



Land Use Committee Report

City of Newton In City Council

Tuesday, July 11, 2023

Present: Councilors Lipof (Chair), Downs, Kelley, Laredo, Lucas, and Markiewicz; Absent: Councilors Bowman and Greenberg

Also Present: Councilor 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 July 11, 2023, Land Use Meeting can be found at the following link: [Land Use Committee - July 11, 2023 \(newtv.org\)](#)

#228-23 Request to further extend a nonconforming 3.5 story single-family dwelling and to exceed FAR at 35 Oak Cliff Road

NELSON AND SALLY DUPERE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a dormer addition in the half story of the nonconforming 3.5-story structure, extending the nonconforming number of stories and exceeding the maximum FAR at 35 Oak Cliff Road, Ward 2, Newtonville, on land known as Section 24 Block 26 Lot 11, containing approximately 6,859 sq. ft. of land in a district zoned Single Residence 2. Ref: 7.3.3, 3.1.3, 7.8.2.C.2, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 6-0; Public Hearing Closed 6-0

Note: Senior Planner Michael Gleba presented the attached request for a special permit at 35 Oak Cliff Road. The request is to construct a dormer addition in the half story of the nonconforming 3.5 story structure, extending the nonconforming number of stories and exceeding the FAR. The presentation is attached, and additional back-up can be found at the following link: [35 Oak Cliff Road- Petition Documents](#). Due to the grade of the parcel, the basement is considered a story which causes the dwelling to be considered 3.5 stories. The addition would not be seen from the front of the property.

The public hearing was opened. There were no members of the public that spoke.

A councilor noted support of the additions to the home.

The public hearing was closed.

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

#229-23 Request to waive seven parking stalls at 12 Austin Street

JP COMELLA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to combine two units currently occupied by retail and personal services uses to operate a 42-seat restaurant which requires a waiver of seven parking stalls at 12 Austin Street, Ward 2, Newtonville, on land known as Section 24 Block 09 Lot 16, containing approximately 5,695 sq. ft. of land in a district zoned Business1. Ref: 7.3.3, 5.1.4, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 6-0; Public Hearing Closed 6-0

Note: Senior Planner Michael Gleba presented the attached request for a special permit at 12 Austin Street. The request is to combine two units currently occupied by retail and personal service uses to operate a 42-seat restaurant which requires a waiver of seven parking stalls. The presentation is attached, and additional back-up can be found at the following link: [12 Austin Street- Petition Documents](#). The Transportation Division did not express concern, and the petitioner noted that deliveries would take place in the back alley.

The public hearing was opened.

John Pellietier, 103 Madison Avenue, noted support of the project and likes there will be more food options close to his house.

Councilors expressed support for the project.

A councilor questioned if the West Newton location would be closing, and if the craft beer store would be closing.

A councilor noted that they would be closing their West Newton location.

A councilor noted the restaurant would be going in where the craft beer store is.

A councilor noted there are several parking options in the area that often go unused.

The public hearing was closed.

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

#239-23 Request to allow parking in the front setback at 213 Jackson Street

THEODORE AND STEPHANIE SILVERSTEIN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing attached garage into living space and construct two parking stalls within the front setback at 213 Jackson Street, Ward 6, Newton Centre, on land known as Section 62 Block 25 Lot 15, containing approximately 5,135 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 5.1.7.A, 5.1.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 6-0; Public Hearing Closed 6-0

Note: Senior Planner Cat Kemmett presented the attached request for a special permit at 213 Jackson Street. The request is to construct an additional parking stall within the front setback. The presentation is attached, and additional back-up can be found at the following link: [213 Jackson Street-Petition Documents](#). Ms. Kemmett noted that the petitioners are converting the garage into living space, and the existing driveway into 2 parking stalls. The department believes that the changes proposed are not likely to have a significant negative impact.

Theodore Silverstein, petitioner, thanked staff members and expressed that the change will help them remain and live in Newton for many more years.

The public hearing was opened. There were no members of the public that spoke.

Councilors expressed support as open spaces and lot coverage are staying above what is required, and the curb cut is staying as it is currently existing. Noted no visibility concerns, and that it does not interfere with the sidewalk.

The public hearing was closed.

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

The Committee adjourned at 7:30 pm.

Respectfully Submitted,

Richard Lipof, Chair

City of Newton Planning and Development

Petition #228-23

Special Permit/Site Plan Approval to construct a dormer addition in the half story of the nonconforming 3.5-story structure, extending the nonconforming number of stories and exceeding the maximum FAR

July 11, 2023



35 Oak Cliff Road

Zoning Relief

#228-23

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.1.3 §7.8.2.C.2	Request to extend a nonconforming 3.5-story single-family dwelling	S.P. per §7.3.3
§3.1.3 §3.1.9	Request to exceed FAR	S.P. per §7.3.3

- *proposed dormer on top half story would extend nonconforming 3½ -story*
- *proposed dormer would increase floor area by approx. 280 sf (2,710 to 2,990 sf, increasing FAR from conforming 0.39 to 0.44 where 0.43 is the maximum allowed by right*

Criteria to Consider

#228-23

When reviewing this request, the Council should consider:

- The proposed expanded structure with a dormer on the 3 ½ story as designed would be substantially more detrimental than the existing nonconforming structure to the neighborhood. (§7.8.2.C.2)
- The specific site is an appropriate location for the proposed expanded structure as designed with a dormer on the 3 ½ story and a floor area ratio (FAR) of 0.44 where 0.43 is the maximum allowed by right. (§7.3.3.C.1)
- The proposed expanded structure as designed with a dormer on the 3 ½ story and a floor area ratio (FAR) of 0.44 where 0.43 is the maximum allowed by right 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 expanded structure with a dormer on the 3 ½ story, as designed with a floor area ratio (FAR) of 0.44 where 0.43 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)

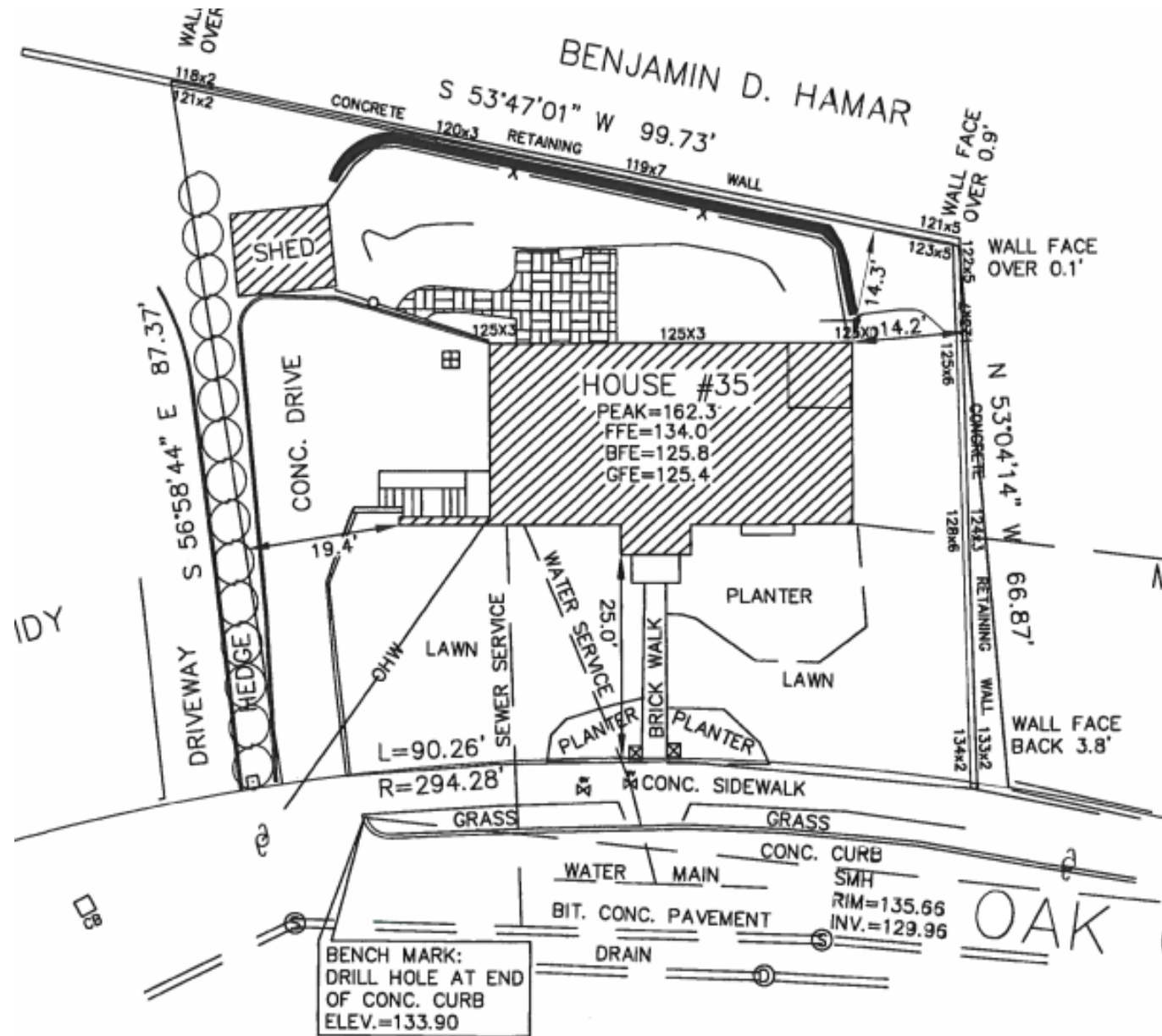
Aerial Map

#228-23



Site Plan

#228-23



Perspectives (clockwise)-

- existing rear left
- proposed rear right
- proposed rear right



Photos

#228-23



Findings

#228-23

1. The proposed expanded structure with a dormer on the 3 ½ story as designed would not be substantially more detrimental than the existing nonconforming structure to the neighborhood given the dormer's relatively modest size and, since it would be located on the rear of the structure, it would have limited or no visibility from adjacent public rights-of-way and/or residential properties. (§7.8.2.C.2)
2. The specific site is an appropriate location for the proposed expanded structure as designed with a dormer on the 3 ½ story and a floor area ratio (FAR) of 0.44 where 0.43 is the maximum allowed by right given the size of the property, that there are similarly scaled and designed dwellings in the neighborhood, and the proposed modifications will be located at the rear of the dwelling and would have limited or no visibility from adjacent public rights-of-way and/or residential properties. (§7.3.3.C.1)

Findings (cont.)

#228-23

3. The proposed expanded structure as designed with a dormer on the 3 ½ story and a floor area ratio (FAR) of 0.44 where 0.43 is the maximum allowed by right as developed and operated will not adversely affect the neighborhood as the proposed modifications will be located at the rear of the dwelling and would have limited no or visibility from adjacent public rights-of-way and/or residential properties. (§7.3.3.C.2)
4. There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3)
5. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
6. The proposed expanded structure as designed with a floor area ratio (FAR) of 0.44 where 0.43 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)

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

City of Newton Planning and Development

Petition #229-23

Special Permit/Site Plan Approval to combine two units currently occupied by retail and personal services uses to operate a 42-seat restaurant which requires a waiver of seven parking stalls

July 11, 2023



12 Austin Street

Zoning Relief

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§5.1.4 §5.1.13	Request to waive seven parking stalls	S.P. per §7.3.3

- *Restaurants required to provide one parking stall per every three seats plus one per every three employees at the busiest shift.*
- *42 seats and up to six employees, requires 16 parking stalls*
- *Nine stall credit, waiver of seven stalls needed*

Criteria to Consider

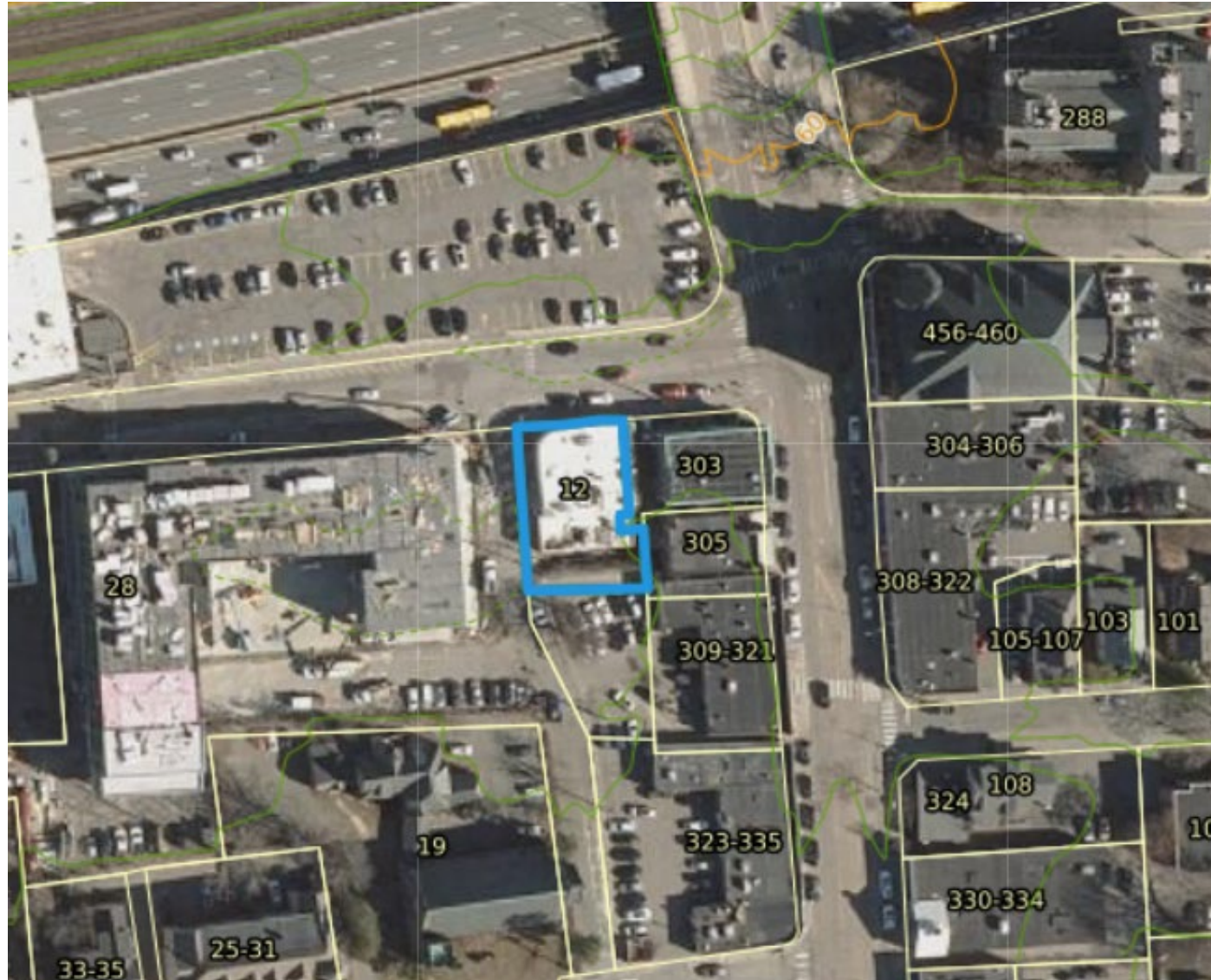
229-23

When reviewing this request, the Council should consider whether :

- Literal compliance with the requirement to provide seven additional parking stalls is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest, or in the interest of safety, or protection of environmental features. (§5.1.4)

Aerial Map

229-23



Parking

- Transportation Division did not express concern, noted petitioner's numbers were relatively conservative as average current number of unoccupied nearby public spaces may be significantly more than what was summarized in the data collected by the petitioner.
- In support requested parking waiver, petitioner indicated:
 - Deliveries would take place through back alley of 14-16 Austin Street; drivers will be instructed to access back alley via Philip Bram Way.
 - Staff would be instructed to utilize public transport whenever possible, noting the site has close proximity to MBTA Framingham/Worcester commuter rail station (approx. 0.1 miles away) and multiple buses stops on Washington St. Walnut St., and Austin St.

Photos

229-23



1. Literal compliance with the requirement to provide seven additional parking stalls is impracticable due to the nature of the use and the size of the lot. The parking waiver of seven stalls is also within the public interest as the site is located in a mixed-use Village Center with public parking and transit nearby.
(§5.1.13)

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

City of Newton Planning and Development

Petition: #239-23

Special Permit/Site Plan Approval to construct an additional parking stall within a front setback

July 11, 2023



213 Jackson Street

Zoning Relief

Zoning Relief Required		
Ordinance		Action Required
§5.1.7.A	Request to allow two parking stalls in the front setback	S.P. per §7.3.3
§5.1.13		

Criteria to Consider

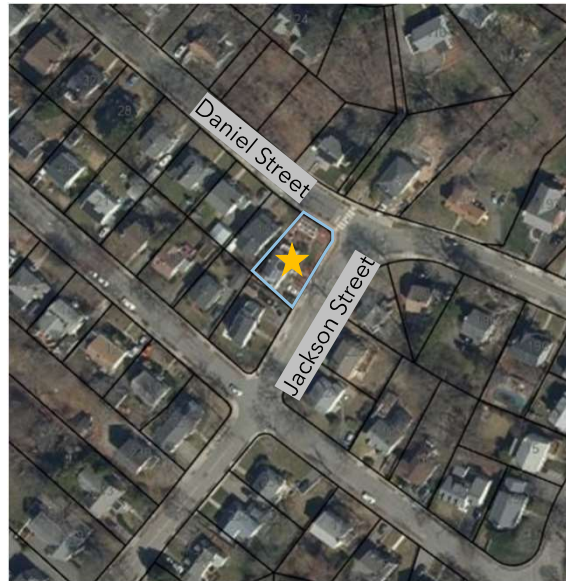
When reviewing this request, the Council should consider:

- The site is an appropriate location for the proposed additional parking stall within the front setback. (§7.3.3.C.1.)
- The additional parking stall within the front setback will adversely affect the neighborhood. (§7.3.3.C.2.)
- There will be no nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3.)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4.)
- Literal compliance with the allowed number of parking stalls within the front setback is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§5.1.7.CA, §5.1.7.C, §5.1.13)

3

3

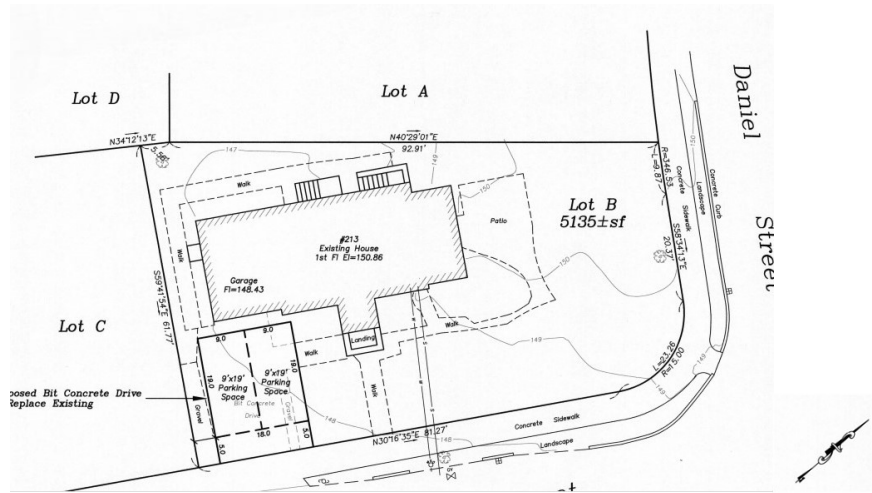
Aerial Map



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4

Site Plan



5

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Findings

1. The site is an appropriate location for the proposed second parking stall within the front setback because the parking will be in the same location as an existing driveway. (§7.3.3.C.1)
2. The additional parking stall within the front setback will not adversely affect the neighborhood because the second stall will be located in an area that is already paved. (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the curb cut and configuration of the driveway will be similar to the existing conditions. (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)
5. Literal compliance with the dimensional parking requirements is impracticable because the site is on a corner lot and an alternate location is likely to result in an increase in paved area. (§5.1.13)

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Conditions

1. Plan referencing
2. Standard building permit conditions
3. Standard occupancy conditions