



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**#244-20**

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Barney S. Heath  
Director

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**PUBLIC HEARING MEMORANDUM**

Public Hearing Date: May 26, 2020  
Land Use Action Date: August 11, 2020  
City Council Action Date: August 17, 2020  
90-Day Expiration Date: August 24, 2020

DATE: May 22, 2020

TO: City Council

FROM: Barney Heath, Director of Planning and Development  
Neil Cronin, Chief Planner for Current Planning  
Michael Gleba, Senior Planner

SUBJECT: **Petition #244-20** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #105-95 to construct a five-story addition with 18 new units and common accessory use space, extending the non-conforming structure to the extent necessary and to determine density and dimensional controls at **280 Newtonville Avenue**, Ward 2, on land known as Section 22 Block 07 Lot 48, containing approximately 146,435 sq. ft. of land in a district zoned MULTI RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.2.2.A.3, 7.8.2.C.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



**280 Newtonville Avenue**

### EXECUTIVE SUMMARY

The subject property located at 280 Newtonville Avenue consists of an irregularly shaped 146,435 square foot lot located in a Multi Residence 3 (MR3) zoning district improved with an approximately 107,653 square foot 100-unit elderly congregate living facility constructed in 1996 pursuant to Special Permit #105-95.

The petitioner proposes to construct a five-story, 16,800 square foot addition to the existing structure, adding 18 dwelling units and 2,800 square feet of accessory use space containing concierge, office and work spaces as well as a food service area. As designed, the addition would project into and over the area currently utilized as the facility's front entrance and the associated circular auto drop-off/pick up area. Auto circulation would continue to be provided in that area, with the projecting addition providing a covered entrance to the facility.

Construction of the proposed addition would require an amendment to Special Permit #105-95, including a modification of the special permit-approved site plan.

Further, the property is located in the MR3 zoning district, which allows residential care facilities such as this congregate living facilities by special permit, but no dimensional and density controls are specified for this use in Sec. 3.2 of the Newton Zoning Ordinance (NZO). Section 3.2.2.A.3 provides that in such instances where a dimensional or density control is not set forth for a use granted by special permit, the the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right would apply unless otherwise required in the special permit. Since congregate living facilities are not allowed by right in any district, the City Council shall determine the dimensional and density requirements for this use.

The Planning Department notes that there are also several issues related to the use of portions of the site for parking by Cabot School employees and the affordability of certain existing and proposed units. These issues are discussed below and are expected to be addressed further subsequent to the issuance of this memorandum.

#### I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The Multi Residence 3 (MR3) zoned site is an appropriate location for the proposed expanded congregate care facility (§7.3.3.C.1; §3.1.2.A.3)
- The proposed expanded congregate care facility as designed will adversely affect the neighborhood (§7.3.3.C.2; §3.1.2.A.3)
- The proposed expanded congregate care facility as designed will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3; §3.1.2.A.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4, §3.1.2.A.3)

## II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The neighborhood features a mix of uses. While single- and two- family dwellings predominate the area, there are several commercial uses to the north across Newtonville Avenue, including a self-storage facility currently under construction at the corner of Lewis Terrace. Cabot Park abuts the subject property directly to the east, and the Cabot School is located approximately 300 feet to the south (**Attachment A**). This mix of uses is generally reflected in the area's zoning, with Single Residence 1 (SR1) and Multi-Residence 2 (SR2) predominating, the subject parcel being zoned MR3, the more commercial activities located in a Manufacturing (MAN) district to the north (between Newtonville Avenue and the Massachusetts Turnpike), and Cabot Park and the Cabot School occupying land zoned for Public Use (PUB) (**Attachment B**).

### B. Site

The subject property consists of an irregularly shaped 146,435 square foot lot improved with an approximately 107,653 square foot, 100-unit elderly congregate living facility constructed in around 1996. The parcel is accessed via a paved driveway located within a narrow "flagpole" section of the lot that leads from Newtonville Avenue to the north. The remaining portions of the site are occupied by parking areas providing 101 parking stalls and landscaping, including lawn areas, mature trees and shrubs, especially along the many property lines shared with adjacent properties. While the site is generally level, there are a few rather significant undulations in some areas occupied by parking and/or landscaping.

## III. PROJECT DESCRIPTION AND ANALYSIS

### A. Land Use

The principal use of the site will remain an elderly congregate living facility containing, if the present petition is granted, an additional 18 units more than the current 100 units.

### B. Building and Site Design

The petitioner proposes to construct a five-story, 16,800 square foot addition to the existing structure, adding 18 dwelling units and 2,800 square feet of accessory use space containing concierge, office, and work space, as well as food service areas.

As designed, the addition would project into and over the area currently utilized as the facility's front entrance and the associated circular auto drop-off/pick up area. Auto circulation would continue to be provided in that area, with the projecting addition providing a covered entrance to the facility.

As detailed in the attached zoning review memorandum, the property is located in the MR3 zoning district in which congregate living facilities are a use allowed only by special permit but no dimensional and density controls are specified for this use. Per sec. 3.2.2.A.3 the most restrictive density or dimensional control applicable to such use in any district where the use

is allowed by right should apply. However, also per sec. 3.2.2.A.3, since congregate living facilities are not allowed by right in any district, the City Council must determine if the proposed density and dimensions are appropriate.

The existing structure is 60 feet in height with five stories. The proposed five-story addition would extend but not increase the height or number of stories. The structure has an existing side setback of 33.1 feet from the line shared with the residences on Norwood Avenue. As the proposed addition would extend that façade approximately 40 feet to the south, and it becomes closer to that lot line and it extends southward, the proposed addition reduces that setback to approximately 23 feet, and does so with its full height. No other setbacks are being decreased.

The subject property's existing lot area per unit is 1,464 square feet. The proposed construction of the additional 18 dwelling units would decrease the lot area per unit to 1,241 square feet. The existing floor area ratio (FAR) is 0.73. The proposed construction adds 16,890 square feet to the existing 106,565 square foot structure for a total 122,590 square feet, producing a FAR of 0.84.

The existing lot coverage for the site is 15.8%. The proposed construction increases the lot coverage to 19.2%. The site's existing open space is 49.8%; the proposed addition would reduce it slightly, to 49.1%.

C. Parking and Circulation

Vehicular access to the site is provided by a paved driveway located within a "flagpole" shaped portion of the irregularly shaped lot leading from Newtonville Avenue. The driveway serves the existing circular auto court located at the facility's front entrance and the several parking areas on the parcel. The only changes to the parking and circulation is that the proposed addition would project into/over the area currently occupied by the circular driveway directly in front of the entrance. Ground-level auto circulation space would continue to be provided, albeit underneath several floors of the addition.

No new parking stalls would be constructed as part of this project, and the number of spaces would remain unchanged. There are 100 parking stalls on the property (please note that the parking utilization study submitted by the petitioner indicates 101 stalls). Per section 5.1.4, an elderly congregate living facility requires one parking stall per every two dwelling units, plus one stall per every three employees and one stall per every four nursing beds (there are no nursing beds). The petitioner proposes to add 18 units to the building, for a total of 118 units. As there are 20 employees at the busiest shift, per the requirements of section 5.1.4, 66 parking stalls are required for the proposed expanded elderly congregate living facility. As such the existing stalls on site more than satisfy the parking requirements for the proposed elderly congregate living facility.

The Planning Department notes, as is discussed in both the attached Zoning Review memorandum and the petitioner's submitted parking study, that 20 of the stalls are available on school days by Cabot School employees (please note that the parking utilization study submitted by the petitioner indicates 21 such stalls). This use is pursuant to Condition 18 of the 1995 special permit (Special Permit #105-95) and, apparently, a 2018 memorandum of

understanding between the petitioner and the City of Newton.

The 100 stalls on the site appear to be sufficient parking on the site for the existing uses, including the Cabot School, and the proposed additional units, all as stated in the petitioner's parking study which observed surplus stalls during several study periods. That said, some City staff has indicated concern regarding a statement in the petitioner's parking study that in the event "parking demands increase over time, there are options to renegotiate the terms of the agreement and restore more parking availability for use by Cabot Park Village." Given the use of parking on site by Cabot School employees, the Planning Department encourages the petitioner to address this issue in advance of or at the public hearing on this petition.

D. Affordability

On the date of this memorandum the Planning Department received information from the petitioner providing information related to the project's compliance with the inclusionary Zoning provision of the NZO at Sec 5.11.4. The Planning Department notes that this information includes an offer to extend the affordability of the existing 20 affordable units at the facility. Planning staff will review this information with the Law Department and be prepared to discuss it at the upcoming public hearing.

E. Landscaping and Lighting

The petitioner has submitted a proposed landscape plan. The Planning Department notes that it includes a limited number of new trees and shrubs located mostly around the perimeter and foundation of the proposed addition. The Planning Department suggests that the petitioner consider providing additional vegetation that could serve to better screen the proposed addition from nearby residential properties and public ways. Relatedly, the Department also recommends that the petitioner submit information regarding any exterior lighting that would be installed in connection with this project.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- S.P. per §7.3.3:
  - to amend Special Permit #105-95
  - to determine the density and dimensional controls (§3.2.2.A.3)

B. Engineering Review

The Engineering Division Memorandum (**Attachment D**) provides an analysis of the proposal with regard to engineering issues. The memorandum details several issues for the petitioner to clarify and/or resolve, including the relocation of a water line and the submission of Operations and Maintenance (O&M) plan for Stormwater Management Facilities for the Division's review. Further, a construction management plan (CMP) will be

required for this project and such requirement should be included in any Order for this petition.

The Engineering Division has also calculated a sewer infiltration/inflow mitigation (I&I) cost for this project, based upon the use of low flow fixtures throughout the project, of \$160,306.

V. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

**ATTACHMENTS:**

- Attachment A:** Land Use Map
- Attachment B:** Zoning Map
- Attachment C:** Zoning Review Memorandum
- Attachment D:** Engineering Division Memorandum



# ATTACHMENT A







## Land Use

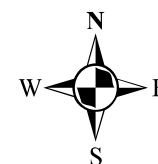
280 Newtonville Ave.

*City of Newton,  
Massachusetts*

### Land Use

#### Land Use

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

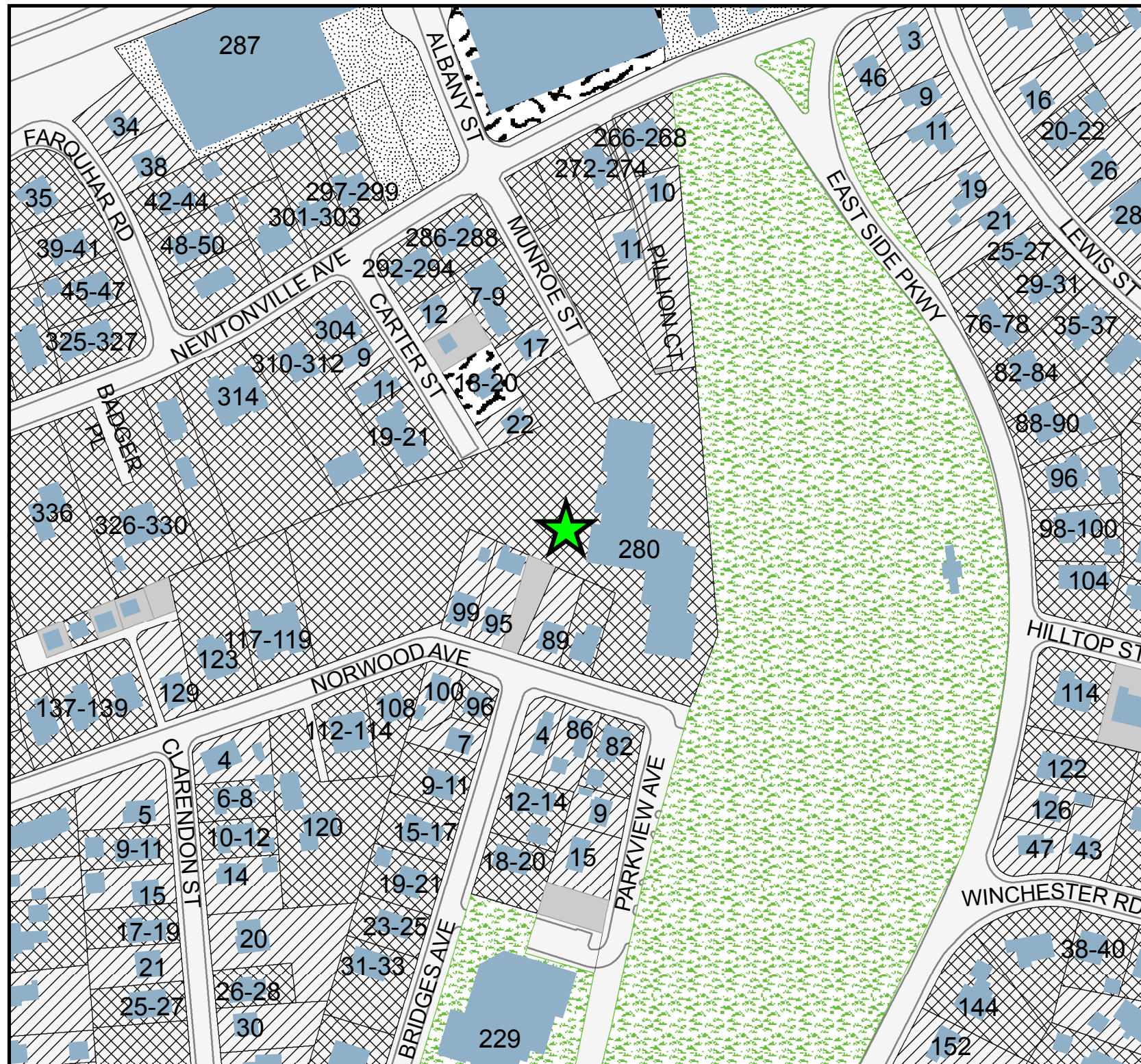


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Ruthanne Fuller  
GIS Administrator - Douglas Greenfield

0 12.5 50 75 100 125 150 175 200 225  
Feet

Map Date: May 21, 2020





# ATTACHMENT B

## Zoning

280 Newtonville Ave.

*City of Newton,  
Massachusetts*

### Legend

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 3
-  Manufacturing
-  Public Use

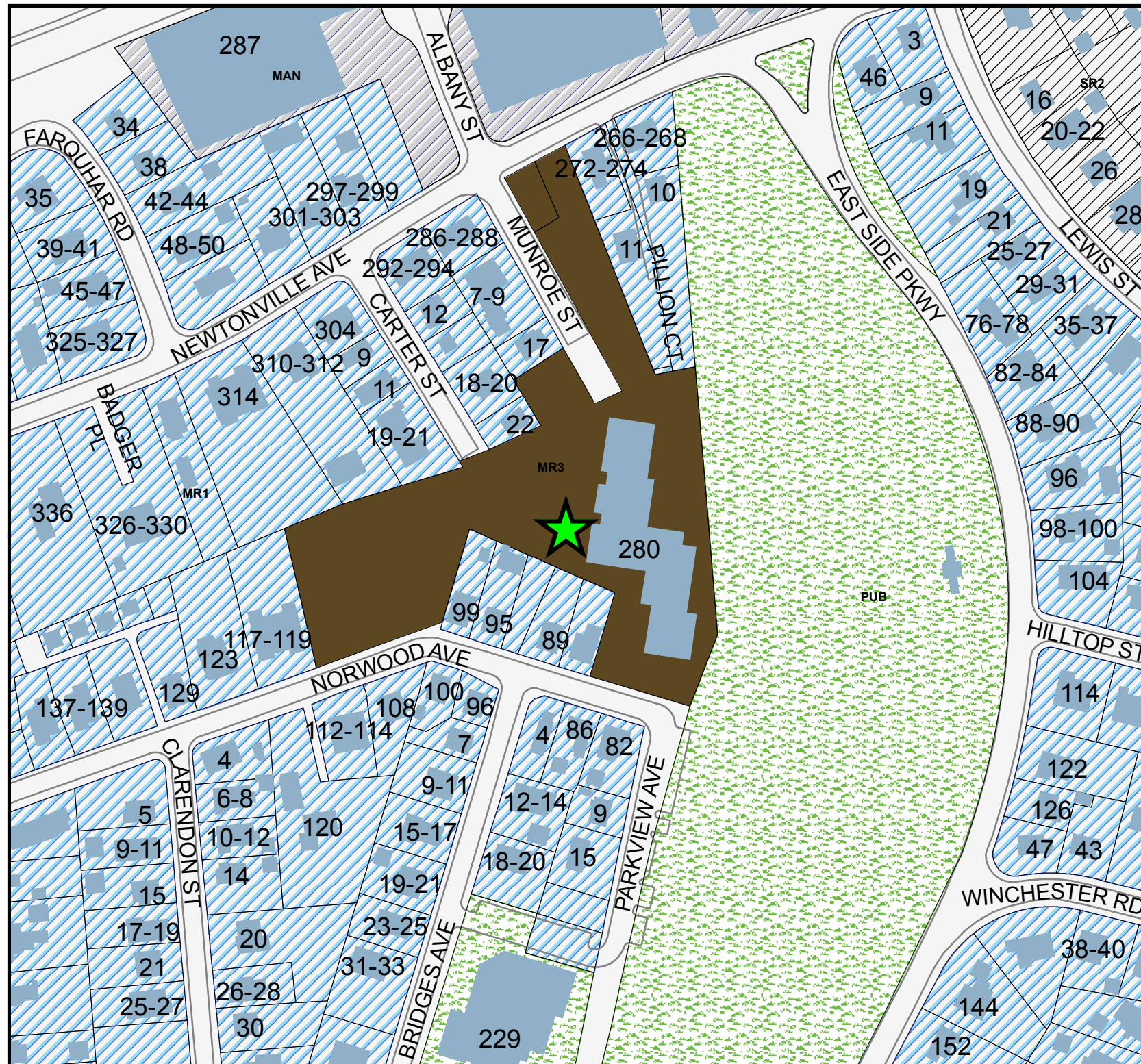


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CITY OF NEWTON, MASSACHUSETTS  
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0 12.5 50 75 100 125 150 175 200 225  
Feet

Map Date: May 21, 2020





## ATTACHMENT C



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Barney S. Heath  
Director

### ZONING REVIEW MEMORANDUM

Date: February 25, 2020

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official  
Neil Cronin, Chief Planner for Current Planning

Cc: KRE-BSL Husky Cabot Park LLC, Applicant  
Alan Schlesinger, Attorney  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

RE: **Request to amend Special Permit #105-95 to construct an additional 18 dwelling units and accessory use space in an existing congregate living facility**

Applicant: KRE-BSL Husky Cabot Park LLC	
Site: 280 Newtonville Avenue	SBL: 22007 0048
Zoning: MR3	Lot Area: 146,435 square feet
Current use: Elderly congregate living facility with 100 units	Proposed use: Elderly congregate living facility with 118 units

#### BACKGROUND:

The property located at 280 Newtonville Avenue consists of a 146,435 square foot lot improved with a 100-unit congregate living facility constructed in 1995. The parcel is located in the MR3 zoning district abutting Cabot Park to the east, and single- and two-family dwellings making up the remaining abutting uses. The petitioner proposes to construct a five-story addition to the existing structure adding 18 dwelling units and common accessory use space. To construct the project as proposed, the petitioner requires an amendment to the existing special permit.

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

- Zoning Review Application, prepared by Alan Schlesinger, attorney, submitted 1/17/2020
- Proposed Plot Plan, signed and stamped by Gerry L. Holdright, surveyor, dated 1/17/2020

- Schematic Site Plan, prepared by Udelsman Associates, architects, dated 9/16/2019
- Floor Plans, prepared by Udelsman Associates, architects, dated 9/16/2019
- Board Order #420-91, dated 12/16/1991
- Board Order 105-95, dated 5/15/1995

## **ADMINISTRATIVE DETERMINATIONS:**

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1. The petitioner received Special Permit #105-95 in 1995 to construct and operate a 100-unit elderly congregate living facility. The petitioner proposes to construct an addition to the existing facility with 18 additional dwelling units and 2,800 square feet of accessory use space containing a concierge, office and workspace, and a food service room for a total additional square footage of 16,800 square feet. The addition is proposed in the existing front courtyard, which will create a covered drop-off area. To construct the addition and modify the approved site plan as proposed requires an amendment to Special Permit #105-95.
2. The property is located in the MR3 zoning district, which allows single- and two-family dwellings by right, and single-family attached and multi-family dwellings and residential care facilities by special permit. While congregate living facilities are a use allowed by special permit, no dimensional and density controls are specified for it in section 3.2. Section 3.2.2.A.3 states that in the instance where a dimensional or density control is not set forth for a use granted by special permit, then the most restrictive density or dimensional control applicable to such use in any district where the use is allowed by right would apply, unless otherwise required in the special permit. Congregate living facilities are not allowed by right in any district, and thus the City Council determines the dimensional and density requirements for this use.

The structure has an existing side setback of 33.1 feet from the line shared with the residences on Norwood Avenue. The proposed addition creates a new side setback from that lot line of 22.2 feet. No other setbacks are being decreased.

The existing lot coverage for the site is 15.8%. The proposed construction increases the lot coverage to 19.2%.

The existing lot area per unit is 1,464 square feet. The proposed construction of the additional 18 dwelling units decreases the lot area per unit to 1,241 square feet.

The site has an existing open space of 49.8%. The proposed construction reduces the open space to 49.1%.

The existing FAR is .73. The proposed construction adds 16,890 square feet to the existing 106,565 square foot structure for a total 122,590 square feet, producing an FAR of .84.

The existing 100 units produce a lot area per unit of 1,464 square feet. The proposed additional 18 units reduce the lot area per unit to 1,241 square feet.

The existing structure is 60 feet in height with five stories. The proposed five-story addition will maintain these dimensions and does not increase the height or number of stories.

Per section 3.2.2.A.3, the City Council must determine if the proposed density and dimensions are appropriate.

3. There are 100 parking stalls on the property. Twenty of those stalls are used by Cabot School employees on school days per a condition of the 1995 special permit. Per section 5.1.4, an elderly congregate living facility requires one parking stall per every two dwelling units, plus one stall per every three employees and one stall per every four nursing beds (there are no nursing beds). The petitioner proposes to add 18 units to the building, for a total of 118 units. There are 20 employees at the busiest shift. Per the requirements of section 5.1.4, 66 parking stalls are required for the elderly congregate living facility, and an additional 20 are used for Cabot School for a total of 86. The existing stalls on site satisfy the parking requirement for the uses on site.
4. The 1995 special permit required six low income units for a period of twenty years from the date of first occupancy. After the twenty years, the project was required to either comply with the then-current inclusionary provisions, or in their absence continue to provide six units. Alternatively, they could have also secured MHFA financing and provide 20 units for low income residents. Currently, all 100 existing units on site are included in the Subsidized Housing Inventory (SHI), which means that at least 25% of the units (25 units) are restricted as affordable at 80% AMI, or that 20% of the units are restricted at 50% AMI, until 2026.

Section 5.11.3 states that the inclusionary zoning provisions apply to any residential development where more than seven units are constructed. Per the Ordinance, a rental project with more than 21 units is required to provide 15% of the total units at 50-80% Area Median Income (AMI), and 2.5% at 110% AMI. The proposed 118 units require 18 units at 50-80% AMI and 3 units at 110% AMI for a total of 21 income restricted units.

With the expiration of the current income restricted units in 2026, the affordability of the required 21 units needs to be formalized via input from the Law Department and the Housing Division.

MR3 Zone	Required*	Existing	Proposed
Lot Size	SP	146,435 square feet	No change
Setbacks			
• Front (Munroe St)	SP	13.9 feet	No change
• Side		33.1 feet	22.2 feet
• Rear		19.6 feet	No change
Building Height	SP	60 feet	No change
Stories	SP	5 stories	No change
Lot Area Per Unit	SP	1,464 square feet	1,241 square feet
FAR	SP	0.73	.84
Open Space	SP	49.8%	49.1%
Lot Coverage	SP	15.8%	19.2%

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\*per section 3.2.2.A.3, where a density or dimensional control is not set forth for a use granted by special permit, the most restrictive controls applicable to such use where it is allowed by right are applicable, unless otherwise required in the special permit.

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Amend Special Permit #105-95	S.P. per §7.3.3
§3.2.2.A.3	To determine the density and dimensional controls	S.P. per §7.3.3



# ATTACHMENT D

## CITY OF NEWTON Department of Public Works ENGINEERING DIVISION

### MEMORANDUM

To: Council Rick Lipof, Land Use Committee Chairman

From: John Daghlion, Associate City Engineer

Re: Special Permit – 280 Newtonville Avenue

Date: May 14, 2020

CC: Barney Heath, Director of Planning  
Jennifer Caira, Deputy Director  
Lou Taverna, PE City Engineer  
Nadia Khan, Committee Clerk  
Neil Cronin, Sr. Planner  
Michael Gleba, Sr. Planner

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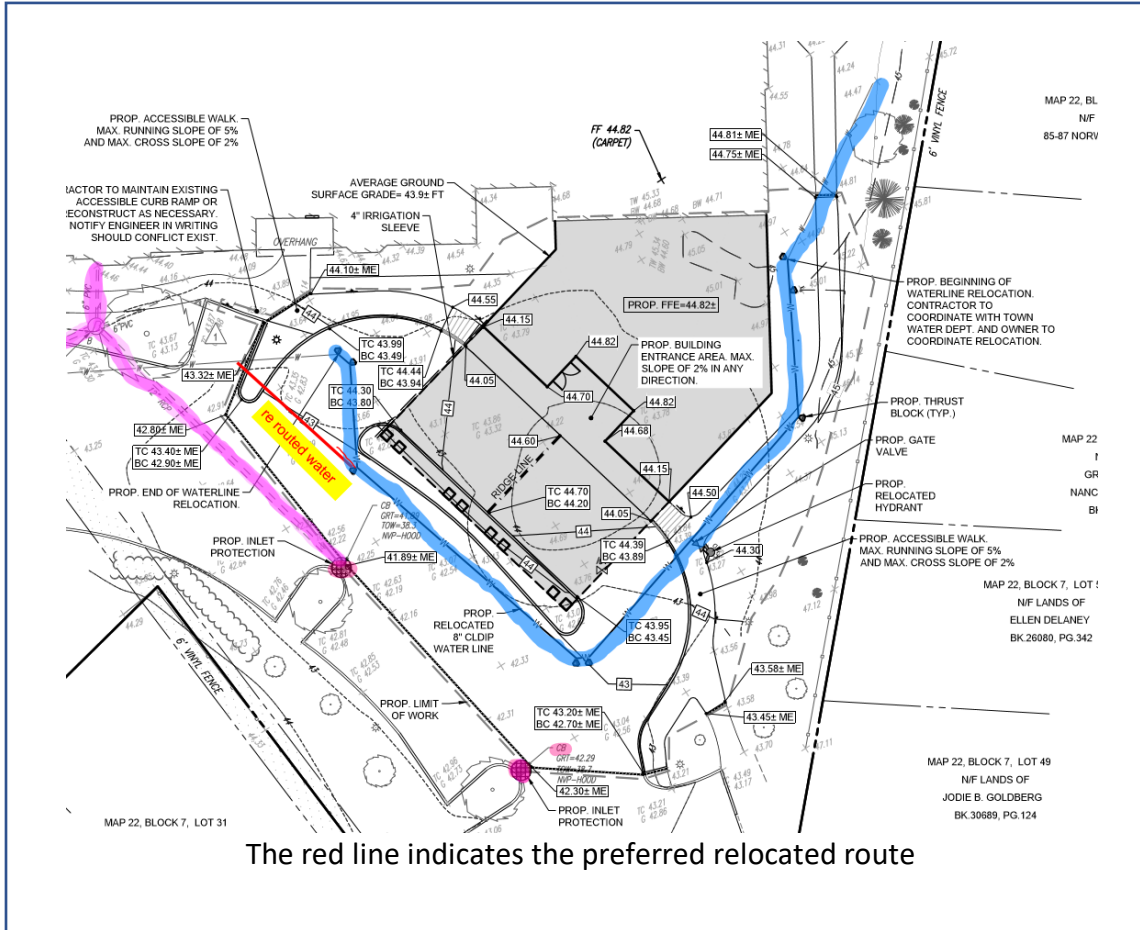
In reference to the above site, I have the following comments for a plan entitled:

Proposed Site Plan Document for Benchmark Senior Living  
Prepared by: Bohler  
Dated: 4-13-'20

#### Executive Summary:

This project entails a five-story addition to existing congregate living facility at 280 Newtonville Avenue. On site drainage improvements are not required as the threshold is not triggered in accordance to the City's stormwater policy. However, the facility should have a Operation and Maintenance plan to properly maintain the existing drainage system on site for long term performance.

As a result of the addition a water line needs to be relocated as shown on the follow utility plan, the recommendation is that the new relocated pipe have less bends in the alignment as shown by the red line. The final configuration of the water pipe relocation will need an approval by the Engineering Division.



### Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
2. Stabilized driveway construction entrance(s) will be required for the duration of the construction which will provide a truck wash to prevent tracking of mud and silt onto City streets.
3. Catch basins within and downstream of the construction zone will be required to have siltation control installed for the duration of the project and must be identified on the site plan.

Water:

1. All water services shall be chlorinated, and pressure tested in accordance to the AWWA and the City Construction Standards & Specifications prior to coming online. These tests MUST be witnessed by a representative of the Engineering Division.
2. Approval of the final configurations of the water service(s) shall be determined by the Utilities Division, the engineer of record shall submit a plan to the Director of Utilities for approval.
3. Fire flow testing will be required for the expanded fire suppression system, hydraulic calculation must be submitted to the Fire Department for review and approval.

Infiltration & Inflow: Will be addressed via a separate memo.

General:

1. All trench excavation shall comply with Massachusetts General Law Chapter 82A, Trench Excavation Safety Requirements, and OSHA Standards to protect the general public from unauthorized access to unattended trenches or excavations. Trench Excavation Permit is required prior to any construction. This applies to all trenches on public and private property. *This note shall be incorporated onto the final plans.*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor of record is responsible for contacting the Engineering Division and scheduling an appointment 48-hours prior to the date when the utilities will be made available for an inspection of water services, sewer services and drainage system installation. The utility in question shall be fully exposed for the Inspector to view, backfilling shall only take place when the City Engineer's Inspector has given their approval. *This note shall be incorporated onto the final plans.*
4. The applicant shall apply for a Building Permit with the Inspectional Services Department prior to ANY construction.

5. Before requesting a Certificate of Occupancy, an As Built plan shall be submitted to the Engineering Division in both digital and paper format. The plan shall show all utilities and final grades, any easements and improvements and limits of restoration. The plan shall include profiles of the various new utilities including but not limited to rim & invert elevations (City of Newton Datum), slopes of pipes, pipe materials, and swing ties from permanent building corners. The as built shall be stamped by both a Massachusetts Registered Professional Engineer and Registered Professional Land Surveyor. Once the as built plan is received the Engineering Division shall perform a final site inspection and then make a determination to issue a Certificate of Occupancy. *This note shall be incorporated onto the final plans.*
6. All site work including trench restoration, sidewalk, curb ,apron and loam border (where applicable) shall be completed before a Certificate of Occupancy is issued. *This note shall be incorporated onto the final plans.*
7. If any changes from the final approved design plan that are required due to unforeseen site conditions, the contractor of record shall contact the design engineer of record and submit revised design and stamped full scale plans for review and approval prior to continuing with construction.

Note: If the plans are updated it is the responsibility of the applicant to provide all City Departments [ ISD, Conservation Commission, Planning and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns, please feel free to contact me at 617-796-1023.