise to open streets, make utility connections for water, sewer, stormwater, gas, electric, cable, or other utilities or to cross sidewalks from time to time.
36. The rear portion of the property is located within the City of Newton Floodplain/Watershed Protection District governed by section 22-22 in its entirety. To the extent that any relief is necessary for the project from the Conservation Commission under the Floodplain/Watershed Protection Ordinance, the petitioner seeks a Comprehensive Permit in lieu of such approvals.
37. The Applicant seeks a waiver from the provisions of the Tree Preservation Ordinance, sections 21-81 through -89, as amended by Ordinance No. A-38 (#397-13), to allow removal of protected trees from the property without relocation or replacement, or payment to the tree replacement fund. To the extent that any permit or fee payment would otherwise be required under the Revised Ordinances section 21-80, the Applicant seeks a waiver.
38. Revised Ordinances Section 22-50 requires review by the Newton Historic Commission and the possible imposition of a demolition delay for the demolition of historically significant buildings. To the extent that the existing dwellings or other elements of the property are deemed historically significant and fall under the jurisdiction of the Newton Historic Commission under Section 22-50, the Applicant seeks a waiver under the Comprehensive Permit.
39. The petitioner seeks a Comprehensive Permit for such amendments to the relief sought herein as may be required to conform to the relief sought to the plans as filed or to any amendments filed in connection with the actions of the Zoning Board of Appeals or the Housing Appeals Committee.
40. The Petitioner seeks any relief from local rules and regulations, and any additional required local approvals as may be necessary for approval for the Comprehensive Permit plans as may be amended prior to the termination of the public hearing.

Zone BU2	Required	Existing	Proposed
Lot Size	10,000 square feet	138,142 square feet	No change
Lot area per unit	1,200 square feet	840 square feet	566 square feet
Frontage			373.3 feet
Setbacks <ul style="list-style-type: none"> • Front • Side • Rear 	5 feet 40.5 feet (½ building height) 40.5 feet (½ building height)		2.4 feet 5 feet 64.7 feet
Building Height	24 feet/48 feet by SP		81.10 feet
Max number of stories	2/ 4 by SP		7
Parking stalls	662		291

41. See “Zoning Relief Summary” below:

Zoning Relief Required		
Ordinance		Action Required
§4.1.2.B	To allow for a development with more than 20,000 square feet	C.P. per MGL c 40B
§4.1.2.A.2 §7.6	Waive required minimum lot area per unit	C.P. per MGL c 40B
§4.1.2.B.3 §4.1.3 §7.6	Waive maximum stories to allow 7 stories	C.P. per MGL c 40B
§4.1.3 §1.5.3 §7.6	Waive minimum front setback	C.P. per MGL c 40B
§4.1.3 §7.6	Waive minimum side setback	C.P. per MGL c 40B
§4.1.3 §7.6	Waive maximum height	C.P. per MGL c 40B
§4.1.3 §7.6	Waive maximum FAR	C.P. per MGL c 40B
§4.4.1 §7.3	To allow ground floor residential uses	C.P. per MGL c 40B
§4.4.1 §6.4.29 §7.3	To allow multi-level parking facilities, fast-food establishments, restaurants with more than 50 seats, for profit schools and stand-alone ATMs	C.P. per MGL c 40B
§5.4.2.B §7.3	To allow a retaining wall in excess of 4 feet in a setback	C.P. per MGL c 40B

§5.1.3.B §5.1.13 §7.3	Waive requirement to apply the A-B+C parking formula	C.P. per MGL c 40B
§5.1.3.E §5.1.13 §7.3	To allow assigned parking	C.P. per MGL c 40B
§5.1.4.A §5.1.13 §7.3	To allow a waiver of 371 parking stalls	C.P. per MGL c 40B
§5.1.5 §5.1.13 §7.3	Waive the requirement to provide an off-street parking and loading plan	C.P. per MGL c 40B
§5.1.8.A.1 §5.1.13 §7.3	To allow parking in the side setback	C.P. per MGL c 40B
§5.1.8.B §5.1.13 §7.3	Waive minimum parking stall dimensions	C.P. per MGL c 40B
§5.1.8.B.6 §5.1.13 §7.3	To allow restricted end stalls	C.P. per MGL c 40B
§5.1.8.C.1 and 2 §5.1.13 §7.3	Waive minimum maneuvering aisle dimensions	C.P. per MGL c 40B
§5.1.12.B.1 §5.1.13 §7.3	Waive off-street loading plan requirements	C.P. per MGL c 40B
§5.1.12.C §5.1.13 §7.3	Waive the number of off-street loading bays	C.P. per MGL c 40B
§5.2 §5.2.13 §7.3	Waive all sign regulations and procedures	C.P. per MGL c 40B
§5.4 §7.3	To allow a retaining wall in excess of 4 feet within a setback	C.P. per MGL c 40B
§5.11 §7.6	Waive the Inclusionary Zoning requirements	C.P. per MGL c 40B
§5.12 §7.6	Waive the sustainable development design standards	C.P. per MGL c 40B
§7.4 §7.3	Waive site plan approval procedures	C.P. per MGL c 40B
§7.3.1.B §7.6	Waive the requirement for submission of a 3-D computer generated model	C.P. per MGL c 40B
§20-23	Waive Light Trespass provisions	C.P. per MGL c 40B

§20-28		
§5-30, Article III	Waive Fence Ordinance provisions	C.P. per MGL c 40B
	Waive requirement for review by and submission of an ANR plan to the Planning Board	C.P. per MGL c 40B
§26-65	Permit to cross the sidewalk and connect to the street	C.P. per MGL c 40B
§29, Article II	Permit to connect to public water supply	C.P. per MGL c 40B
§29, Article III	Sewer connection permit	C.P. per MGL c 40B
§29, Article IV	Storm drain connection permit	C.P. per MGL c 40B
§22-22	Waive relief from Conservation Commission under the Floodplain/Watershed Protection Ordinance	C.P. per MGL c 40B
§21-81 through 89 §21-80	Waive Tree Preservation Ordinance	C.P. per MGL c 40B
§22-50	Waive review and demolition delay by Newton Historical Commission	C.P. per MGL c 40B

ATTACHMENT B

Land Use

"Dunstan East"

City of Newton,
Massachusetts

Land Use

Land Use

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

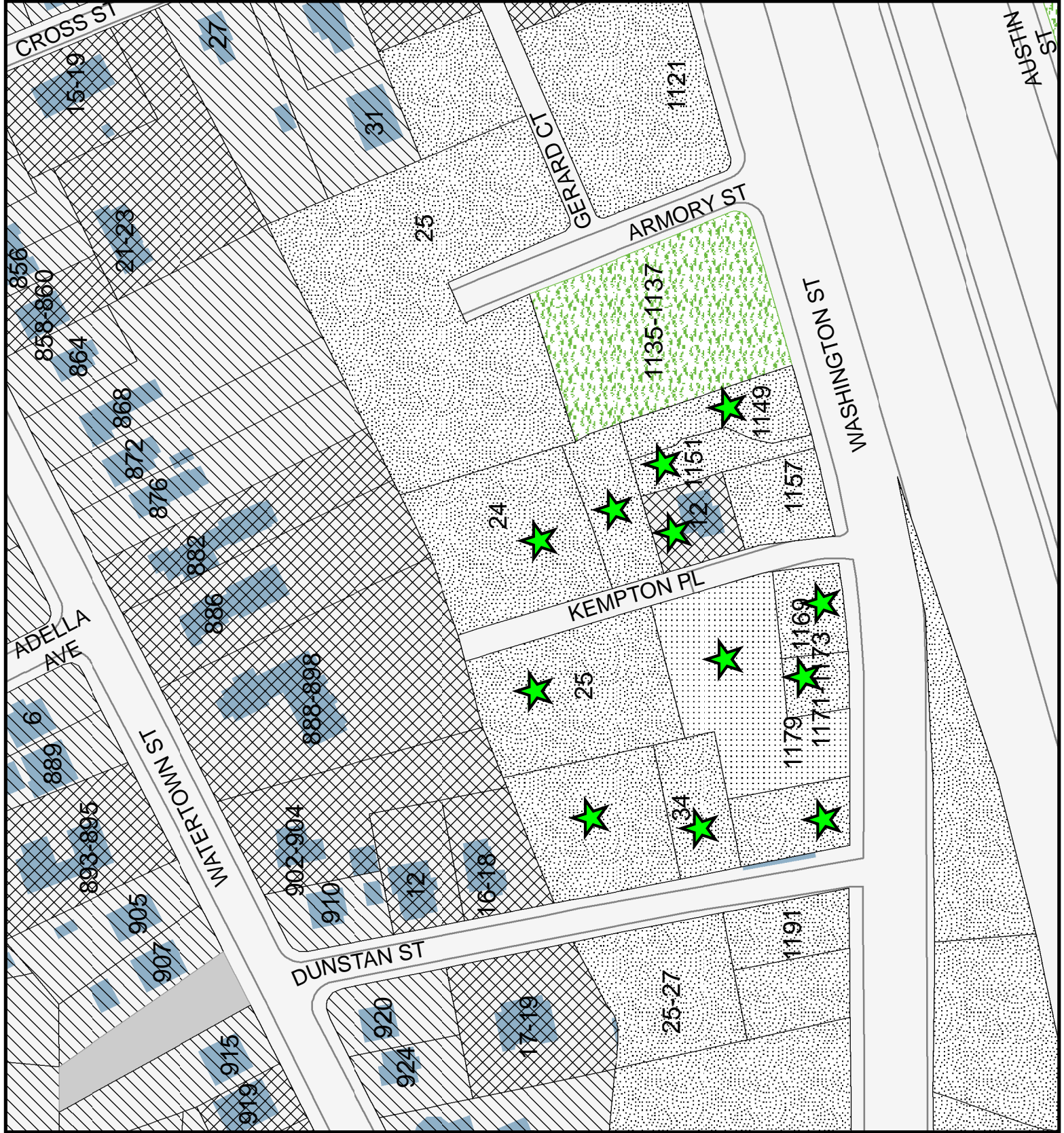


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 150 175 Feet

Map Date: January 15, 2020



ATTACHMENT C

Zoning

"Dunstan East"

City of Newton,
Massachusetts

Legend

- Single Residence 2
- Single Residence 3
- Multi-Residence 1
- Business 1
- Business 2



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CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield

0 12.5 25 50 75 100 125 150 175
feet

Map Date: January 15, 2020





Ruthanne Fuller
Mayor

ATTACHMENT D

City of Newton, Massachusetts
Department of Planning and Development
Urban Design Commission

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney Heath
Director

DATE: January 16, 2020
TO: Zoning Board of Appeals
FROM: Urban Design Commission
RE: Dunstan East - 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 32-34 Dunstan Street, 12, 18, 24, and 25 Kempton Place
CC: Jennifer Caira, Deputy Director
Michael Gleba, Senior Planner
Petitioner

Section 22-80 of the Newton City Ordinances authorizes the Urban Design Commission to act in an advisory capacity on matters of urban design and beautification.

At their regular meeting on December 11, 2019, the Newton Urban Design Commission reviewed the proposed Dunstan East project at 1149, 1151, 1169, 1171-1173, and 1185 Washington Street, 32-34 Dunstan Street, 12, 18, 24, AND 25 Kempton Place. The Urban Design Commission had the following recommendations:

1. The UDC commented that the applicant has done a lot of great things with a tough/sloping site.
2. The UDC commented that Washington Street has been addressed very well in the proposal but the height and bulk along both side streets is overwhelming (which will set a precedent for adjoining properties). The UDC commented that building elevations along Washington Street are very strong. The UDC recommended to have more variation in building elevations on side streets as well, maybe step down the buildings along side streets.
3. The UDC was concerned about building 2, it is a very large, long building. The UDC recommended to break building 2 into 2 buildings. There will be a lot of walking required (from the elevator to the last units in the building). The UDC recommended that an option is to have 2 elevator lobbies (one elevator in each building) so there is less walking required to go to the units. The corridors are very long and have no natural light.
4. Some of the UDC members commented that the buildings are too long and tall, they need reduction/ variation in height and breaks in building. The buildings as they face Dunstan Street and Kempton Place are too big. There are 7 levels of construction (including the parking levels) facing Cheesecake Brook and the side streets.

5. The UDC commented that the parking is driving a lot of form, two levels of parking is the challenge point in this project. There's a lot of parking that is required for the project. The UDC asked the applicant if parking can be reduced.
6. It will be very helpful to see the street sections for all the streets. It's difficult to understand the relationship between the buildings and the street without a street section. Massing and three-dimensional sketches will be very helpful to see in order to understand the bulk and massing of the project.
7. The UDC commented about comparing this plan with the Washington Place since it is already built, especially to compare three-dimensional, bulk and massing of both the projects. The UDC requested plan comparison drawings from the developer.
8. The UDC also recommended to setback the buildings to create some more open/green space in front of the stores to encourage walking. The applicant mentioned that the sidewalks are planned to be 15 feet wide which will encourage walking.
9. There was concern about so much retail, the retail stores in West Newton Square are already struggling. Dunstan East is separate from West Newton Square and retail in Dunstan East lacks a connection to West Newton Square. In the near future, retail will be on shaky grounds, especially in locations where it is isolated from Village Centers. The UDC recommends considering other uses along Washington Street, like non-retail uses, temporary-retail concepts, and/or civic uses.
10. The UDC recommended to have residential lobby along Washington Street (maybe building 1 lobby could be along Washington Street). There was also discussion about drop-off areas close to the residential lobby and have live parking close to that.
11. The UDC commented that the use of flats type units facing the brook is good (vs. blank wall hiding parking).
12. There was discussion about the landscape amenity space between building 3 and Cheesecake Brook. The UDC had questions about how that space will be used. The applicant mentioned that it will be used for compensatory flood storage area, it is a very sustainable stormwater management technique. The applicant may use this area to teach about how to manage stormwater. It's an opportunity to bring school children to teach and have signage to inform/teach the community about stormwater management.
13. The UDC would like to review the project further.



Setti D. Warren
Mayor

ATTACHMENT E

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

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(617) 796-1120
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(617) 796-1142
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(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

Newton Historical Commission Demolition Review Decision

Date: 8/8/17 Zoning & Dev. Review Project# _____

Address of structure: 1171-1173 Washington Street

Type of building : Commercial

If partial demolition, feature to be demolished is _____

The building or structure:

is _____ is not x in a National Register or local historic district not visible from a public way.

Is X is not _____ on the National Register or eligible for listing.

is X is not _____ importantly associated with historic person(s), events, or architectural or social history

is X is not _____ historically or architecturally important for period, style, architect, builder, or context.

is _____ is not x located within 150 feet of a historic district and contextually similar.

is _____ **NOT HISTORICALLY SIGNIFICANT** as defined by the Newton Demolition Delay Ordinance.

Demolition is not delayed and no further review is required.

is X **HISTORICALLY SIGNIFICANT** as defined by the Newton Demolition Delay Ordinance (See below).

The Newton Historical Commission staff:

_____ **APPROVES** the proposed project based upon materials submitted see below for conditions (if any).

Demolition is not delayed, further staff review may be required.

X **DOES NOT APPROVE** and the project requires
Newton Historical Commission review (See below).

The Newton Historical Commission finds the building or structure:

is _____ **NOT PREFERABLY PRESERVED**

Demolition is not delayed and no further review is required.

is X **PREFERABLY PRESERVED -- (SEE BELOW).**

Delay of Demolition:

X Is in effect until 1/27/2019

_____ has been waived - see attached for conditions

Determination made by:

Please Note: if demolition does not occur within two years of the date of expiration of the demolition delay, the demolition will require a resubmittal to the Historical Commission for review and may result in another demolition delay.



Setti D. Warren
Mayor

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Barney S. Heath
Director

RECORD OF ACTION:

DATE: August 8, 2017

SUBJECT: 1171-1173 Washington Street, NR

At a scheduled meeting and public hearing on July 27, 2017, the Newton Historical Commission, by a vote 5-0:

RESOLVED to find this building preferably preserved for architectural integrity and impose an 18-month delay.

Voting in the Affirmative: Voting in the Negative: Abstained:

Nancy Grissom, Chairman
Mark Armstrong, Member
John Sisson, Member
Peter Dimond, Member
Laura Fitzmaurice, Member

Title Reference:

Owner of Property:

Christine M. White Cunningham

Deed recorded at:

Middlesex (South) Registry of Deeds

Book 21438, Page 326

Date 9/1/1991

Katy Max Holmes
Katy Max Holmes, Staff



ATTACHMENT F

Massachusetts Housing Finance Agency
One Beacon Street, Boston, MA 02108

TEL: 617.854.1000
FAX: 617.854.1091 | www.masshousing.com

Videophone: 857.366.4157 or Relay: 711

October 28, 2019

Dunstan East, LLC
57 River Street, Suite 106
Newton, MA 02481
Attention: Damien Chaviano

**RE: Dunstan East
Project Eligibility/Site Approval
MH ID No. 1043**

Dear Mr. Chaviano:

This letter is in response to your application as “Applicant” for a determination of Project Eligibility (Site Approval) pursuant to Massachusetts General Laws Chapter 40B (“Chapter 40B”), 760 CMR 56.00 (the “Regulations”) and the Comprehensive Permit Guidelines issued by the Department of Housing and Community Development (“DHCD”) (the “Guidelines” and, collectively with Chapter 40B and the Regulations, the “Comprehensive Permit Rules”), under the New England Fund (“NEF”) Program (“the Program”) of the Federal Home Loan Bank of Boston (“FHLBank Boston”).

Dunstan East, LLC has submitted an application with MassHousing pursuant to Chapter 40B. You have proposed to build 243 units of rental housing (the “Project”) on approximately 2.98 acres of land located on Washington Street, Dunstan Street, and Kempton Place (the “Site”) in Newton (the “Municipality”).

In accordance with the Comprehensive Permit Rules, this letter is intended to be a written determination of Project Eligibility (“Site Approval”) by MassHousing acting as Subsidizing Agency under the Guidelines, including Part V thereof, “Housing Programs In Which Funding Is Provided By Other Than A State Agency.”

MassHousing has performed an on-site inspection of the Site, which local boards and officials were invited to attend, and has reviewed the pertinent information for the Project submitted by the Applicant, the Municipality and others in accordance with the Comprehensive Permit Rules.

Municipal Comments

The Municipality was given a thirty (30) day period in which to review the Site Approval application and submit comments to MassHousing. Newton’s Department of Planning and

Development submitted a letter regarding the Application dated September 6, 2019. The letter expressed support for the Project and summarized comments from municipal staff and officials.

In summary, the Municipality acknowledged that the need for affordable housing in Newton is vast and that the proposed Project aligns with many of the objectives of Newton's housing and planning initiatives, such as the Newton Leads 2040 Housing Strategy and Draft Washington Street Vision Plan. The Municipality looks forward to continuing to review and refine the Project with the Applicant within the context of a Comprehensive Permit public hearing process, particularly in connection with the following areas of concern:

- The Municipality expressed concerns regarding potential light and noise impacts on abutting properties and requests that a detailed lighting plan and information relative to HVAC equipment, its locations, and measures taken to minimize noise heard by residential abutters be provided as part of their Comprehensive Permit application.
- The Municipality expressed concerns regarding potential impacts of Project construction and requests that a construction management plan be prepared to provide additional information regarding strategies for mitigation.
- The Municipality would like more information relative to traffic impacts, parking needs, infrastructure improvements, loading, and circulation within the Site and requests that the Applicant submit a traffic study, parking analysis, and transportation demand management plan as part of their Comprehensive Permit application. The Municipality noted support for minimizing parking to the extent feasible and incentivizing alternative modes of transportation.
- The Municipality would like more information in connection with the Site's proximity to Cheesecake Brook. In particular, the Municipality requests further details on the scope of landscaping along Cheesecake Brook, stormwater management on the Site, the width of the newly proposed Brook Road, and its level of salt use during winter events.

Community Comments

In addition to the comments from town staff and officials, MassHousing received seventeen (17) letters from area residents. Twelve of these letters expressed support for the proposed Project, stating that it directly responds to the region's need for more diverse and affordable housing options, and that it aligns closely with the Washington Street vision. The remaining 5 letters expressed concerns relative to the impacts of new massing and density on the Site, the feasibility of the proposed ground floor retail, and echoed Municipal concerns relative to construction, environmental, traffic, and noise and light impacts.

Comments Outside of the Findings

While Comprehensive Permit Rules require MassHousing, acting as Subsidizing Agency under the Guidelines, to "accept written comments from Local Boards and other interested parties" and to "consider any such comments prior to issuing a determination of Project Eligibility," they also limit MassHousing to specific findings outlined in 760 CMR 56.04(1) and (4). The following comments submitted to MassHousing identified issues that are beyond the scope of our review:

- The Municipality encourages the Applicant to consider incorporating deeper levels of affordability than minimum standards set forth in the Guidelines. In particular, the Municipality suggested a need for units set at or below 50% AMI and 65% AMI, in addition to the 80% AMI units.

MassHousing Determination and Recommendations

MassHousing staff has determined that the Project appears generally eligible under the requirements of the Program, subject to final review of eligibility and to Final Approval under the Comprehensive Permit Rules. As a result of our review, we have made the findings as required pursuant to 760 CMR 56.04(1) and (4). Each such finding, with supporting reasoning, is set forth in further detail on Attachment 1 hereto. It is important to note that Comprehensive Permit Rules limit MassHousing to these specific findings in order to determine Project Eligibility. If, as here, MassHousing issues a determination of Project Eligibility, the Developer may apply to the Zoning Board of Appeals of the Municipality for a Comprehensive Permit. At that time, local boards, officials and members of the public are provided the opportunity to further review the Project to ensure compliance with applicable state and local standards and regulations.

Based on MassHousing's consideration of comments received from the Municipality, and its site and design review, the following issues should be addressed in your application to the ZBA for a Comprehensive Permit and fully explored in the public hearing process prior to submission of your application for final approval under the Program:

- Development of this Site will require compliance with all state and federal environmental laws, regulations and standards applicable to existing conditions and to the proposed use related to building construction, stormwater management, wastewater collection and treatment, and hazardous waste safety. The Applicant should expect that the Municipality will require evidence of such compliance prior to the issuance of a building permit for the Project.
- The Applicant should be prepared to provide sufficient data to assess potential traffic impacts and parking needs and respond to reasonable requests for mitigation. In particular, traffic patterns should be reviewed for the Site access and egress, particularly during peak travel times; the provision of space for bike storage, car-sharing, and electric vehicle charging stations is encouraged; and consideration should be given to providing bus shelters as well as bike lanes to allow safe access to nearby transportation nodes.
- The Applicant should be prepared to provide detail information relative to light, noise, and construction impacts and respond to reasonable requests for mitigation.
- As the Applicant and its design team move towards refining the project's open space plan, in addition to creating spaces for passive recreation, they are encouraged to incorporate opportunities for active recreation, such as play structures for children.
- The Applicant should continue to work with its design team to pursue sustainability initiatives that may improve occupant comfort and reduce operating expenses.

- The affordability component of the Project must conform to the requirements outlined in the 40B Guidelines and to those of the NEF Program of the FHLBank Boston, administered by MassHousing as Subsidizing Agency.

MassHousing has also reviewed the application for compliance within the requirements of 760 CMR 56.04(2) relative to Application requirements and has determined that the material provided by the Applicant is sufficient to show compliance.

This Site Approval is expressly limited to the development of no more than two hundred forty-three (243) rental units under the terms of the Program, of which not less than sixty-one (61) of such units shall be restricted as affordable for low or moderate-income persons or families as required under the terms of the Guidelines. It is not a commitment or guarantee of financing and does not constitute a site plan or building design approval. Should you consider, prior to obtaining a Comprehensive Permit, the use of any other housing subsidy program, the construction of additional units or a reduction in the size of the Site, you may be required to submit a new Site Approval application for review by MassHousing. Should you consider a change in tenure type or a change in building type or height, you may be required to submit a new site approval application for review by MassHousing.

For guidance on the Comprehensive Permit review process, you are advised to consult the Guidelines. Further, we urge you to review carefully with legal counsel the M.G.L. c.40B Comprehensive Permit Regulations at 760 CMR 56.00.

This approval will be effective for a period of two (2) years from the date of this letter. Should the Applicant not apply for a Comprehensive Permit within this period this letter shall be considered to be expired and no longer in effect unless MassHousing extends the effective period of this letter in writing. In addition, the Applicant is required to notify MassHousing at the following times throughout the two-year period: (1) when the Applicant applies to the local ZBA for a Comprehensive Permit, (2) when the ZBA issues a decision and (3) if applicable, when any appeals are filed.

Should a Comprehensive Permit be issued, please note that prior to (i) commencement of construction of the Project or (ii) issuance of a building permit, the Applicant is required to submit to MassHousing a request for Final Approval of the Project (as it may have been amended) in accordance with the Comprehensive Permit Rules (see especially 760 CMR 56.04(07) and the Guidelines including, without limitation, Part III thereof concerning Affirmative Fair Housing Marketing and Resident Selection). Final Approval will not be issued unless MassHousing is able to make the same findings at the time of issuing Final Approval as required at Site Approval.

Please note that MassHousing may not issue Final Approval if the Comprehensive Permit contains any conditions that are inconsistent with the regulatory requirements of the New England Fund Program of the FHLBank Boston, for which MassHousing serves as Subsidizing Agency, as reflected in the applicable regulatory documents. In the interest of providing for an efficient review process and in order to avoid the potential lapse of certain appeal rights, the Applicant may wish to submit a "final draft" of the Comprehensive Permit to MassHousing for review. Applicants who avail themselves of this opportunity may avoid

significant procedural delays that can result from the need to seek modification of the Comprehensive Permit after its initial issuance.

If you have any questions concerning this letter, please contact Katherine Miller at (617) 854-1116.

Sincerely,



Chrystal Kornegay
Executive Director

cc: Janelle Chan, Undersecretary, DHCD
The Honorable Cynthia Stone Creem
The Honorable Kay S. Khan
The Honorable Ruthanne Fuller, Mayor, City of Newton
Marc Laredo, President, City Council
Brooke Lipsitt, Chair, Zoning Board of Appeals
Barney Heath, Director of Planning & Development

Attachment 1

760 CMR 56.04 Project Eligibility: Other Responsibilities of Subsidizing Agency
Section (4) Findings and Determinations

Dunstan East, Newton, MA #1043

MassHousing hereby makes the following findings, based upon its review of the application, and taking into account information received during the site visit and from written comments:

(a) that the proposed Project appears generally eligible under the requirements of the housing subsidy program, subject to final approval under 760 CMR 56.04(7);

The Project is eligible under the NEF housing subsidy program and at least 25% of the units will be available to households earning at or below 80% of the Area Median Income, adjusted for household size, as published by the U.S. Department of Housing and Urban Development (“HUD”). The most recent HUD income limits indicate that 80% of the current median income for a four-person household in Newton is \$89,200.

The 61 affordable units will have rent levels of \$1,521 for the 13 studios, \$1,673 for the 26 one-bedroom units, \$2,007 for the 15 two-bedroom units, and \$2,319 for the 7 three-bedroom units, less assumed utility costs of \$114, \$164, \$254, and \$342, respectively. MassHousing’s Appraisal and Marketing Division (A&M) has reviewed proposed affordable rents and report that they are within current affordable rent levels for the Boston-Cambridge-Quincy HMFA under the NEF Program.

The Applicant submitted a letter of financial interest from Brookline Bank, a member bank of the FHLBank Boston under the NEF Program.

(b) that the site of the proposed Project is generally appropriate for residential development, taking into consideration information provided by the Municipality or other parties regarding municipal actions previously taken to meet affordable housing needs, such as inclusionary zoning, multifamily districts adopted under c.40A, and overlay districts adopted under c.40R, (such finding, with supporting reasoning, to be set forth in reasonable detail);

Based on MassHousing staff’s site inspection, internal discussions, and a thorough review of the application, MassHousing finds that the Site is suitable for residential use and development and that such use would be compatible with surrounding uses.

Comments provided by the City of Newton outline recent municipal actions taken to meet affordable housing needs, including the Newton Leads 2040 Housing Strategy, published in 2016, and the current Washington Street visioning process and draft plan, which is pending approval by the City Council. While the Municipality acknowledged that there are currently several pending and approved developments with SHI eligible units, they also recognized that these additional units will not fully meet the overwhelming demand for affordable rental housing throughout Newton. As of August 2019, Newton has 2,492 Subsidized Housing Inventory (SHI) units (7.70%

of its housing inventory), which is 743 units short of the statutory minimum requirement of 10%. Given that the proposed Project aligns with many of the objectives of Newton's housing and planning initiatives, MassHousing encourages the Applicant and the Municipality to continue to engage on a mutually beneficial project.

The need for additional affordable housing is further supported by U.S. Census data from the 2013-2017 American Community Survey (ACS), which indicates that of the 30,952 households in the city of Newton approximately 47.6% earned less than the HUD published 2019 AMI (\$113,300), approximately 21.5% earned less than 50% of the 2019 AMI, approximately 24.8% earned less than 60% of the 2019 AMI and approximately 33.9% earned less than 80% of the 2019 AMI.

(c) that the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns (such finding, with supporting reasoning, to be set forth in reasonable detail);

Relationship to Adjacent Building Typology (including building massing, site arrangement, and architectural details):

The Site and surrounding neighborhood are comprised of a mix of uses, including single- and multi-story commercial and industrial uses along Washington Street, and single-family residential uses at the rear of the Site along Watertown Street. The single-family residential uses are buffered by Cheesecake Brook, which abuts the Site to the north.

The proposed Project consists of three mixed-use structures ranging in height from three- to six-stories, including 12,521 square feet of ground-floor retail along Washington Street, and comprising a total of 243 rental apartments ranging in size from studios to three-bedrooms. Varying heights and materials are used to reduce the scale and massing of the proposed buildings. Materials include cast stone, brick, concrete panels, metal panels and shingles. Architectural details such as large loft-style windows and balconies further break up the mass and provide variety to the elevations. Floor to ceiling glazing at the ground level retail spaces in conjunction with awnings, streetlighting and street furniture bring the buildings to the pedestrian scale along Washington Street. The height and architectural style of the proposed Project are able to successfully integrate with the surrounding context.

Relationship to adjacent streets/Integration into existing development patterns

The Project is located on two blocks of land fronting Washington Street in West Newton village center. The first block is bounded by Dunstan Street and Kempton Place, existing roads that enter the Site through curb cuts on Washington Street. The second block lies to the east of Kempton Place, and is bounded by the eastern property lines at 1149 Washington Street and 24 Kempton Place. Existing street patterns on Dunstan Street and Kempton Place will be preserved to provide vehicular access to the Site. A new roadway called Brook Road is proposed at the Site's northern boundary, which runs parallel to Cheesecake Brook, to connect Dunstan Street and Kempton Place and to aid circulation throughout the Site. The proposed Project encourages pedestrian circulation within the Site by improving sidewalks along the proposed Washington Street retail spaces, and by building new sidewalks along Dunstan Street and Kempton Place. Pedestrian amenities and

connections throughout the Site are also enhanced by the proposed interior courtyard and the proposed boardwalk along Cheesecake Brook.

Washington Street, which bounds the Site to the south, is a busy 4 lane roadway which runs east-west throughout much of Newton and parallel to the Massachusetts Turnpike. The Site is roughly three-quarters of a mile east of the Massachusetts Turnpike on-ramp at Exit 16 and West Newton MBTA commuter rail platform. Given its transit-oriented, mixed-use location, the proposed Project is able to successfully integrate into existing development patterns.

Density

The Developer intends to build 243 homes on approximately 2.98 acres, 2.29 of which are buildable. The resulting density is 106 units per buildable acre, which is acceptable given the proposed housing type and the Project's location within an existing mixed-use neighborhood.

Conceptual Site Plan

The site plan consists of three L-shaped mixed-use structures ranging in height from three- to six-stories. Two larger buildings containing 80 and 90 units respectively front Washington Street with 12,521 square feet of ground floor retail located along the street frontage. The buildings are oriented in a manner that forms an interior courtyard and defines the block along Washington Street and between Dunstan Street and Kempton Place. A third smaller 73-unit building is set back from Washington street and defines the block east of Kempton Place. Below-grade structured parking is provided under each building. In total, 288 parking spaces are proposed. 45 of these spaces are designated for non-residential retail and commercial uses. The remaining 243 spaces are reserved for the residential structures, resulting in a parking ratio of 1 space per rental unit. The proposed Project also enhances pedestrian interaction by providing an expanded public sidewalk and interior courtyard area. The courtyard area provides access to the new Brook Road through a large open stairway which connects with a landscaped boardwalk and park along Cheesecake Brook.

Environmental Resources

The Site is bounded on the northerly side by Cheesecake Brook, a perennial stream with a gravel bottom and manmade granite block vertical edges. A portion of the channel bottom lies within the Site boundaries as Land Under Water. The Site is entirely developed, and no vegetated area exists within 200 feet of the brook. The northerly portion of the Site is also located within a floodplain. Together, the Land Under Water and floodplain areas amount to 0.69 acres. The conceptual design for the Project proposes recreational open space along Cheesecake Brook which will also serve as compensatory flood storage.

Topography

The Site slopes downward from an approximate elevation of 53' at the front of the Site on Washington Street to an approximate elevation of 35' at the rear of the Site bordering Cheesecake Brook. The design makes effective use of this grade change by incorporating two levels of below-grade parking within the Site.

(d) that the proposed Project appears financially feasible within the housing market in which it will be situated (based on comparable rentals or sales figures);

The Applicant proposes 243 rental apartments to be financed under the NEF Program. There will be 182 market-rate units with proposed average rent levels of \$2,745 for the studios; \$3,470 for the one-bedroom units; \$4,608 for the two-bedroom units; and \$6,385 for the three-bedroom units. MassHousing's Appraisal and Marketing team (A&M) performed a Competitive Market Analysis and found that the developer's proposed studio and one-bedroom market rents fall within the range of adjusted comparable market rents for each unit type, albeit at the upper end of their respective ranges. The developer's proposed two-bedroom and three-bedroom market rents fall above the upper end of the adjusted ranges. Although proposing some of the amenities typically included at many of the mid- to high-end comparable properties (e.g. garage parking, fitness/rec. space, community space, courtyard areas, and balconies etc.), it remains unclear whether the subject will be offering the completed range of amenities/services necessary to attract renters willing to pay at or above the existing range of comparable rentals.

(e) that an initial pro forma has been reviewed, including a land valuation determination consistent with the Department's Guidelines, and the Project appears financially feasible and consistent with the Department's Guidelines for Cost Examination and Limitations on Profits and Distributions (if applicable) on the basis of estimated development costs;

MassHousing has commissioned an as "As-Is" appraisal which indicates a land valuation of \$28,300,000. Based on a proposed investment of \$63,793,707 in equity the development pro forma appears to be financially feasible and within the limitations on profits and distributions.

(f) that the Applicant is a public agency, a non-profit organization, or a Limited Dividend Organization, and it meets the general eligibility standards of the housing program; and

Dunstan East, LLC is a Limited Dividend Organization. The Applicant meets the general eligibility standards of the NEF housing subsidy program and has executed an Acknowledgment of Obligations to restrict their profits in accordance with the applicable limited dividend provisions.

(g) that the Applicant controls the site, based on evidence that the Applicant or a related entity owns the site, or holds an option or contract to acquire such interest in the site, or has such other interest in the site as is deemed by the Subsidizing Agency to be sufficient to control the site.

The Applicant or a related entity to the Applicant controls the entire 129,874 square foot (2.98 acre) Site by virtue of the following deeds and agreements:

Address	Ownership Status	Southern Middlesex Registry Info
1169 Washington Street	Deed	Book 67996, Page 530
1171 Washington Street	Deed	Book 70019, Page 236

32-34 Dunstan Street	Deed	Book 72163, Page 310
1185 Washington Street, Unit 1	Option Agreement, expiring 1/18/2021	N/A
1185 Washington Street, Unit 2	Option Agreement, expiring 12/14/2020	N/A
1185 Washington Street, Units 3 and 5	Option Agreement, expiring 12/28/2020	N/A
1185 Washington Street, Unit 4	Option Agreement, expiring 1/4/2021	N/A
1185 Washington Street, Unit 6	Option Agreement, expiring 12/24/2020	N/A
1185 Washington Street, Unit 7	Option Agreement, expiring 12/21/2020	N/A
1185 Washington Street, Unit 8	Option Agreement, expiring 1/4/2021	N/A
12 Kempton Place	Option Agreement, expiring 2/9/2020	N/A
1179 Washington Street, 18 and 25 Kempton Place, and 24 Kempton Place	Ground Lease, expiring 10/6/2082, with right of first offer to purchase	Book 70047, Page 1
1149 and 1151 Washington Street	Deed	Book 72773, Page 98



Ruthanne Fuller
Mayor

ATTACHMENT G

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
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(617) 796-1142
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(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

September 6, 2019

[By Electronic Mail and Regular Mail]

Katherine Miller
Planning and Programs
Massachusetts Housing Finance Agency
One Beacon Street
Boston, MA 02108

RE: Chapter 40B Comprehensive Permit Project Eligibility Application/Site Approval

Project Name:	Dunstan East
Location:	1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 32-34 Dunstan Street, and 12, 18, 24, and 25 Kempton Place
Number of Proposed Units:	243
Subsidizing Agency:	Massachusetts Housing Finance Agency (MassHousing)
Applicant:	Mark Development, LLC

Dear Ms. Miller:

The Planning and Development Department, on behalf of the City of Newton, appreciates the opportunity to comment on the Project Eligibility/Site Approval application recently submitted by Mark Development (the "Applicant") for Dunstan East (the "Project"). This letter constitutes the City's response to your letter addressed to Mayor Fuller, dated August 7, 2019, seeking comments regarding the Project.

The Planning and Development Department (the "Department") solicited written comments from abutters to the proposed project as well as from City staff, and members of the City Council and Boards and Commissions. All of the comments received can be found in Attachments A, B, and C.

Comments in Response to the Project Proposal

The Planning and Development Department offers the following comments in response to the information provided by the Applicant, Mark Development, LLC, to help MassHousing evaluate this request for Project Eligibility/Site Approval:

A. Affordable Housing

- **Affordable Housing Need.** The need for affordable housing in Newton is vast, impacting extremely low-income individuals and families to those earning upwards of 120% of the area median income. These needs continue to persist as evidenced by the latest Comprehensive Housing Affordability Strategy data published by HUD. Of the total 30,900 households in the City, 27% are low-to-moderate with incomes at or below 80% of the area median income (AMI). More startling is the percentage of housing cost burdened families in the City – close to 30% of *all* households in Newton, regardless of income level. Housing cost burden pertains to those individuals or families that spend over 30% of their monthly gross income on housing costs. As a result, these households are likely to struggle to afford other basic needs such as food, clothing, transportation, medical care, and childcare, which force difficult trade-offs. An even more shocking statistic is that over 44% of low-to-moderate families (at or below 80% AMI) in Newton are considered severely housing cost burdened, paying greater than 50% of their annual incomes on housing costs.¹

In Newton, the lowest income families experience the greatest challenges related to housing. Close to 19% of all households in the city, or over 5,700 households, earn at or below 50% of AMI, yet there are only 2,145 rental units and 106 ownership units affordable to families at these low-income levels.² This affordability gap amongst Newton's vulnerable populations is also highlighted by the over 1,300 families and seniors on the Newton Housing Authority waitlist. Many of these households spend close to ten years on the Housing Authority's waitlist before receiving notification of an available unit in Newton.

While there are a handful of pending and approved developments in the City with SHI-eligible units, as of August 2019 only 7.5%, or 2,425 units, of the City's housing units are listed on Newton's Subsidized Housing Inventory (SHI). These additional units will not meet the overwhelming demand for affordable rental housing throughout Newton.

- **Newton's Housing Strategy and Priorities.** Newton's housing priorities stem from the urgent need for affordable housing. According to the City's *Newton Leads 2040 Housing Strategy*, published in 2016, since 2003 the average sale price of a single-family home in Newton has doubled from approximately \$600,000 to \$1.2 million. The rental market in

¹ 2012-2016 CHAS.

² 2011-2015 CHAS.

Newton also corresponds to this widening price trend as most rentals in the City are only affordable to households earning 100% of the area median income (AMI) or higher. In addition, the number of households earning less than \$125,000 declined by 22.2% between 2000 and 2013. The combination of escalating housing prices and the City's significant loss of low- and middle-income households over the past 15 years means that without action, Newton will become predominantly a city affordable to only the wealthy, with limited diverse housing options for younger and older Newtonians and those of more limited means.³

The dearth of housing options affordable to a variety of populations at a range of incomes threatens the vibrancy of our village centers, our schools, and community life. The City, therefore, has consulted with stakeholders and residents to create public plans with clear goals to guide Newton in combatting this challenge. These documents, the City's Comprehensive Plan, the *2040 Housing Leads Strategy*, the Economic Development Strategic Plan, and the Needham and Riverside Vision Plans all identify the protection and broadening of Newton's housing diversity as major priorities. The plans emphasize that the creation of affordable housing could assist in maintaining the diversity of Newton by providing housing opportunities of varying types to different populations at mixed incomes. Doing so creates the opportunity for greater economic and social diversity, as families and individuals of varying ages, ethnicities, occupations, and income levels can find a home in Newton.

The enactment of these overarching goals and others (e.g., walkable village centers, lowering greenhouse gas emissions, co-locating housing and public transit to address congestion) requires the implementation of key strategies, which are also outlined in the City's public planning documents. One strategy is the purposeful placement of new housing. For instance, housing development near transit centers with comfortable pedestrian access to Newton's important village centers may attract young professionals and seniors with a walkable environment with adjacent amenities. In addition to new development in these locations, the City recognizes the value in utilizing existing housing. Reversing the decline in housing permitted on the upper floors of existing commercial buildings offers increased housing opportunities while creating desired foot traffic to the below commercial retailers. Thus, the development of mixed-use housing is another key strategy to meet the City's housing goals.

In addition to the desirability of mixed-use development, Newton also recognizes mixed-income development as an integral strategy. Mixed-income projects that offer equitable housing units and amenities for both low-and middle-income and higher income individuals and families are crucial for encouraging newcomers to Newton and helping residents stay in community. The creation of a greater number of mixed-income

³ Newton Leads 2040 Housing Strategy, p. 28

developments may help to reverse the trend of Newton's shrinking low- and middle-income populations. Finally, leveraging a mix of local, state, federal, and private dollars to create affordable ownership and rental housing is crucial for Newton to meet its housing goals and create the diverse and welcoming city it desires.

- **Project Unit Mix and Affordability.** The Project will add 61 units affordable to households at 80% of the Area Median Income (AMI): 13 studios, 26 one-bedrooms, 15 two-bedrooms, and 7 three-bedrooms. By producing affordable units at these sizes, the Project allows individuals and families with a range of social and economic diversity to find a home in Newton. The remaining 182 units will be rented at market-rate.

The affordability of Dunstan East responds to the City's diverse housing goals as articulated earlier in this document. However, while the Department supports this variety of unit sizes at an income-restricted affordable rent, we would like to see a deeper level of affordability represented throughout the 61 affordable units, including units set at or below 50% AMI and 65% AMI, in addition to the 80% AMI units.

B. Land Use, Site Plan Design and Sustainability

The regulation for a Comprehensive Permit under M.G.L. Chapter 40B states that the Subsidizing Agency determines whether *"the conceptual project design is generally appropriate for the site on which it is located, taking into consideration factors that may include proposed use, conceptual site plan and building massing, topography, environmental resources, and integration into existing development patterns."*⁴

- **Land Use and Density.** The subject site is located along Washington Street in West Newton Square. The properties to the east and west are zoned Business 2 ("BU2") and contain a mix of commercial and light industrial buildings as well as the former Massachusetts Army National Guard Armory, currently being considered by the City for reuse as 100% affordable housing. To the south of the site, across Washington Street, is the Massachusetts Turnpike and directly to the north is the Cheesecake Brook. The parcels to the north of the project site, across the Cheesecake Brook, are zoned Multi-Residence 1 ("MR1") and are comprised of primarily multi-family buildings with a range of two to six units along the south side of Watertown Street. The north side of Watertown Street is comprised of a mix of single-family and two-unit dwellings. The BU2 zone allows for commercial and mixed-use multifamily buildings. Considering the site's location along Washington Street, a major corridor, as well its proximity to the West Newton village center and transportation (including a commuter rail station) and services, the Department believes that the site is an appropriate location for the proposed use of mixed-use housing, retail, and parking.

⁴ (760 CMR 56.04(4)(c))

Mark Development proposes three mixed-use buildings ranging from three to six stories on two blocks. There would be a total of 243 apartments ranging from studios to three bedrooms, of which 61 (25%) would be affordable at 80% of area median income (AMI). In addition to the residential units, the applicant also proposes 12,521 square feet of ground floor retail space along Washington Street. Two subterranean parking garages would include 288 parking stalls (a ratio of 1:1 for the 243 apartments and 45 stalls for the retail space). The following table provides a comparison of the zoning requirements and the proposed project.

The Project requires zoning relief for parking, lot area per unit, setbacks, floor area ratio, height and stories. While the project requires relief from numerous provisions of the Newton Zoning Ordinance, the project is largely consistent with the draft zoning proposed by the Planning Department (but not yet voted on by the City Council) as part of a recent Washington Street Visioning process. The July 29, 2019 draft of the Washington Street Vision Plan (Vision Plan) recommends locating buildings with additional height and density just outside the core of village centers, but still well within areas served by transit and walkable to the village center amenities. The “Cheesecake Brook lots,” site of this proposed project, are specifically identified in the plan as a location appropriate for mixed-use in buildings up to six stories. For this area, the draft Vision Plan recommends heights of three to six stories, transitioning to one to three stories at the rear of the site. While the proposed project must seek relief from the current zoning ordinance, the Planning Department is supportive of the project as it is consistent with the draft Vision Plan to guide the design. (To repeat, the City Council has yet to vote on the draft zoning ordinance.)

- **Building Massing, Design and Architecture.** The proposed project would locate the 243-unit mixed-use development with 12,521 square feet of ground floor retail along Washington Street, just east of the West Newton village center. The site slopes down significantly from Washington Street to the Cheesecake Brook at the rear of the site. The applicant proposes three buildings; two of which will comprise the block between Dunstan Street and Kempton Place, and one which will be located behind existing buildings to the east of Kempton Place. The applicant also proposes a new roadway, Brook Road, at the rear of the site, adjacent to the Cheesecake Brook and connecting Dunstan Street and Kempton Place. Buildings F and G front along Washington Street and continue through to Brook Road. Building F would be six stories from Washington Street, and three stories at the rear of the building. Building G would have a three-story portion and a five-story portion along Washington Street and would be three stories at the rear of the building. The two buildings would be connected by a public courtyard, which would be at grade level along Washington Street and would connect to Brook Road by a large stairway and an elevator inside of the building. Building H would be four stories and would have frontage along Kempton Place, but not Washington Street. All three buildings would be

located further from the Cheesecake Brook than the existing buildings on the site. Parking would be provided in subterranean levels. Due to the grade change across the site, parking under Buildings F and G that would be exposed at the rear of the site is lined by residential units that will have individual entries from Brook Road.

The proposed Project fulfills many goals of the Draft Washington Street Vision Plan by proposing multiple buildings instead of one large building, by varying the building heights, locating all parking either underground or screened, and breaking up the massing with a courtyard. In addition, the City's Urban Design Commission will conduct a full review of the project if deemed eligible for the Comprehensive Permit process by MassHousing to ensure compatibility for neighboring building design.

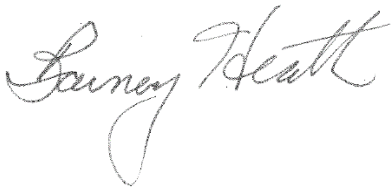
- **Open Space, Landscaping and Tree Removal.** The existing site is built out with commercial and industrial uses, and surface parking lots. The project proposes improvements to the Cheesecake Brook, a perennial stream, and a viewing area at the rear of the site. A portion of the site is within FEMA flood zone AE. The proposed project includes new landscaping and public open space and the application states 35% of the site will be usable open space, which is a vast improvement over existing conditions.
- **Noise, Lighting, and Construction Management.** The applicant should submit a detailed site lighting plan to ensure the lighting does not negatively impact neighboring properties. HVAC and other equipment and their locations should be selected carefully in order to minimize sound heard by residential abutters. A construction management plan should be prepared to give assurance to the neighborhood that the contractor will mitigate the impacts of construction, including noise and vibration. The construction management plan should include a designated contact person for the construction along with 24-hour contact information.
- **Access to Public Transit and a Village Center.** The Department believes the Project's location fulfills thoughtful growth principles, as it will add housing and retail in a walkable location with access to transportation, amenities and services.
- **Traffic, Parking and Transportation Impacts.** The Planning Department will undertake a peer review process to analyze the Applicant's traffic study and potential impacts and mitigations. The Project proposes to add 288 parking stalls for the mixed-use project with 243 apartments and 12,521 square feet of retail. More information is necessary to fully analyze traffic impacts, parking needs, infrastructure improvements, loading, and circulation within the site. The Department supports minimizing parking to the extent feasible and incentivizing alternative modes of transportation. The applicant should submit a traffic study, parking analysis, and transportation demand management plan as part of their Comprehensive Permit application.

C. Conclusion

As detailed above, the Planning Department is supportive of Dunstan East due to its alignment with Newton's goals of creating diverse housing opportunities. The Project's creation of 61 income-restricted housing units for individuals and families at 80% of AMI in a mixed-use development with easy access to public transportation responds to an identified goal for broadening the City's diversity of housing options. However, we urge the Applicant to provide a deeper level of affordability below 80% of AMI for the project. In addition to its support, the Department will still provide planning analysis of the Project, both internally and through the peer-reviews, as the Comprehensive Permit process continues pending an announcement of 40B project eligibility from MassHousing.

Please do not hesitate to contact me if you have any questions about the contents of this letter.

Sincerely,

A handwritten signature in cursive script, reading "Barney Heath".

Barney Heath
Director, Planning and Development Department

cc: Mayor Ruthanne Fuller
Alissa O. Giuliani, City Solicitor
Applicant
Councilor Barbara Brousal-Glaser
Councilor Andrea W. Kelley
Councilor James R. Cote

Attachments:

Attachment A: Summary of Additional City Staff Comments

Attachment B: Comments from Abutters and Other Stakeholders

Attachment C: Comments Received by City Post-Deadline (from Abutters and Other Stakeholders)

ATTACHMENT A
Summary of Additional City Staff Comments

➤ **Affordability**

- Desire a deeper level of affordability represented in the 61 affordable units. Income limits set at 50% AMI and 65% AMI in addition to the Chapter 40B required 80% AMI would further provide much-needed diverse housing options in Newton.

➤ **Environmental**

- Clarification needed on the scope of landscaping along Cheesecake Brook.
- Further detail needed on stormwater management on the site due to its proximity to Cheesecake Brook.
- Need to ensure Brook Road is wide enough for public use and details on salt use during winter weather events.

➤ **Transportation**

- Potential transportation demand management modeled after Northland and Washington Place projects.
- Possibility of creating pedestrian crossing to reach MBTA bus stops.