



# Land Use Committee Report

## City of Newton In City Council

**Tuesday, June 6, 2023**

**Present:** Councilors Lipof (Chair), Kelley, Bowman, Greenberg, Laredo, Lucas, and Markiewicz

**Also Present:** Councilors Leary, Gentile, Oliver, and Wright

**City Staff Present:** Senior Planner Cat Kemmett, Senior Planner Michael Gleba, Chief Planner Katie Whewell and Assistant City Solicitor Jonah Temple

All Special Permit Plans, Designs, Plan Memoranda and Application Materials, both past and present, can be found at the following link: [NewGov - City of Newton Land Use Committee Special Permit Search](#).

The full video of the June 6, 2023, Land Use Meeting can be found at the following link:  
[06-06-2023 Land Use Committee Meeting](#)

**#197-23**      **Request to amend conditions within Special Permit #395-22 at 136-144 Hancock Street**  
TERRENCE P. MORRIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL amends Special Permit #395-22 relative to conditions around the vibration control condition and units which were designated to conform to MAAB requirements at 136-144 Hancock Street, Ward 4, Auburndale on land known as Section 43 Block 31 Lots 01 and 16, containing approximately 58,492 square feet of land in a district approved to be zoned MULTI RESIDENCE 2. Ref: 7.3.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 7-0; Public Hearing Opened**

**#198-23**      **Request to amend Special Permit #447-22 at 106 River Street**  
NORTON POINT STREET LLC and 106 RIVER STREET LLC T/C DAVID OLIVERI petition for SPECIAL PERMIT/SITE PLAN APPROVAL amend the vibration control condition within Special Permit #447-22 at 106 River Street, Ward 3, West Newton, on land known as Section 33 Block 24 Lot 11A, containing approximately 15,802 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 7-0; Public Hearing Opened**

**#199-23**      **Request to amend Special Permit #504-22 at 71 Commonwealth Avenue**  
71 COMMONWEALTH LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend the vibration control condition within Special Permit #504-22 at 71 Commonwealth Ave, Ward 7, Newton, on land known as Section 63 Block 01 Lots 13 and 13A, containing approximately 32,980.50 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 7-0; Public Hearing Opened**

**Note:** The Committee decided they would initially discuss the three of these items together, as they all deal with the vibration control condition, and then discuss the individual components of each project separately.

Chief Planner Katie Whewell presented a combined presentation with an initial focus on the request for a special permit at 136-144 Hancock Street. This request is to amend Special Permit #395-22 relative to conditions around the vibration control condition and units which were designated to conform to MAAB requirements. The Planning Department's presentation is attached. Please find additional back-up at the following link: [136-144 Hancock Street- Petition Documents](#) The project was initially approved in 2022 with 16 units in 4 buildings. Ms. Whewell noted that Massachusetts Architectural Access Board requirements doesn't apply to the project due to the fact there are less than 20 units. Planning is supportive of eliminating this condition and letting the building code prevail. For vibration control, the petitioner requested to eliminate the requirement of the 250-foot radius for vibration control and replace it with abutters. Planning believes for projects less than 25 units the condition could be changed to reduce the radius to 150 feet. For 106 River Street and 71 Commonwealth Ave please find additional back-up information at the following links: [106 River Street- Petition Documents](#) and [71 Commonwealth Avenue- Petition Documents](#)

Councilor noted that sometimes a rule is created that needs to be amended, and that some projects are more case specific. Feels the committee needs to discuss if the 250 feet is too far reaching and if smaller projects should be reduced to a radius of 150 feet. Due to regulations from the State the radius when blasting is involved will always be 250 feet.

David Oliveri, the petitioner noted that previous projects (Trio and Sunrise) that resulted in the 250-foot radius were doing scope of work activities beyond what these projects would be doing. These 3 projects would have limited vibrations due to no blasting and no pile driving and would have no greater vibrations than the construction of a single-family residence. Inquired about where the 150-foot radius from planning came from. Noted that he has a seismologist and geologist to speak about vibrations and guidance around this issue.

Richard Groll, of Richard J. Groll Technical Services, out of New Hampshire, has been a seismologist since 1989. Has been an expert witness in cases involving structure damage due to surface mine blasting and vibratory sources. He serves the blasting, construction, and insurance industries. Noted he reviewed these 3 sites, and nothing currently proposed would employ the use of mechanical agitation to perform useful work. They will involve normal delivery and demolition activities that are common to taking down, modifying, reconstructing, or building a structure. The activities will be less than the impulsive vibration limit set by Massachusetts for blasting at surrounding structures. Believes the separate insurance fund is redundant due to the fact a contractor is required to carry insurance. Noted that it is rare to have vibration monitoring for general construction operations, and that it would be excessive to impose it on projects that don't employ vibration specific machinery.

Councilor inquired if planning or the committee has heard from any professionals to give guidance regarding this issue. Believes there needs to be guidance from an independent professional not associated with the petitioner regarding the potential harms to homes from this change and guidance around this issue.

Councilor noted that this condition does not apply to single family homes and teardowns, and the condition came about because of larger projects. Inquired from planning if there is a separate insurance fund, and about the possibility of hiring a seismologist.

Ms. Whewell noted there is a separate insurance fund because the orders for these projects predated when the committee last discussed the fund. Noted the fund was taken away for projects less than 25 units. Noted that she does not believe there has been any engagement with professionals on the city side, and she would have to speak with leadership about the possibility of hiring a seismologist.

Councilor noted a desire for conditions that are consistent across projects, and an analysis of what makes sense for small and large projects. Noted that there have been vibration issues from smaller projects that have not involved pile driving.

Councilor noted these special conditions came about due to larger projects and conditions were not in place before those issues arose.

Councilor stated that Sunrise hired an expert to monitor the project using the U.S. Bureau of Mines standard. Noted there are numerous variables that go into if a structure is damaged and would be supportive of holding these items.

Councilor noted that planning is suggesting a 150-foot radius while the petitioner is suggesting just direct abutters. Would like a map of homes with 150-foot radius when this comes back up to compare the two options.

Mr. Temple expressed concern if the city would be able to hire an expert and if there would be different information available when the project comes before the committee again.

Councilors expressed that 250 feet seems high since the standard for blasting is 250 feet. Concerned that these three projects could be held up and believes that at the minimum the reserve fund should be taken out of these three projects.

Councilor noted this hold is essential a no until the committee figures out how they want to handle the vibration control condition. Questioned if the committee could separately remove the fund from these three projects.

Mr. Temple noted that the public hearing notice was broad enough that the fund could be removed if the committee chose to do so.

Mr. Oliveri noted that when looking at the condition it should not just be about the number of units, but about the scope of the work. To do the process required it would take 2 to 3 months and add cost to the project. Noted these conditions do not apply to similar projects in the City that are happening by right.

Councilor noted the first project that comes before the committee with these new conditions shows that there might have been an overstep that needs to be addressed concerning how these conditions impact smaller projects.

Councilors noted that they believe the design review committee could look at these conditions, and inquired as to why this was not brought up as an issue when the petitioners were going through the special permit process to begin with.

Councilor noted that this is because this is the first project the petitioner has had to deal with concerning these conditions and realized the cost and time when trying to comply with them. Asked for planning to do a one pager on guidance for these types of projects.

Mr. Oliveri noted that these projects are going through the building permit process and he has concerns that this decision will hold up that process.

Councilor noted that the design review committee is set up to weigh in on city owned properties and projects, and it is not within their domain to review private projects. The Design Review Team does have experts as they are 2 different groups.

Councilors noted that a standardized question concerning vibration control could possibly be on the application process for special permits where ISD or engineering could review to see if vibration controls are necessary for the project. Expressed need for planning to reach out to experts and give committee suggestions on how to deal with this.

The public hearing was opened.

Councilor Markiewicz made a motion to hold 136-144 Hancock Street, which passed unanimously.

Councilor Markiewicz made a motion to hold 106 River Street, which passed unanimously.

Councilor Markiewicz made a motion to hold 72 Commonwealth Avenue, which passed unanimously.

**#194-23 Request to further extend nonconforming FAR at 76 Drumlin Road**

NA'AMA AND AMIR YACOBY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a sunroom addition at the rear of the dwelling which will further extend the nonconforming FAR at 76 Drumlin Road, Ward 8, Newton Centre, on land known as Section 82 Block 25 Lot 30, containing approximately 16,000 sq. ft. of land in a district zoned SINGLE FAMILY 1. Ref: 7.3.3, 3.1.3, 3.1.9., 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:** Land Use Approved 7-0; Public Hearing Closed 7-0

**Note:** Senior Planner Michael Gleba presented the attached request for a special permit at 76 Drumlin Road. The request is to construct a sunroom addition at the rear of the dwelling further extending the nonconforming FAR. The presentation is attached, and additional back-up can be found at the following link: [76 Drumlin Road- Petition Documents](#) It would be a 16 foot by 16 foot expansion to the rear of the home, and will not be visible from the street.

The public hearing was opened.

The Committee discussed the draft Council Order, and Councilor Bowman motioned to approve which passed unanimously.

**#196-23 Request to expand a nonconforming detached garage at 231-233 Tremont Street**  
ARTO AND VICTORIA DERMOVESIAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a half-story addition, vertically extending a nonconforming side setback on an existing detached accessory structure at 231-233 Tremont Street, Ward 1, Newton, on land known as Section 71 Block 38 Lot 15, containing approximately 6,400 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 3.4.3.A.1, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:** Land Use Approved 7-0; Public Hearing Closed 7-0

**Note:** Senior Planner Michael Gleba presented the attached request for a special permit at 231-233 Tremont Street. The request is to construct a half-story addition, vertically extending a nonconforming side setback on an existing detached accessory structure. The presentation is attached, and additional back-up can be found at the following link: [231-233 Tremont Street- Petition Documents](#). The footprint will not be changing if approved.

Ron Jarek, architect representing the petitioners, believes the description described by planning was appropriate, and this would add capacity to the house and their living situation. Height and dormitory requirements are not exceeded.

Arto Dermovesian noted he received support from his neighbors.

The public hearing was opened.

Councilor noted there have been no complaints brought forward about this project.

The Committee discussed the draft Council Order, and Councilor Greenberg motioned to approve which passed unanimously.

**#195-23 Request to allow ground floor residential use, to allow three stories and a 35.3-foot height and to exceed FAR at 20 Clinton Street**  
CLINTON STREET LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing dwelling and construct four residential units in two buildings with dimensional waivers at 20 Clinton Street, Ward 1, Newton, on land known as Section 14 Block 22 Lot 12, containing approximately 10,404 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 4.4.1, 4.1.2.B.2, 4.1.2.B.3, 4.1.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:** Land Use Held 7-0; Public Hearing Opened

**Note:** Senior Planner Cat Kemmett presented the request for special permit at 20 Clinton Street. The request is to raze the existing dwelling and construct four residential units in two buildings with dimensional waivers at 20 Clinton Street. The Planning Department's presentation is attached. Please find additional back-up at the following link: [20 Clinton Street- Petition Documents](#). Noted that a request to alter

and extend an existing nonconforming side setback was not advertised for. As a result, it will have to be readvertised before the committee can vote. The Newton Historical Commission reviewed the site in February of last year to preserve the home, but it did not pass. Each residential unit has 3 bedrooms, and there is a shared driveway for the structures. Planning believes this is appropriate for the neighborhood, and this will be one of the only 3 story buildings along Clinton Street.

Stephen Buchbinder with Schlesinger and Buchbinder, LLP, noted this project started many months ago with changes along the way. A by right plan means that there could have been retail at the bottom of the structure. The original design had 4 units with 4 bedrooms but after feedback from the community they were dropped to 3-bedroom units. Two public meetings were held to get feedback with councilors attending, which resulted in the following changes: reduced the length of the building, reduced entire gross floor area, more landscaping, preserved 2 trees, and reoriented the balconies. Worked with 3 neighbors to come to a resolution regarding issues with the projects, which resulted in 2 easements with no compensation and to give land to rear abutters that they previously thought they owned. Noted they discovered the need to alter and extend an existing nonconforming side setback this morning, which they brought to planning and the clerk's office. Noted all the neighbors wanted 2 car garages, which is appropriate because they are designed to be family units.

The public hearing was opened.

Anthony Pelligrini (56 Clinton Street) noted that the abutters are very happy with the changes of the project. Noted he is happy with the project, and it is better than what it could have been by right.

Councilors commended the amount of work that went in with the neighbors and community.

Councilor would like to know from planning if the project done by right or what is now currently proposed could be done by right under the proposed zoning changes.

Councilor commended that the units could be changed to make it an accessible unit without a complete remodel.

Councilor Greenberg made a motion to hold, which passed unanimously.

The Committee adjourned at 8:45 pm.

**Respectfully Submitted,**

**Richard Lipof, Chair**

# City of Newton Planning and Development

**Petition #s : 197-23, 198-23, 199-23**

## **Special Permit/Site Plan Approval**

*To amend the conditions of the prior special permits around vibration control and MAAB (197-23)*

*June 6, 2023*



136-144 Hancock Street  
Petition #197-23



River Street Elevation



Elm Street Elevation

106 River Street  
Petition #198-23



71 Commonwealth Avenue  
Petition #199-23



# 136-144 Hancock Street

#197-23  
#198-23  
#199-23



Barton House



Walker House



Town Homes





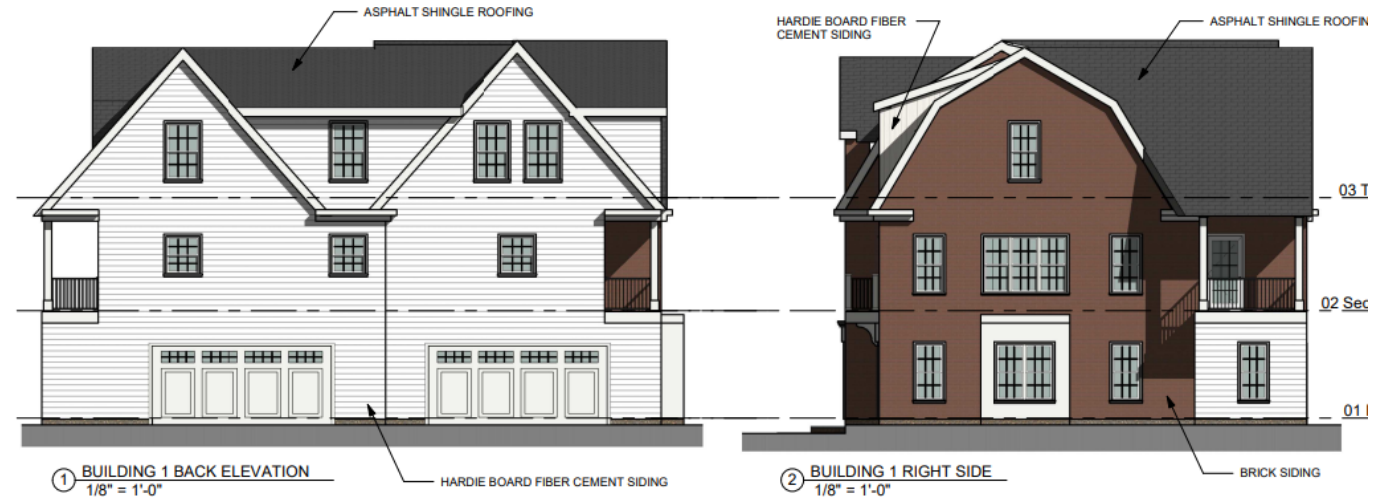
# 136-144 Hancock Street - Background

#197-23  
#198-23  
#199-23

- 2022: Special Permit for 16 units in four buildings with dimensional relief and Rezoning from SR-3 to MR-2
- Within Auburndale Historic District
- Approved project consists of 27 parking stalls; 13 surface and 14 within a garage
- Townhomes - two buildings (4 units): basements consist of bonus rooms; first floor garage parking.
- Barton House (5 units): existing basement with only living area; surface parking
- Walker House (7 units): ground floor garage parking for 6 cars basement is partially exposed due to topography of the site.



Walker House



Townhomes

# 136-144 Hancock Street - Request

#197-23  
#198-23  
#199-23

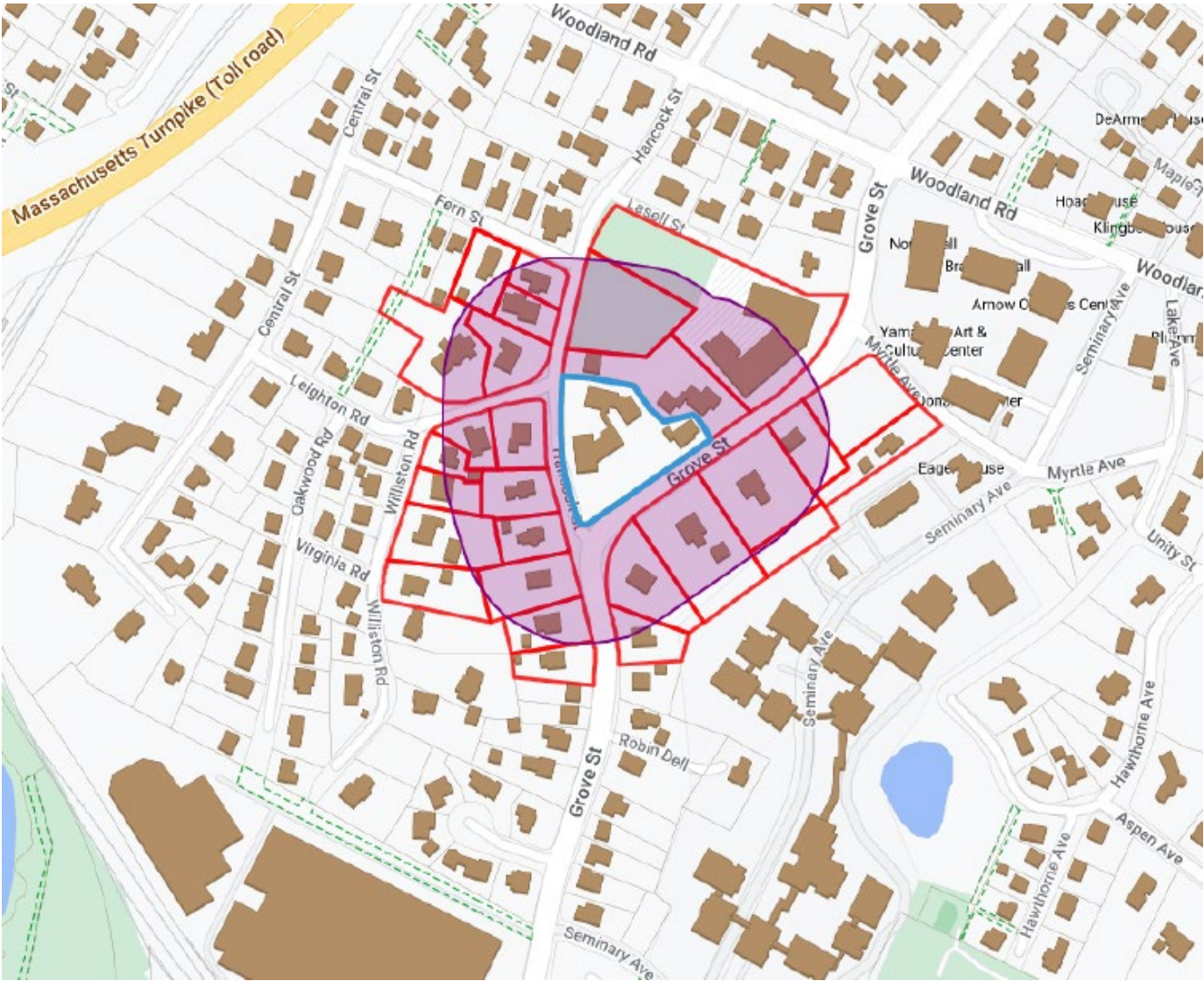
1. By inserting the words, “if applicable” at the end of the first sentence in Condition 2 on page 4, so that it reads, “All residential units shall conform to the Massachusetts Architectural Access Board (MAAB) requirements for ‘Group 1 units, if applicable”.
2. By deleting the words, “within 250 feet of the Project” as they now appear in Condition 25(a) and 25(k) on pages 8 and 9, and inserting in place thereof the words, “on Grove Street and Hancock Street that directly abut the project”.

**Supportive of  
eliminating to let  
building code  
prevail**

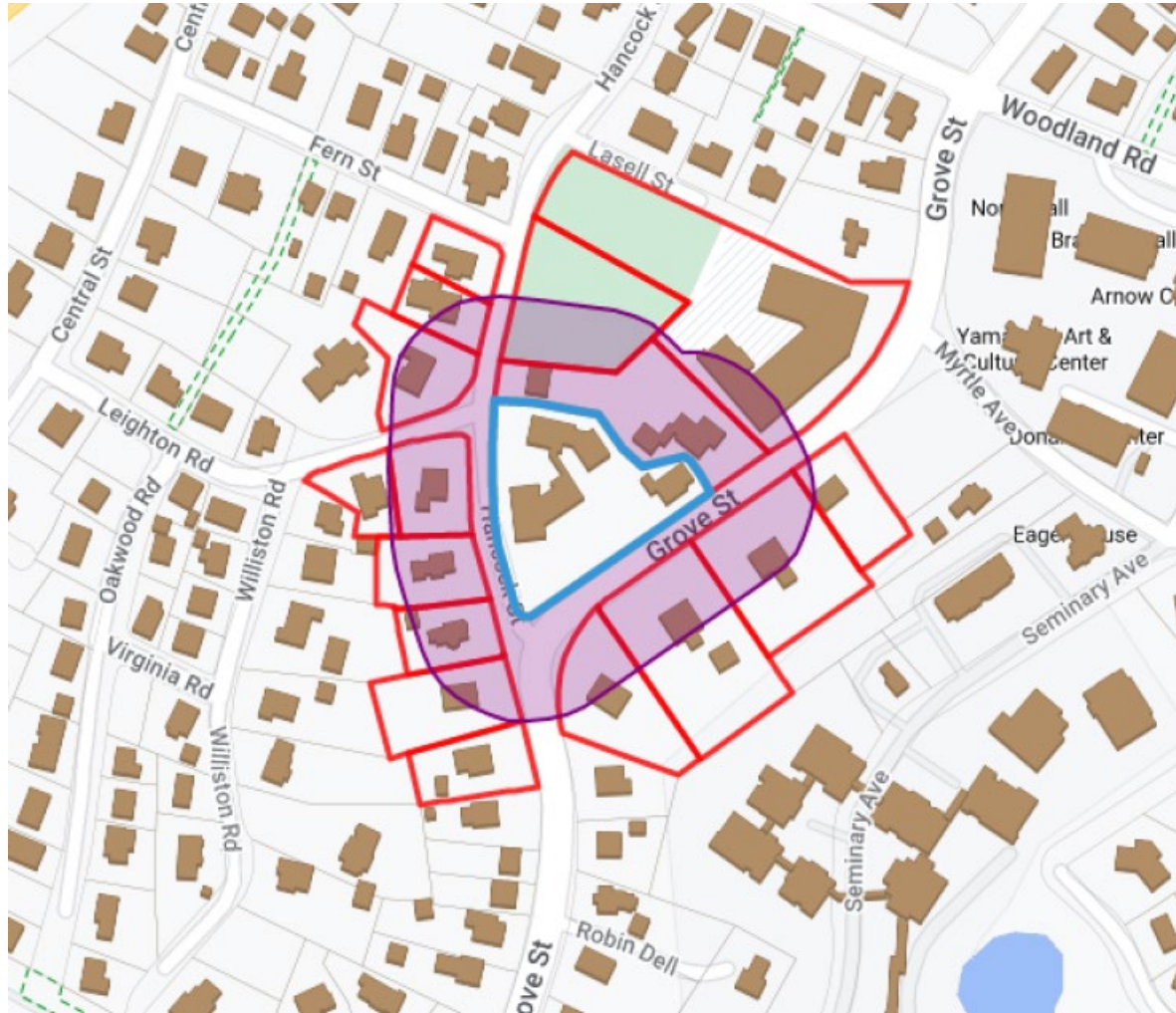
**Further discussion  
required**

136-144 Hancock Street  
250 foot radius

#197-23  
#198-23  
#199-23







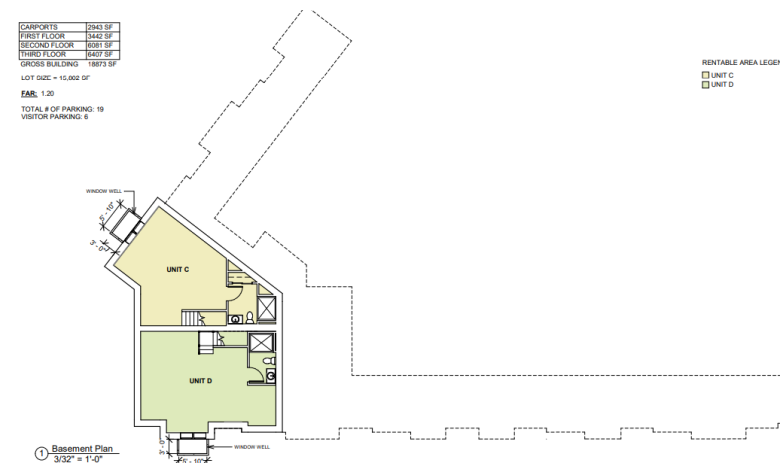
- Planning and Law exploring reducing radius to 150 feet for projects with less than 25 units.
- Directive to City Staff in February 2023 was to use a version of vibration control condition without mitigation fund for projects with less than 25 units. Staff believes this condition could be further tweaked to reduce the radius to 150 feet.

# 106 River Street Background

#197-23  
#198-23  
#199-23



- Approved January 2023
- Special Permit to allow nine residential units with 17 surface parking stalls.



Area below grade



# 106 River Street Request

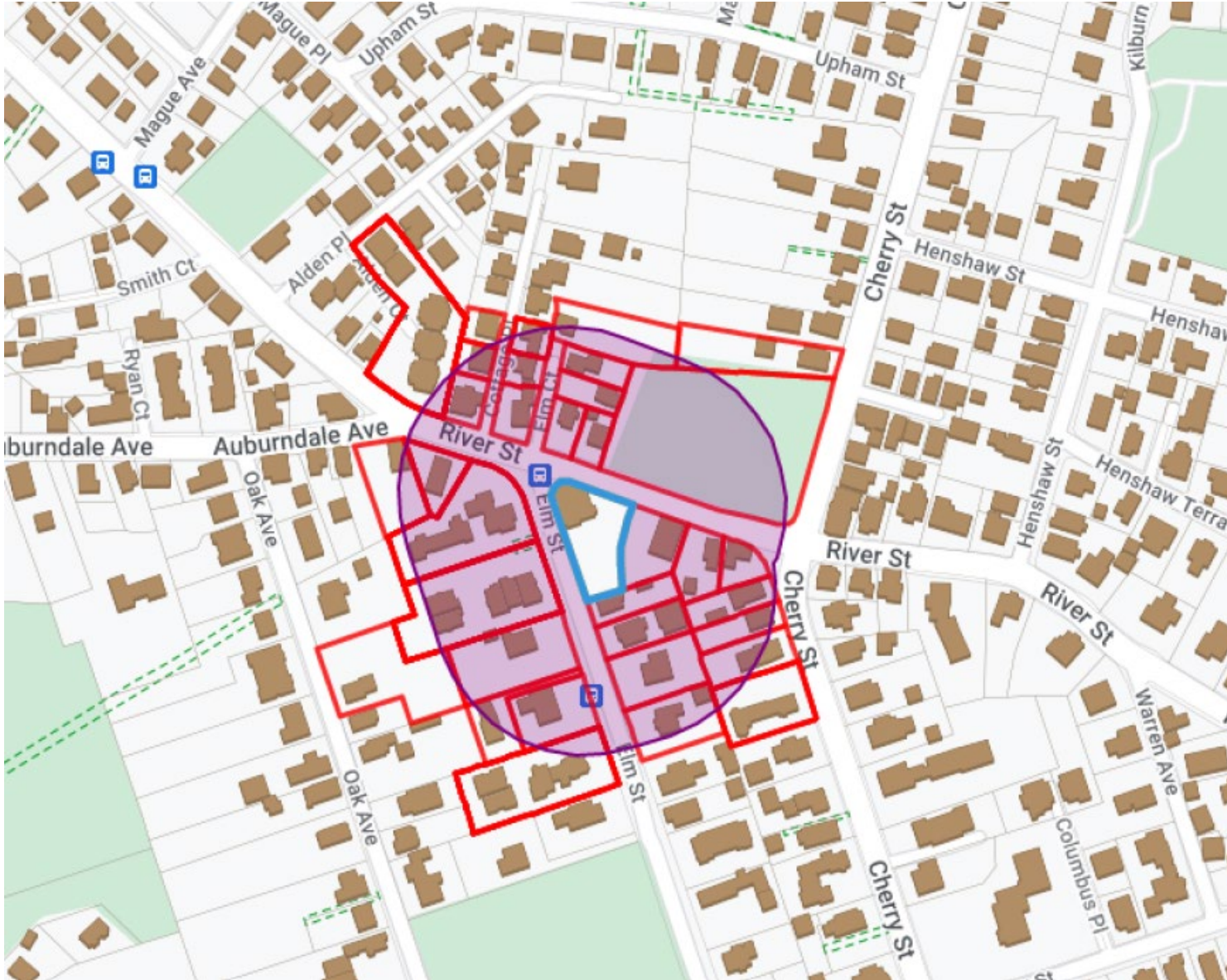
#197-23  
#198-23  
#199-23

That Council Order #447-22 is hereby amended as follows:

1. By deleting the words, “within 250 feet of the Project” as they now appear in Condition 13(a) and (b) and inserting in place thereof the words, “on River Street and Elm Street that directly abut the project”.

106 River Street  
250-foot radius

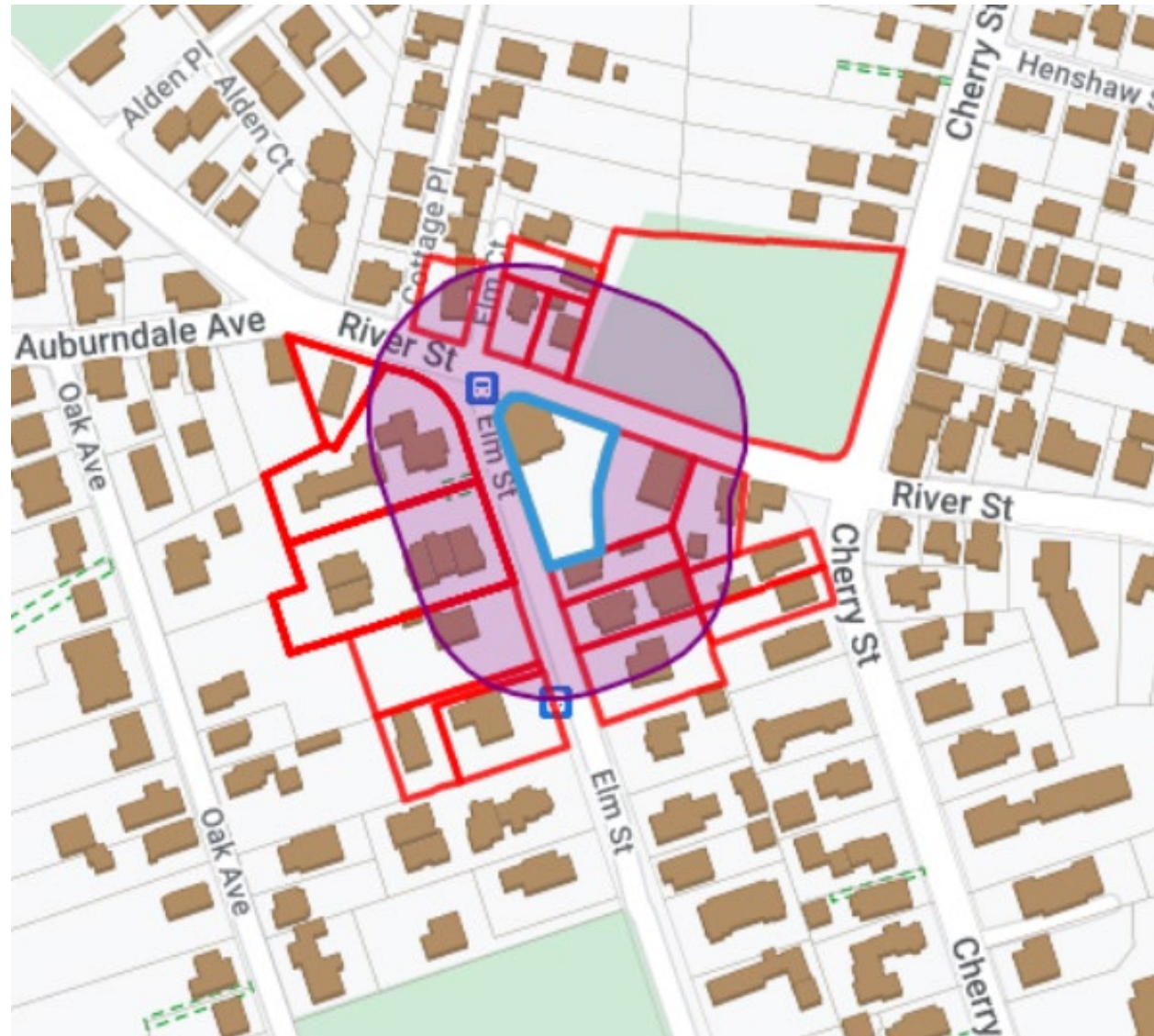
#197-23  
#198-23  
#199-23



63 abutters

106 River Street  
150-foot radius

#197-23  
#198-23  
#199-23



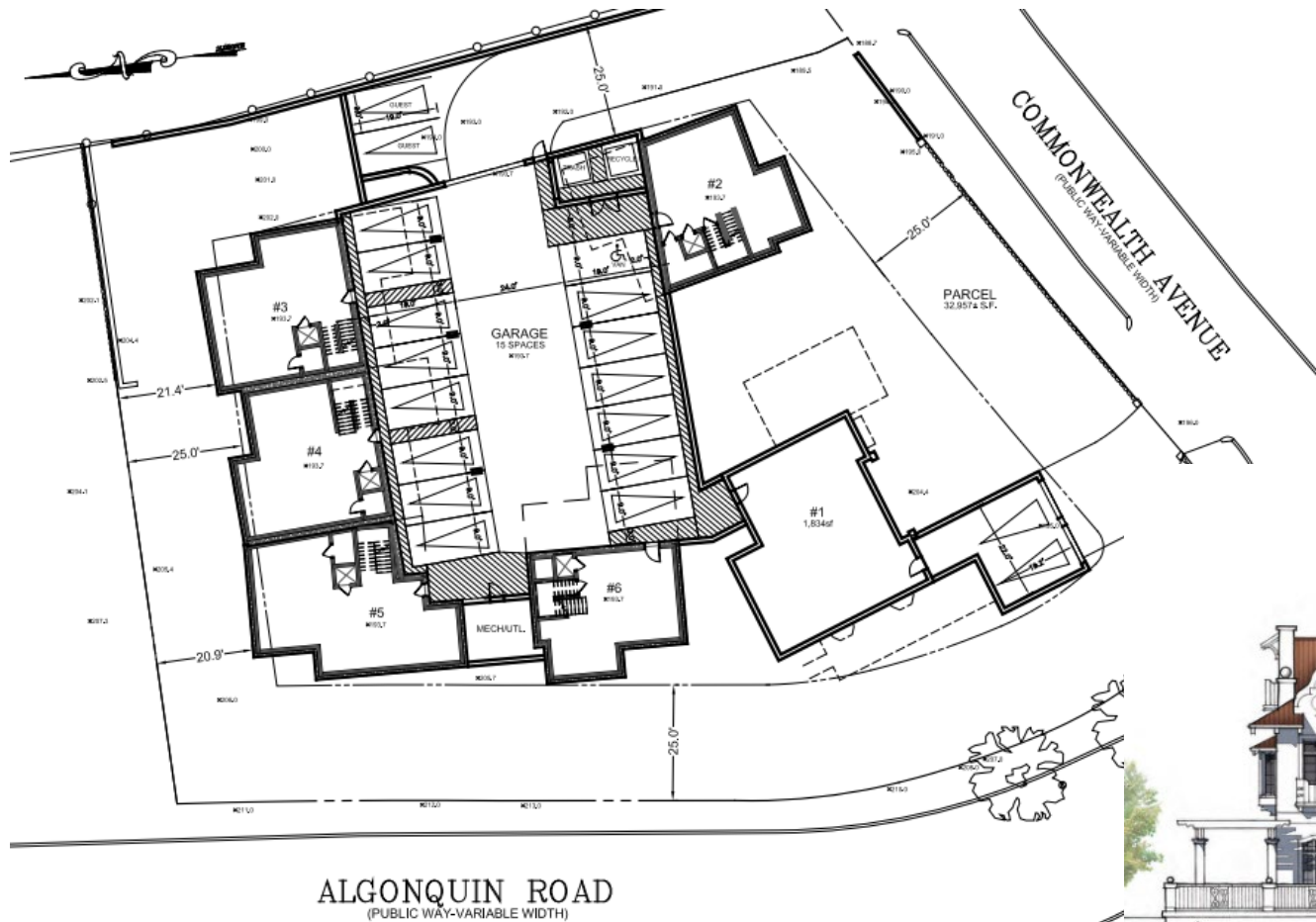
29 abutters



# 71 Commonwealth Avenue Background

#197-23  
#198-23  
#199-23

- Approved April 2023
- Special Permit to allow six single family attached dwellings with 17 parking stalls.
- Retained historic dwelling
- 15 parking stalls under a common courtyard and basement space for 5 units of new construction



COMMONWEALTH AVENUE STREETScape

# 71 Commonwealth Avenue Request

#197-23  
#198-23  
#199-23

That Council Order #504-22 is hereby amended as follows:

1. By deleting the words, “within 250 feet of the Project” as they now appear in Condition 7(a) and 7(i) and inserting in place thereof the words, “on Commonwealth Avenue and Algonquin Road that directly abut the project”.



71 Commonwealth Avenue  
250-foot radius

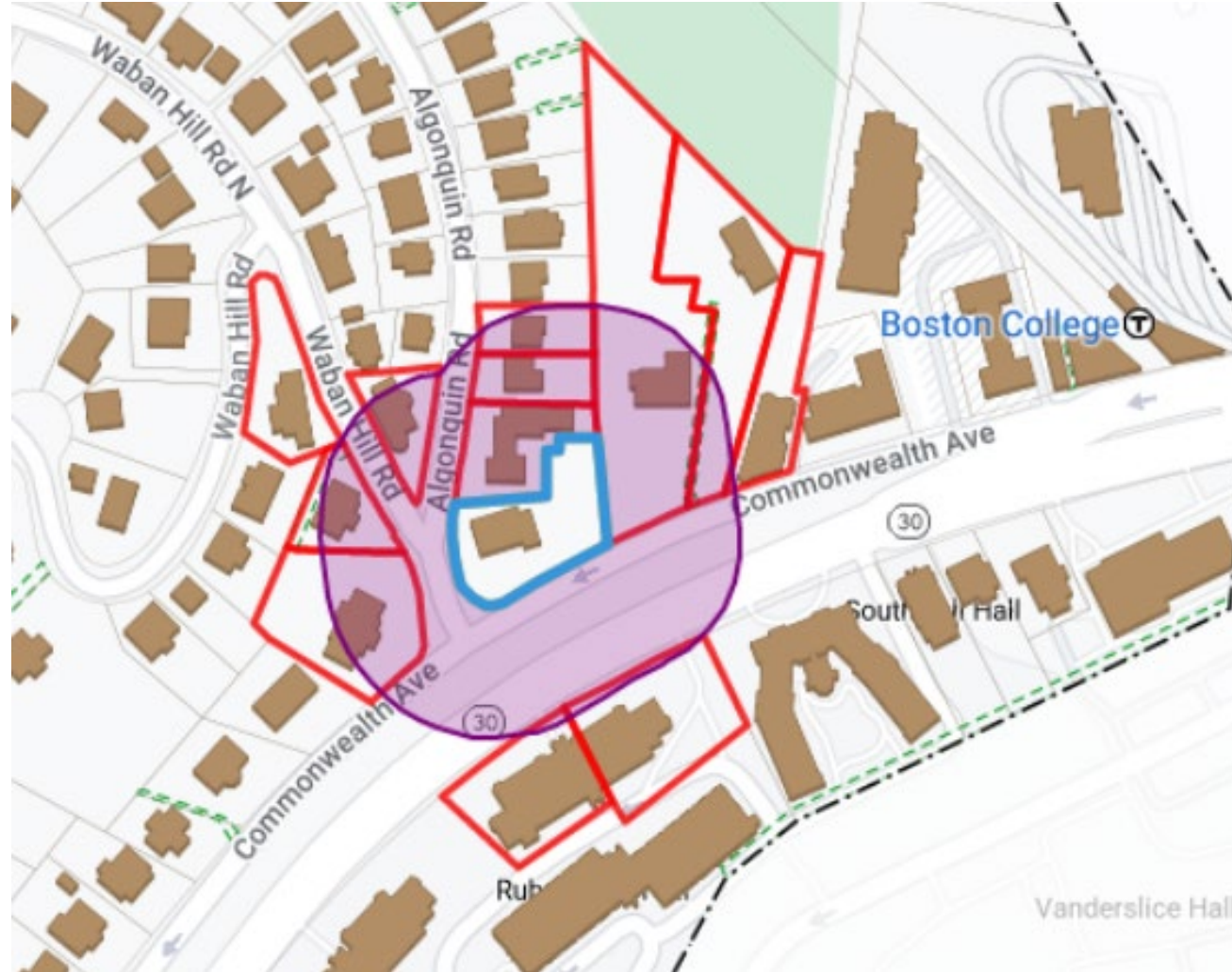
#197-23  
#198-23  
#199-23



44 abutters

71 Commonwealth Avenue  
150-foot radius

#197-23  
#198-23  
#199-23



12 abutters

# City of Newton Planning and Development

## Petition #194-23

Special Permit/Site Plan Approval to to construct a sunroom addition at the rear of the dwelling which will further extend the nonconforming FAR

***June 6, 2023***



**76 Drumlin Road**

# Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §3.1.9 §7.8.2.C.2	Request to further extend nonconforming FAR	S.P. per §7.3.3

- + *would increase already nonconforming FAR from 0.35 to 0.37 where 0.30 is the maximum allowed by right (from 5,676 to 5,932 SF; 256 SF)*



# Criteria to Consider

When reviewing this request, the Council should consider:

1. the proposed expanded dwelling with an increased FAR of 0.37 where 0.35 exists and 0.30 is the maximum allowed by right is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood. (§3.1.9)
2. the proposed expanded dwelling with an increased FAR of 0.37 where 0.35 exists and 0.30 is the maximum allowed by right is not substantially more detrimental than the existing nonconforming dwelling to the neighborhood. (§7.8.2.C.2)



# Aerial Map

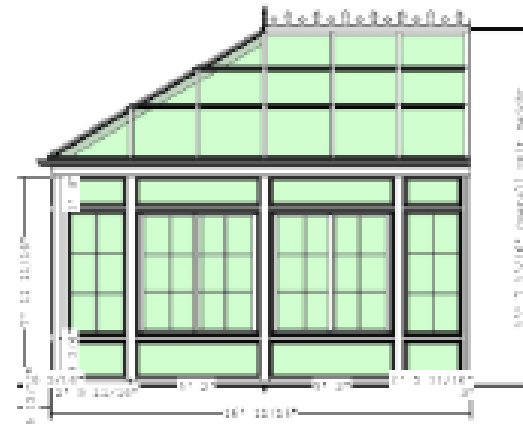
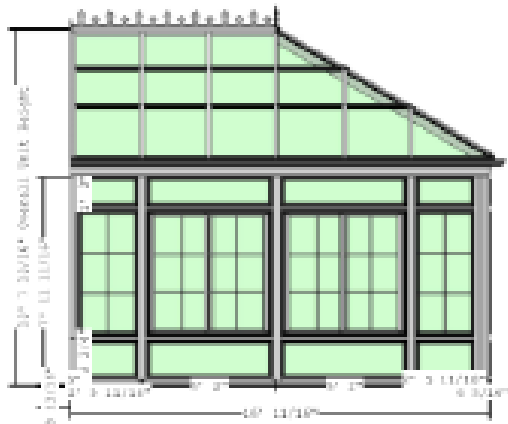
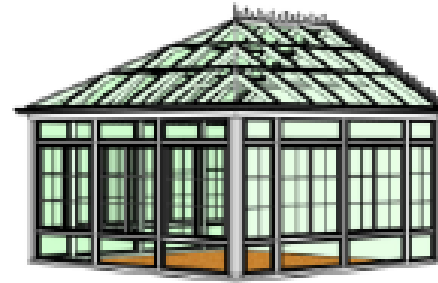
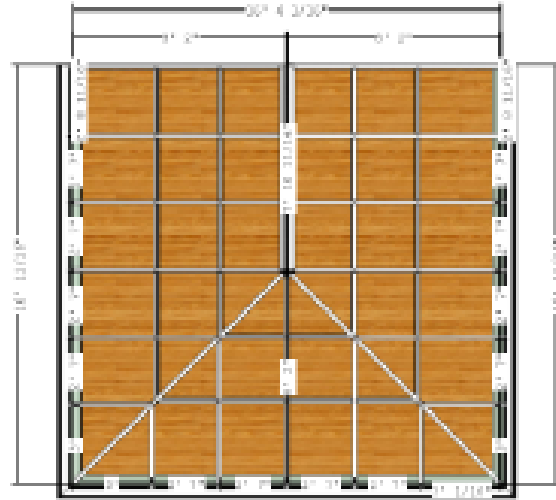
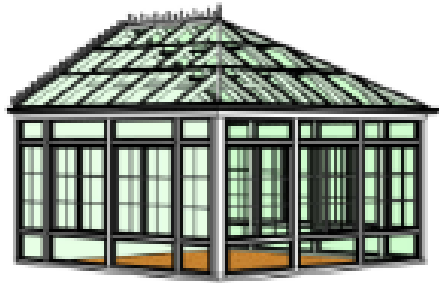
194-23





# Elevations & Perspectives

194-23





# Photo

194-23



1. The proposed expanded structure with an increased nonconforming FAR of 0.37 where 0.35 exists and 0.30 is the maximum allowed by-right is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood given the neighborhood features similar dwellings throughout. (§3.1.9)
2. The proposed expanded structure with an increased nonconforming FAR of 0.37 where 0.35 exists and 0.30 is the maximum allowed by-right would not be substantially more detrimental than the existing nonconforming structure is to the neighborhood given its size, construction, and limited visibility from nearby properties and/or public rights-of-way (§7.8.2.C.2)



- + *Plan Referencing Condition*
- + *Standard Building Permit Condition*
- + *Standard Final Inspection/Certificate of Occupancy Condition*

# City of Newton Planning and Development

## **Petition #196-23**

Special Permit/Site Plan Approval to construct a half-story addition, vertically extending a nonconforming side setback on an existing detached accessory structure

***June 6, 2023***



**231-233 Tremont St.**

# Zoning Relief

195-23

<b>Zoning Relief Required</b>		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.3.A.1 §7.8.2.C.2	Request to vertically extend the nonconforming side setback of a detached accessory structure	S.P. per §7.3.3

- + half story addition would increase garage height by approximately 10 feet, extending the nonconforming side setback upward, resulting in 21.95 foot height at ridgeline (slightly lower than the maximum 22 feet allowed for sloping roofs on detached accessory structures).

# Criteria to Consider

195-23

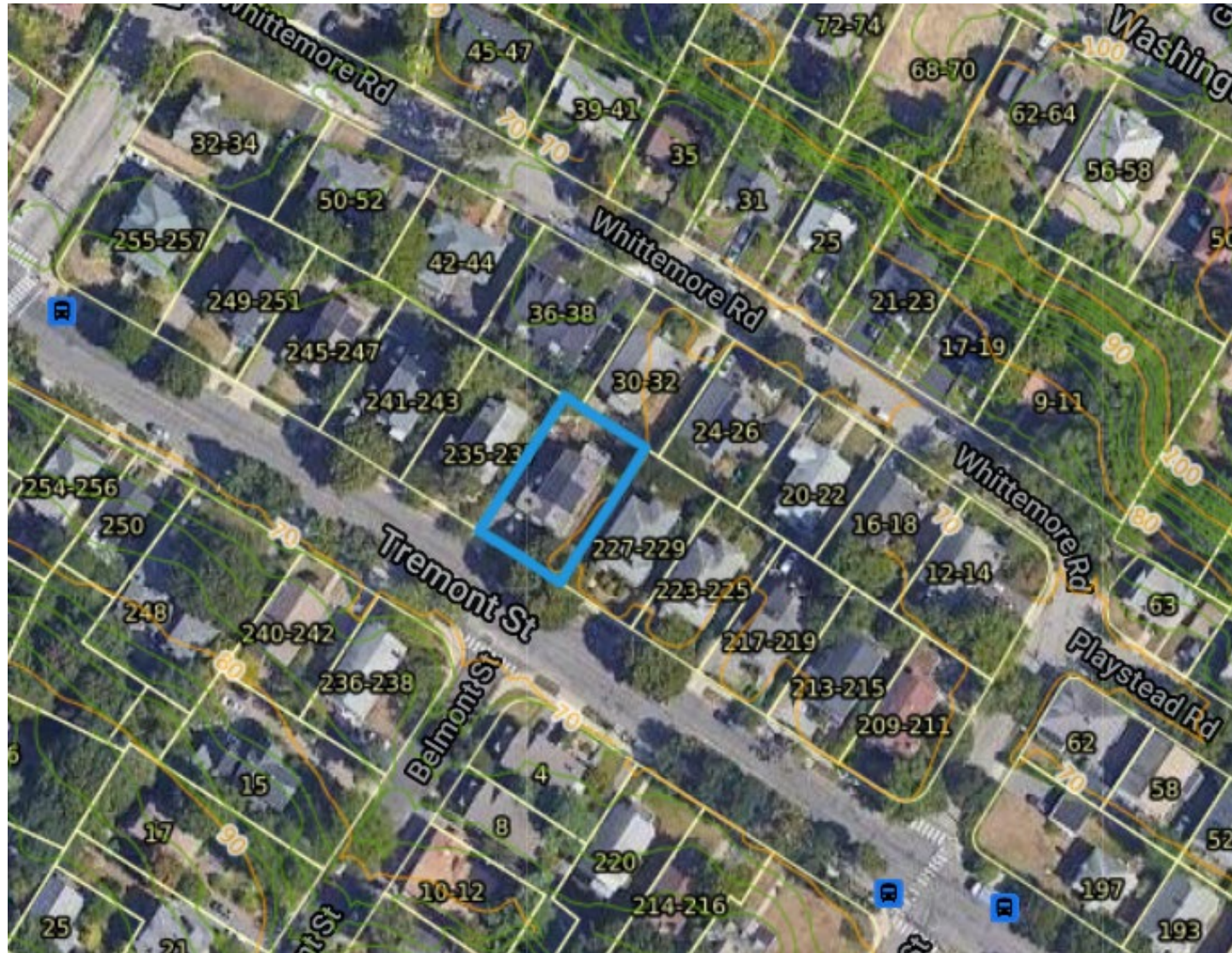
When reviewing this request, the Council should consider:

1. The proposed expanded detached accessory structure with a vertically extended nonconforming three-foot side setback would be not substantially more detrimental than the existing nonconforming structure to the neighborhood. (§7.8.2.C.2)



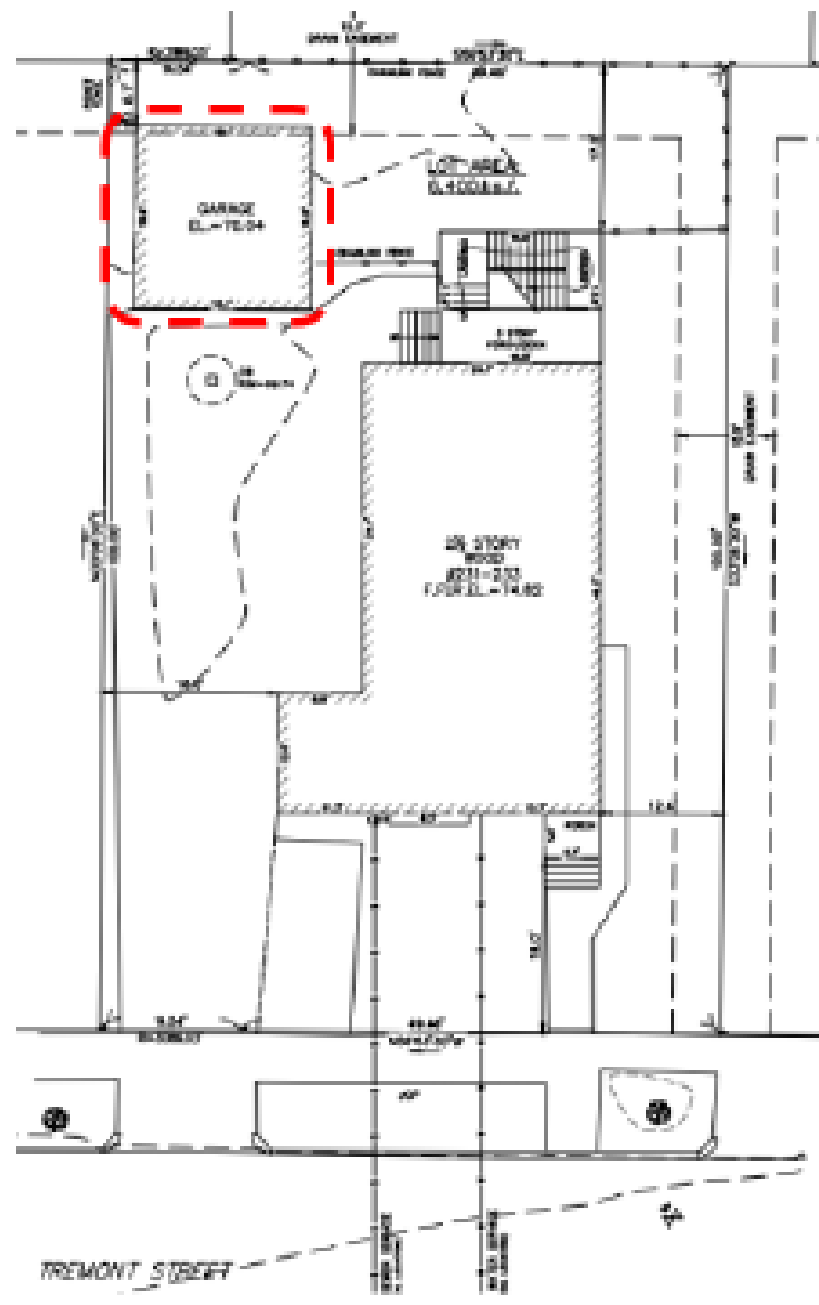
# Aerial Map

195-23



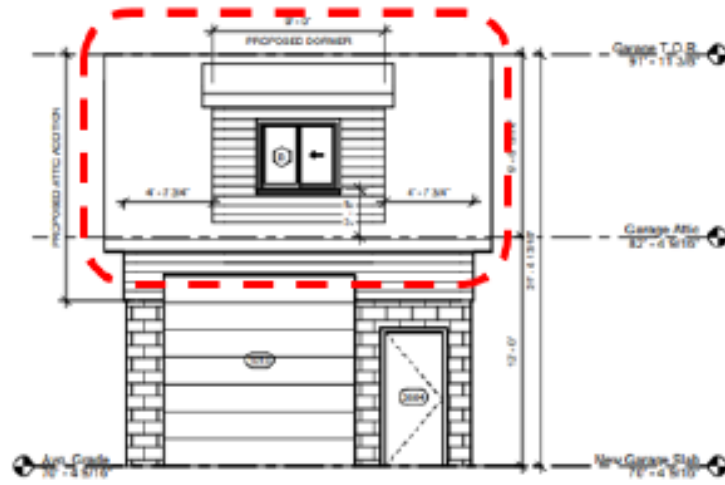
# Site Plan

195-23

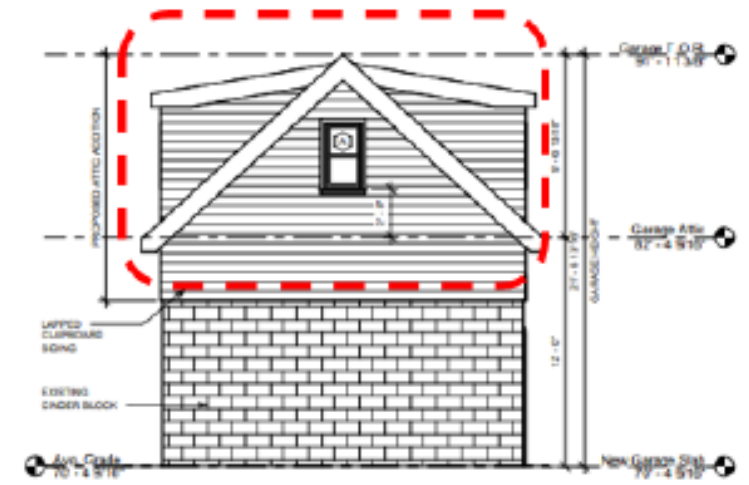


# Elevations

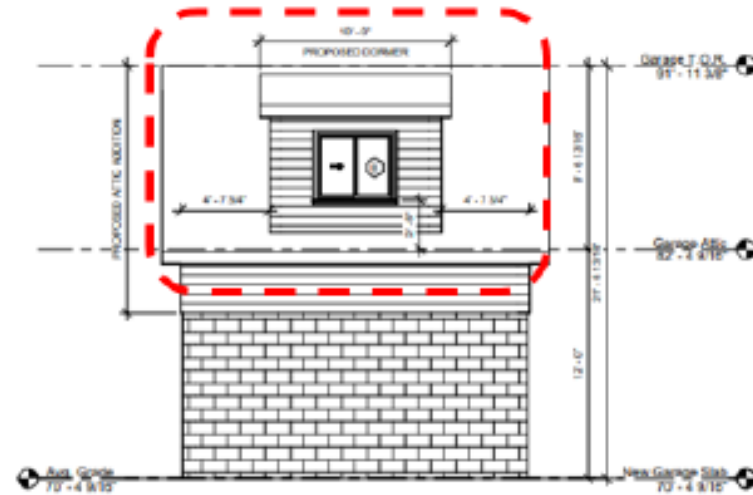
195-23



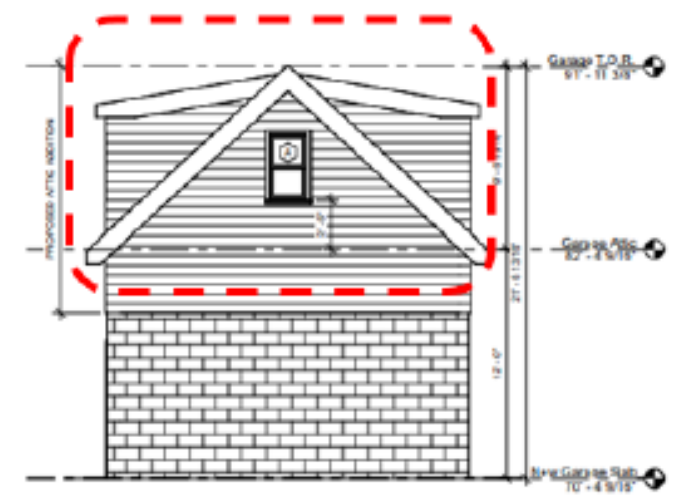
① FRONT ELEVATION  
142" x 1'-0"



② LEFT ELEVATION  
142" x 1'-0"



③ REAR ELEVATION  
142" x 1'-0"



④ RIGHT ELEVATION  
142" x 1'-0"



# Photo

195-23





1. The proposed expanded detached accessory structure with a vertically extended nonconforming three- foot side setback would be not substantially more detrimental than the existing nonconforming structure to the neighborhood given that the proposed addition would have limited or no visibility from nearby public rights of way. (§7.8.2.C.2)

- + *Plan Referencing Condition*
- + *Standard Building Permit Condition*
- + *Standard Final Inspection/Certificate of Occupancy Condition*

# City of Newton Planning and Development

Petition: #195-23

**Special Permit/Site Plan Approval** to raze the existing dwelling and construct four residential units in two buildings with dimensional waivers



**20 Clinton Street**

June 6, 2023

# Zoning Relief

Zoning Relief Required		
Ordinance		Action Required
§4.4.1	Request to allow ground floor residential use	S.P. per §7.3.3
§4.1.2.B.2	Request for site plan review for a building with more than 10,000 square feet	S.P. per §7.3.3
§4.1.2.B.3 §4.1.3	Request to allow a three-story structure with 36 feet in height	S.P. per §7.3.3
§4.1.3 §7.8.2.C.2	Request to alter and extend an existing nonconforming side setback	S.P. per §7.3.3
§4.1.3	Request to allow an FAR of 1.1	S.P. per §7.3.3

# Criteria to Consider

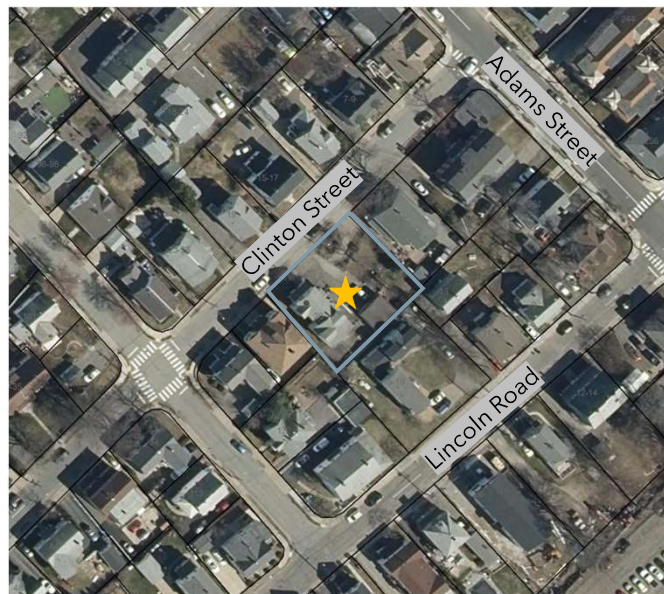
When reviewing this request, the Council should consider:

- The site in BU-2 is an appropriate location for the proposed four residential units in two structures with three stories and 35.3 feet in height, a nonconforming side setback, a ground floor residential use, a Floor Area Ratio (FAR) of 1.1, and site plan review for a building with more than 10,000 square feet.
- The project as developed and operated will not adversely affect the neighborhood, (§7.3.3.C.2);
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- The proposed increase in FAR is not substantially more detrimental than the existing structure is to the neighborhood. (§7.3.3)

3

3

## Aerial Map



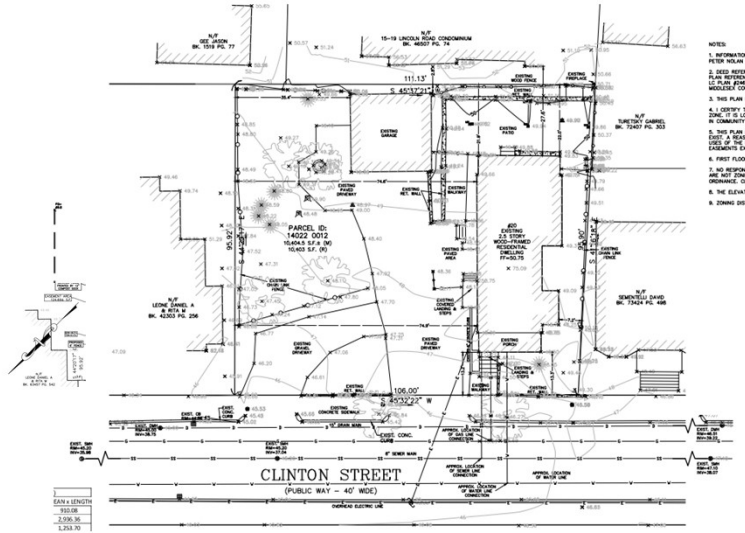
4

4



# Site Plan

## Existing conditions

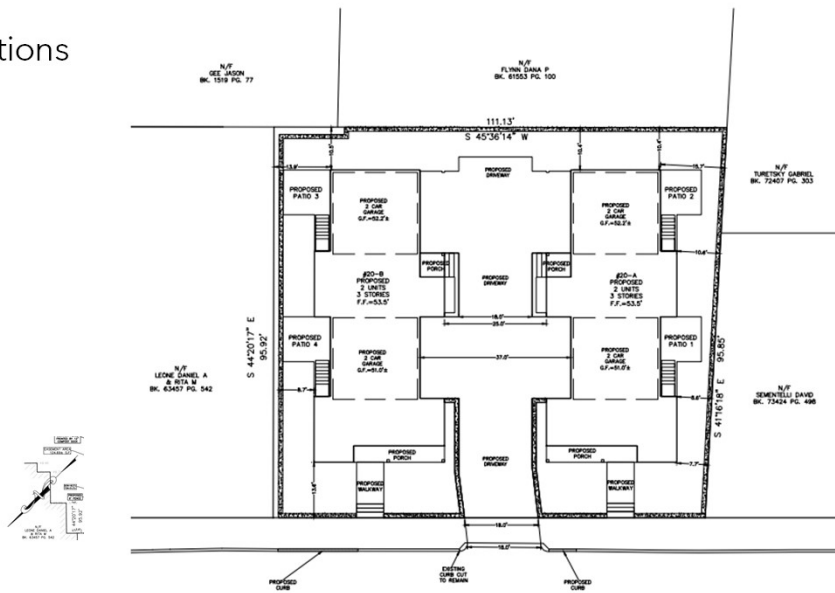


5

5

# Site Plan

## Proposed conditions



6

6

# Proposed elevations

Front



7

7

# Proposed elevations

Interior courtyard



PROPOSED COURTYARD ELEVATION  
scale 3/32"=1'-0"

8

8

# Proposed elevations

Side yard



9

# Landscape plan



10

10