



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459  
617-796-1120

Petition: #355-22 &  
#356-22  
Public Hearing:  
10/24/23

Barney S. Heath  
Director

## **PUBLIC HEARING/WORKING SESSION MEMORANDUM**

**DATE:** October 20, 2023  
**MEETING DATE:** October 24, 2023  
**TO:** Land Use Committee of the City Council  
**FROM:** Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Alyssa Sandoval, Deputy Chief Planner for Current Planning  
**CC:** Petitioner

In response to issues raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis previously provided at the public hearing.

### **PETITION : #355-22 & #356-22**

**11 Florence Street**

Request to Rezone 11 Florence Street SUNRISE DEVELOPMENT, INC petition to rezone 2 parcels as follows: 11 Florence Street (Section 82 Block 04 Lot 49) from MULTI RESIDENCE 1 to BUSINESS USE 4; and 318 Boylston Street (Section 82 Block 04 Lot 47) from BUSINESS USE 2 to BUSINESS USE 4.

Special Permit/Site Plan Approval to allow Elder Housing with services, to allow a development in excess of 20,000 sq. ft., to allow a five-story building, to allow a retaining wall greater than 4' in height within a setback, to allow free-standing signs, to allow parking within the front setback, and to waive lighting requirements at 11 Florence Street and 318 Boylston Street, Ward 8, Newton, on land known as Section 82 Block 04 Lots 47 and 49, containing approximately 82,946 sq. ft. of land in a district zoned BU2 (318 Boylston Street, to be rezoned to BU4) and MR1 (11 Florence Street, to be rezoned to BU4). Ref: Sec. 7.3.3, 7.4, 4.4.1, 6.2.10, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 5.4.2.B, 5.1.8.A.1, 5.1.13, 5.1.10.A, 5.2.13 of the City of Newton Rev Zoning Ord, 2017.

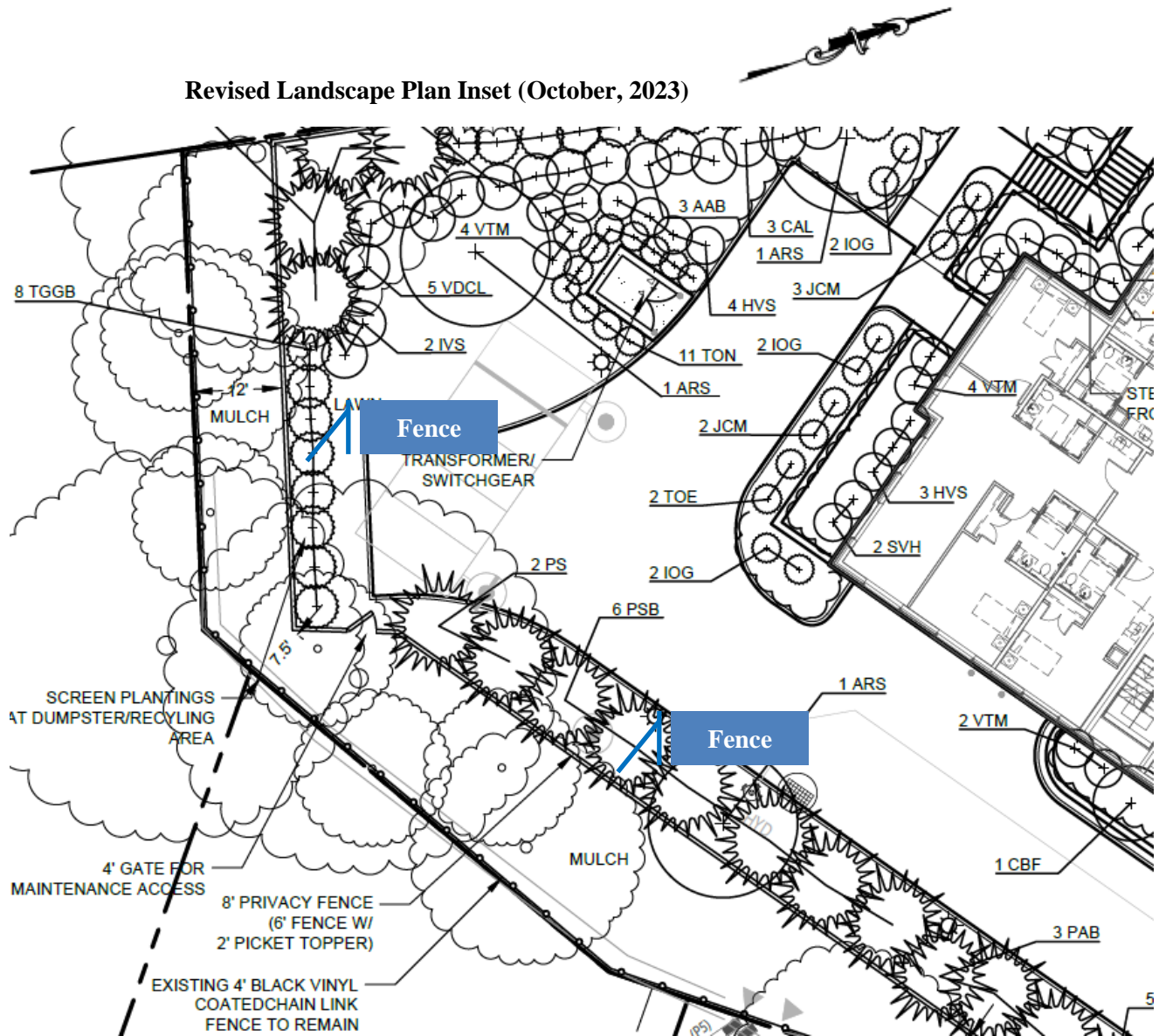
### **Background**

The Land Use Committee heard the petition on June 27, 2023, and discussed the project including the need for better pedestrian and bicycle accommodations along Route 9, signage for motorists, and information on stormwater infrastructure and retaining walls. During the Land Use Committee hearing on September 19, 2023, the petitioner presented additional information and plans on a nearby

pedestrian improvement intersection project, the proposed retaining wall, and stormwater infrastructure. The Public Hearing was held open for the petitioner to meet with neighbors related to questions and issues raised by Councilors and members of the public. Please refer to Attachment A for the September 15, 2023 Planning memorandum (including Zoning Memorandum) for further details on the project review.

Since the September 19, 2023 Public Hearing, Planning understands that the Petitioner has met with neighborhood abutters. In response to their input, the Petitioner has made changes to the Landscape Plan for the Project ([Landscape Plan](#), revised 10/10/2023). The primary change in the Landscape Plan is additional fencing on the property near the Tanglewood Road abutters to provide better screening. There is a proposed 8-foot-high fence (6 foot-high-fence with 2-foot picket topper) to screen the new building. The revised Landscape Plan includes additional plantings along the southeastern property line closest to the fence (see inset of revised Landscape Plan below).

Revised Landscape Plan Inset (October, 2023)



As a result of the neighbor input, Planning understands that the Petitioner has also addressed several other neighbor concerns regarding lighting, stormwater treatment, on-street parking, and hours of exterior construction on Saturdays (see Attachment B). The Proposed Order reflects a change in the hours of exterior construction on Saturday from 8 am to 7 pm to 8 am to 4 pm. In addition, the Petitioner proposes to change the green building designation from Enterprise Green Communities program to Passive House. Planning has no issues with this change as it still complies with Sustainable Development Requirements set forth in Section 5.13.4 of the Newton Zoning Ordinance.

**ATTACHMENTS:**

- Attachment A:** Planning Department Public Hearing memorandum, 9/15/2023 (including Zoning Memorandum)
- Attachment B:** Letter to Richard Lipof, Chair, Land Use Committee, Dated October 17, 2023
- Attachment C:** Request to Rezone Map
- Attachment D:** DRAFT Council Order
- Attachment E:** DRAFT Rezoning Order
- Attachment F:** Planning Board Zoning Recommendation Memorandum



# Attachment A

Petition: #355-22 &

#356-22

Public Hearing: 09/19/23

## City of Newton, Massachusetts

Department of Planning and Development

1000 Commonwealth Avenue Newton, Massachusetts 02459

617-796-1120

Barney S. Heath

Director

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### PUBLIC HEARING MEMORANDUM

DATE: September 15, 2023

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
Alyssa Sandoval, Deputy Chief Planner for Current Planning

SUBJECT: **Petition #355-22** Request to Rezone 11 Florence Street SUNRISE DEVELOPMENT, INC petition to rezone 2 parcels as follows: 11 Florence Street (Section 82 Block 04 Lot 49) from MULTI RESIDENCE 1 to BUSINESS USE 4; and 318 Boylston Street (Section 82 Block 04 Lot 47) from BUSINESS USE 2 to BUSINESS USE 4.

**Petition #356-22** to allow Elder Housing with services, to allow a development in excess of 20,000 sq. ft., to allow a five-story building, to allow a retaining wall greater than 4' in height within a setback, to allow free-standing signs, to allow parking within the front setback, and to waive lighting requirements at 11 Florence Street and 318 Boylston Street, Ward 8, Newton, on land known as Section 82 Block 04 Lots 47 and 49, containing approximately 82,946 sq. ft. of land in a district zoned BU2 (318 Boylston Street, to be rezoned to BU4) and MR1 (11 Florence Street, to be rezoned to BU4). Ref: Sec. 7.3.3, 7.4, 4.4.1, 6.2.10, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 5.4.2.B, 5.1.8.A.1, 5.1.13, 5.1.10.A, 5.2.13 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.



**11 Florence Street**

## **Project Description**

### **Background**

The subject property consists of two parcels located at 318 Boylston Street and 11 Florence Street. Together, the parcels total approximately 83,000 square feet. 11 Florence Street is improved with a two-story commercial building and three greenhouse tents, while 318 Boylston Street is a gravel parking lot.

### **Special Permit**

The petitioner requires special permit relief for the use, a structure with five stories, over 20,000 square feet of area, and a retaining wall greater than 4 feet in height within a setback. The petitioner requires additional relief for locating parking within the front setback, lighting requirements for parking facilities over five stalls, and to allow a free-standing sign.

The petitioner initially filed for a special permit in 2021 and subsequently in 2022. While there have been some minor modifications, the plans have not substantially changed from the plans received in 2022. The relief requested is the same as the last plans submitted in 2022.

The Land Use Committee heard the petition on June 27, 2023, and discussed the project including the need for better pedestrian and bicycle accommodations along Route 9, signage for motorists, and information on stormwater infrastructure and retaining walls. The Public Hearing was held open for the petitioner to respond to questions and issues raised by Councilors and members of the public.

### **Rezoning**

In addition to seeking a special permit, the petitioner is seeking a rezoning to allow the building as designed. 318 Boylston Street (Parcel A) is within the Business 2 zone ("BU-2"), and 11 Florence Street (Parcel B) is within the Multi Residence 1 zone ("MR-1"). The petitioner is seeking to rezone both parcels to Business 4 ("BU-4") to construct an elderly housing with services facility. The facility would contain five-stories and approximately 87,000 square feet of floor area, which excludes the underground garage. The facility will have 120 beds and is subject to the Inclusionary Zoning Ordinance.

At its May 1, 2023 regular meeting, the Planning & Development Board recommended approval of this rezoning request to the City Council (see Attachment F).

### **Analysis**

Planning is unconcerned with the proposed assisted facility development in this location. The assisted living facility project is appropriate for this location as a higher density use adjacent to the Route 9 corridor and adjacent to business and multi-family residence neighborhoods. Staff believes the BU-4 zone is appropriate due to the site's location within a regional corridor which

contains an array of zones and land uses. The development will provide residential care and facilities for seniors and will meet a need for this service for aging residents. By planning to install EV charging stations for 10% of parking spaces and making another 10% EV ready, the project is on track to meet the requirements of the Zoning Ordinance. However, the Planning Sustainability Team notes that there is substantial growth in EV adoption and would encourage the project team to install a greater number of chargers than required. In addition, there is an opportunity to provide for more robust Transportation Demand Management (TDM) measures, particularly around EV infrastructure.

City Councilors requested more detail on the proposed retaining wall at the northeast corner of the site over 4 feet tall. Planning has requested from the petitioner but as of the writing of this memo, these details have not yet been provided. In addition, the City Councilors asked for further detail on stormwater improvements based on neighbor input. The stormwater report (see [attachments](#)) provided by the petitioner notes that the stormwater runoff and discharge rates would decrease as a result of the stormwater infrastructure provided by the Project.

Planning supports the conceptual plan for pedestrian improvements described further below, which will help to provide a more pedestrian-friendly environment along Route 9 and adjacent to the proposed Project.

### **Pedestrian Improvements on Route 9**

In response to feedback from Councilors and members of the public at the prior Land Use Committee meeting in June 2023, which noted issues with bicycle accommodations and pedestrian safety near the project on Route 9, the Petitioner worked with its consultants to develop a conceptual plan for pedestrian improvements. The plan includes additional pedestrian infrastructure along Route 9 adjacent to the accessory parking lot and across the intersection of Route 9 and Florence Street. The City's Transportation Engineering Department reviewed and has no issues with the improvements noting that the Petitioner will need to work with MassDOT to obtain the necessary approvals for these improvements along the state-owned Route 9.

Further analysis, previously provided at prior Land Use Committee meetings, can be found below.



I. Zoning Relief Requested:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Request to rezone parcel to BU4	
§4.4.1 §6.2.10	To allow an Elder Housing with Services facility	S.P. per §7.3.3
§4.1.2.B.1	Development of 20,000+ square feet of gross floor area	S.P. per §7.3.3
§4.1.2.B.3 §4.1.3	To allow a building with five stories	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall in excess of 4 feet in a setback	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13	To allow parking within the front setback	S.P. per §7.3.3
§5.1.10.A §5.1.13	To waive lighting requirements	S.P. per §7.3.3
§5.2.13	To allow a free-standing sign	S.P. per §7.3.3

For more details around the zoning analysis please refer to **Attachment A**.

II. Criteria for Consideration per §7.3.3:

- The site is an appropriate location for the proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories. (§7.3.3.1)
- The site is an appropriate location for the proposed retaining wall greater than four feet in height within a setback. (§7.3.3.1)
- The site is an appropriate location for the proposed free-standing sign. (§7.3.3.1)
- The proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories as developed will adversely affect the neighborhood. (§7.3.3.2)
- There will be a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.3)
- Access to the site is appropriate for the types and numbers of vehicles involved. (§7.3.3.4)
- The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy, including through some or all of the following: (a) minimizing operating energy; (b) minimizing the use of fossil fuels; (c) implementing a transportation plan that will minimize carbon footprint. (§7.3.3.C.5)



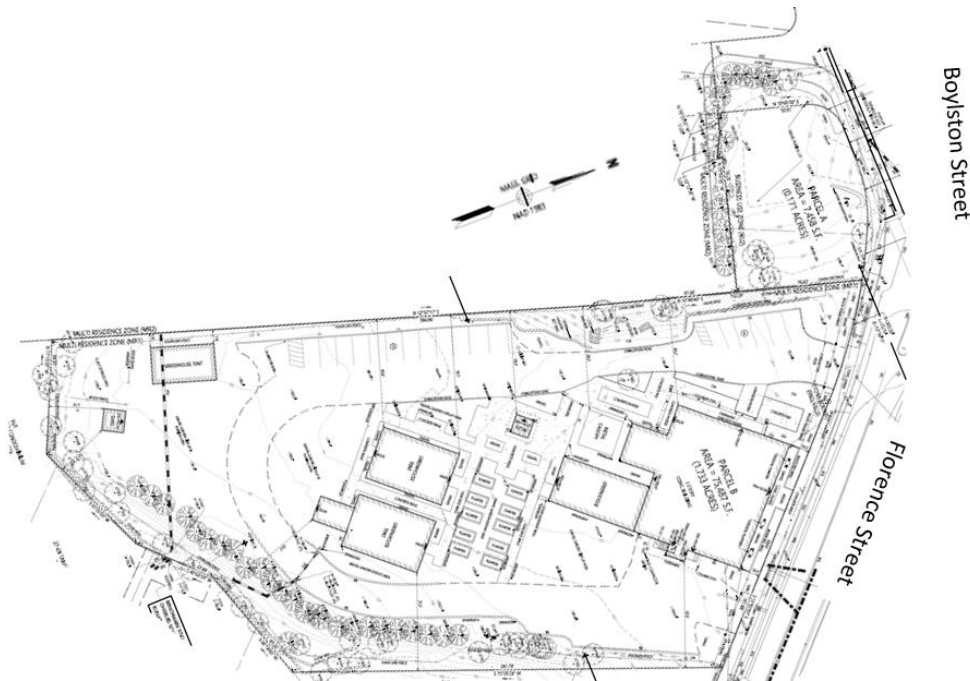
- Literal compliance with the dimensional parking requirements is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§5.1.13)
- Literal compliance with the lighting requirements for parking facilities over five 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. (§5.1.13)
- The proposed free-standing sign should be permitted and is appropriate due to the nature of the use of the premises, the architecture of the buildings or their location with reference to the street is such that such exceptions are in the public interest. (§5.2.13)

### III. Project Proposal and Site Characteristics

#### A. Site

The site consists of two parcels: Parcel A is the 7,548 square foot lot at 318 Boylston Street in the BU-2 zone which fronts both Boylston Street and Florence Street, while Parcel B refers to the 75,487 square foot lot which fronts Florence Street. Parcel A is accessed from Boylston Street and consists of a gravel parking area for approximately 6-8 vehicles and landscaping. Parcel B consists of a two-story commercial building, which houses a retail use, and associated structures. Parcel B has two separate entrance and exit drives from Florence Street which provide access to an internal driveway that loops around the site and includes three separate parking areas. The site consists of mature landscaping at the south and southeastern property lines, screening the site from adjacent residential uses.

## Existing Site Conditions



### IV. Project Description and Analysis

#### A. Land Use

The current use of the site is commercial. If approved, the use would be elderly housing with services residential use.

#### B. Site Design

The petitioner is proposing to combine Parcels A and B to construct the elderly housing facility and associated parking areas. The site will have three points of access, one driveway from Boylston Street which provides access to the ten-stall surface parking facility and two driveways from Florence Street. Vehicular access to the building will occur from Florence Street. Pick up and drop off would take place in the circular front driveway at the front of the building. This middle driveway along the frontage also connects to the easternmost driveway, which provides access to the site and garage entrance towards the rear of the building.

In the business zones, the required setbacks are the equivalent of half of the building height. With a proposed building height of 60 feet, the required front, side, and rear setbacks are 30 feet. As proposed, the front setback will be 40 feet from the front

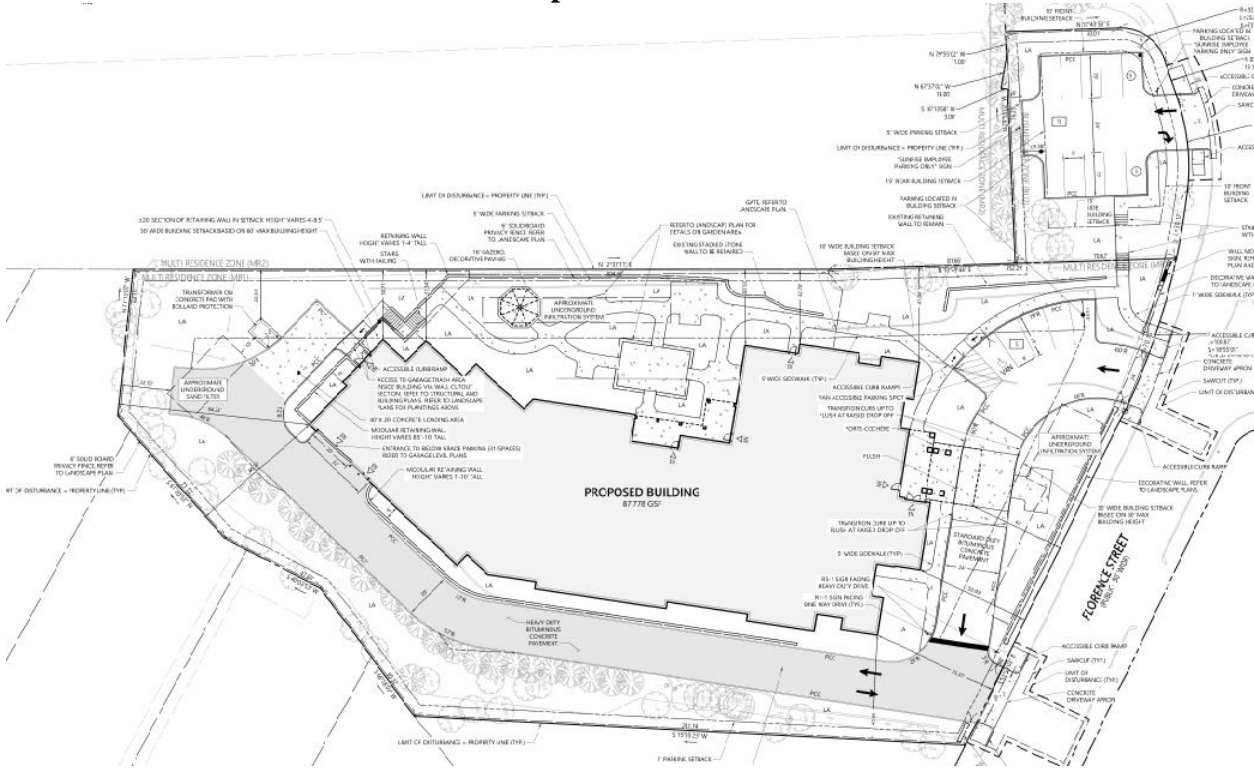
property line to the porte-cochere over the pick-up/drop off driveway. The proposed side setbacks are 30.7 feet from the western property line and 45.9 feet from the eastern property line, which abuts residential uses. The proposed rear setback is 84.23 feet, exceeding the 30 feet required.

Parcel A will be used as a ten-stall surface parking facility and have an internal non-vehicular connection to the site via an internal path and set of stairs due to the grade change of approximately 10 feet between Parcels A and B.

There is a proposed retaining wall along the right (western) side property line and rear of the building. The plans submitted indicate portions of a retaining wall reach a height of eight feet within the side setback. The wall that reaches a height of eight feet is at the rear of the building with the wall along the property line ranging from less than a foot to four feet. There is a portion of the wall which exceeds eight feet but is outside of the side setback.

At the rear of the proposed building between the building and right property line is a transformer screened by landscaping and protected by bollards. The proposed site plan is provided below:

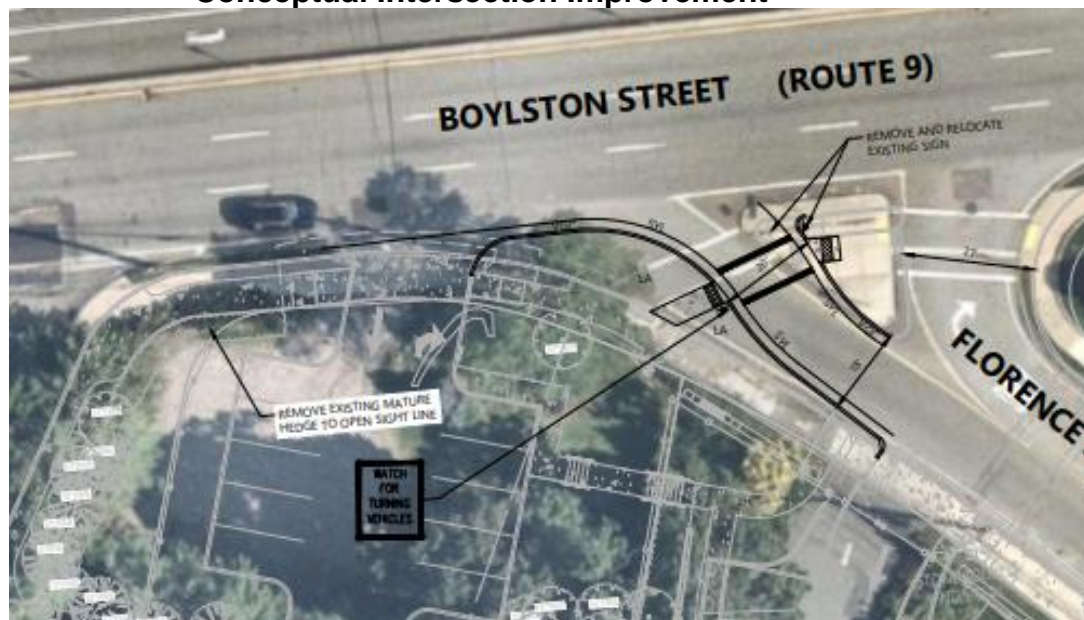
### Proposed Site Plan



C. Conceptual Intersection Improvements on Route 9

In response to feedback from Councilors and members of the public at the prior Land Use Committee meeting in June 2023, which noted issues with bicycle accommodations and pedestrian safety, the Petitioner worked with its consultants to develop a conceptual plan for pedestrian improvements. The plan includes additional pedestrian infrastructure along Route 9 adjacent to the accessory parking lot and across the intersection of Route 9 and Florence Street. The City's Transportation Engineering Department reviewed and had no issues with these improvements noting that the Petitioner will need to work with MassDOT to obtain the necessary approvals. The conceptual plan is provided below and the full plan is included in the project attachments [here](#).

**Conceptual Intersection Improvement**



Planning believes that the intersection plan provides pedestrian improvements to the intersection as it reduces the total width of roadway that the pedestrian has to cross from curb to curb. The curb will be extended to provide some traffic calming and slow the right turns of motorists turning onto Florence Street from Route 9. The removal of the hedge adjacent to the accessory parking lot should improve sight lines for motorists looking to make a right turn onto Florence Street to visit the assisted living facility.

Should the Land Use Committee decide to recommend this petition for approval, Planning has drafted a condition that the conceptual intersection improvement would

be constructed by the petitioner in coordination with MassDOT.

D. Parking and Circulation

The petitioner is proposing 46 parking stalls for the site, where 40 stalls are required. There are ten surface parking stalls proposed on Parcel A, and five surface parking stalls proposed in front of the proposed building. The garage will consist of parking for 31 parking stalls. All garage and surface parking stalls comply with the parking dimensional requirements of 9 feet x 19 feet, as prescribed in the Ordinance.

The petitioner requires relief for parking within the front setback for the surface parking stalls. Parking in the front setback relief is required for both the ten-stall surface parking facility and the five surface stalls at the front of the building within the 30-foot setback.

The petitioner included bike racks within the garage but should provide more information as to the number of bikes that can be accommodated and type of bike rack. The petitioner should also consider providing secure, sheltered bicycle parking elsewhere on site.

Planning engaged BETA, a transportation on-call consultant, to provide comments on the site plan and circulation. BETA asked for clarity on the landscape trimming to improve sight lines and noted that the employee parking area could be reduced and still meet the parking requirements under Zoning Ordinance. The petitioner has provided an updated concept plan for the improvements near the employee parking area. Planning supports this concept plan and notes that the removal of the hedge next to Route 9 should improve sight lines.

**TDM:**

A Transportation Demand Management (TDM) Plan was prepared and submitted by the petitioner (dated May 19, 2023), and provided in Attachment E. Proposed TDM Plan Provisions include:

- Establish a Transportation Demand Management (TDM) Program coordinator.
- Display all public transit schedules in a central location within the facility.
- Transit map of the area provided for transit users that displays the location of MBTA trains, MBTA bus stops, sidewalks, and crosswalks. This information will be distributed to employees and will also be posted in common areas.
- Secure bicycle storage area on site
- Locker Room with Showers
- EV Charging Stations (10% initially, additionally 10% ready)

- \$31,250 one-time contributions for employee Public Transportation Subsidies.
- \$23,400 one-time contribution for city-initiated transit improvements
- Resident welcome package including all TDM initiatives that are offered.
- Onsite car-pool rideshare program with guaranteed ride home for employees.
- Preferential electric vehicle/low emission car parking in parking garage by designating spaces.
- Sedan available to transport residents to medical and other necessary appointments off site.

The Planning Department recommends raising the percentage of EV charging capabilities by providing 20% EV already installed. The Planning Department notes there is a growing market for EV, which should be planned for in higher-density projects and to support the City's sustainability goals.

E. Landscaping and Lighting

The surface parking stalls on Parcel A are subject to provisions for parking facilities over five stalls, which requires these parking facilities be screened with at least five feet of landscaping and/or fencing. The petitioner is providing landscaping and fencing around this parking area that complies with the Ordinance's requirements.

The landscape plan shows generous screening around the perimeter of the site, as well as privacy fencing. In the prior (2021) filing, the petitioner stated the caliper inches removed will be 46 caliper inches and replacement will be approximately 170 caliper inches. Under the new landscape plan, 210 caliper inches would be removed, and 400 caliper inches would be planted. There is a six-foot-high vinyl privacy fence proposed along the property lines where the site abuts residential uses, except for the front property line. At the front of the site, the petitioner proposes an ornamental stone wall.

The petitioner submitted a lighting plan which shows lighting levels less than the one foot-candle minimum required by the Ordinance.

F. Housing

The Housing Division reviewed the petitioner's proposal and stated that the project correctly calculated the number of inclusionary beds to be provided, which is determined to be six beds. During the Building Permit Process, the Housing Division will ensure that the six beds are located in appropriate locations.

G. Signage

Relief has been identified for the installation of a free-standing sign. The petitioner

provided the proposed signage with the landscape plan.

H. Sustainability

The petitioner submitted a sustainability plan indicating a commitment to making the building achieve the Enterprise Green Communities Green Building Rating System. The Sustainability Team reviewed the petitioner's sustainability submittal and issued a memorandum included in the project attachments [here](#).

V. ZONING REQUEST

The MR-1 zone allows single- and two-family structures as of right. Other allowed residential uses include, but are not limited to, single-family attached dwellings, associations of persons and congregate living facilities; all requiring a special permit. Dimensional standards, e.g., building height, number of stories, and lot area per unit vary based on the use.

The proposed use is not allowed within the MR-1 zone, but it is a residential use allowed by special permit in the BU-4 zone. Uses allowed as of right in the BU-4 zone range from personal service, to retail, to office, while special permit uses range from multi-family, to hotel, and to laboratory and research. Unlike the MR-1 zone, the dimensional standards are based on the size of the structure, e.g., setbacks are determined from the building height and the proposed use complies with the prescribed dimensional standards.

VI. INTERDEPARTMENTAL REVIEW

- A. Historic Review: On April 15, 2021, the project was administratively deemed not historically significant by the Chief Preservation Planner, and no further review is required.
- B. Engineering: Planning reached out to Engineering in light of concerns raised about stormwater and flooding. Engineering noted that it reviewed the project in 2021. The project has not had substantive changes since that time. As noted in the [Engineering Division Memo](#) dated September 10, 2021, all stormwater runoff from the site will need to be captured on-site and infiltrated in accordance with the Massachusetts Department of Environmental Protection standards and the City of Newton Department of Public Works policy.

VII. PETITIONER'S RESPONSIBILITIES

The petitioner should review and respond to issues and suggestions raised in this memo regarding retaining wall, stormwater infrastructure, and EV capability. Otherwise, this petition is considered complete.



**ATTACHMENTS:**

- Attachment A:** Zoning Review Memorandum
- Attachment B:** Request to Rezone Map
- Attachment C:** DRAFT Council Order
- Attachment D:** DRAFT Rezoning Order
- Attachment E:** Transportation Demand Management Plan, Updated 2023
- Attachment F:** Planning Board Zoning Recommendation Memorandum



Ruthanne Fuller  
Mayor

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Barney S. Heath  
Director

## ZONING REVIEW MEMORANDUM

Date: April 28, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Stephen J. Buchbinder, attorney  
Katherine Braucher Adams, Attorney  
Seltzers Realty LLC  
Barney S. Heath, Director of Planning and Development  
Jonah Temple, Associate City Solicitor

**RE: Request for a zone change to BU4, and a special permit to construct elderly housing with services and for associated dimensional waivers**

Applicant: Seltzers Realty LLC	
<b>Site:</b> 11 Florence Street and 318 Boylston Street	<b>SBL:</b> 82004 0049, 82004 0047
<b>Zoning:</b> BU2 and MR1 (to be rezoned to BU4)	<b>Lot Area:</b> 82,945 square feet
<b>Current use:</b> Greenhouse/nursery and parking	<b>Proposed use:</b> Elderly housing with services facility

### BACKGROUND:

The subject site is comprised of two lots with a total area of 82,945 square feet: 11 Florence Street is zoned Multi Residence 1, contains 75,487 square feet; and is improved with a greenhouse and garden nursery; 318 Boylston Street is zoned Business Use 2, contains 7,458 square feet, and is used for parking for the greenhouse.

The applicant proposes combine and to rezone the parcels to BU4, raze the structure, and construct an elderly housing with services facility containing 95 living units with 120 beds in a five-story building of approximately 92,791 square feet with underground garage and surface parking. The proposed project will provide a total of 46 parking stalls on site.

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

- Zoning Review Application, prepared by Stephen J. Buchbinder, attorney, dated 3/18/2022
- Project Information, submitted 3/18/2022
- Existing Conditions Plan of Land, prepared by VHB, dated October 5, 2021
- Site Layout and Materials Plan, prepared by VHB, dated 7/30/2021, revised 3/15/2022

- Landscape Plan, signed and stamped by Andrew D. Leonard, landscape architect, dated 7/19/2021, revised 3/15/2022
- Floor Plans, signed and stamped by Mark K. Moeller, architect, dated 3/28/2022

**ADMINISTRATIVE DETERMINATIONS:**

1. The site is comprised of two properties. The property along Florence Street is zoned MR1, while the lot on Boylston Street is zoned BU2. The applicant requests to combine the parcels and rezone the site to BU4.

The administrative determinations and relief requested by this application assume that the entire site is zoned BU4.

2. The applicant proposes to construct an elderly housing with services facility. Per section 6.2.10, an elderly housing with services facility is defined as “elderly housing with services, including residential care facilities, assisted living facilities and congregate care facilities.” Section 4.4.1 requires a special permit for elderly housing with services in the BU4 zoning district.
3. The applicant proposes to raze the building and construct a five-story building of approximately 92,791 square feet, excluding the underground parking facility. Section 4.1.2.B.1 requires a special permit for any development in a Business district of 20,000 square feet or more of new gross floor area.
4. The applicant proposes to construct a five-story structure at 60 feet in height. Section 4.1.2.B.3 requires a special permit for four stories or more in the Business 4 zoning district with a maximum FAR of 2.25. A special permit allowing five stories legitimizes the proposed height and FAR allowed per section 4.1.3.
5. A retaining wall varying in heights up to approximately 6 feet is proposed within the western side setback. Per section 5.4.2.B, a special permit is required for a retaining wall in excess of 4 feet in a setback.
6. The facility will contain 95 living units with 120 beds. Each living unit will contain sleeping and sanitary facilities, but no separate individual cooking facilities. Per Section 1.5.1.E, a dwelling unit is defined as “one or more rooms forming a habitable unit for one family, with facilities used or intended to be used, in whole or in part, for living, sleeping, cooking, eating and sanitation.” As the units will lack cooking facilities, they do not meet the definition of a dwelling unit.
7. The applicant proposes to construct 46 parking stalls on site, with 31 stalls located in the proposed underground garage and 15 surface stalls. Per Section 5.1.4.A, an elderly housing with services facility requires one parking stall per every two dwelling units, one per every four nursing beds, plus one stall per three employees. As stated, the proposed facility will not have “dwelling units” as defined by the Ordinance, as each unit will not provide independent cooking facilities. Nor will the units provide nursing beds, as the facility will not provide skilled nursing care. However, for the purposes of determining the parking requirement, the number of beds and employees will be used, as there are no dwelling units. The parking requirement for 120 beds and 30 employees at the busiest shift is 40 stalls. As 46 stalls are provided, no waiver from the number of parking stalls is required.

8. The applicant proposes to construct 10 surface parking stalls with an entrance off of Boylston Street and five along the front entrance drive off of Florence Street. Section 5.1.8.A.1 requires that no parking be located within a front or side setback. Several parking stalls within the two lots are located within the required 24-foot front setback from Florence Street requiring a special permit per section 5.1.13.
9. Section 5.1.10.A requires outdoor parking facilities used at night to provide security lighting with a minimum intensity of 1-foot candle. The applicant did not indicate lighting on the proposed plans for the two surface parking facilities, requiring a special permit per section 5.1.13.
10. A free-standing sign is proposed in a landscape wall along where Florence Street frontage meets with Boylston Street. The proposed signs are both approximately 28 square feet. Per section 5.2.13, free-standing signs require a special permit.
11. Section 5.11.11 requires that Elder Housing with Services meet certain requirements of the Inclusionary Housing provisions. This contribution may be residential units, beds, or a cash payment.

<b>BU4 Zone</b>	<b>Required</b>	<b>Existing</b>	<b>Proposed</b>
Lot Size	25,000 square feet	82,945 square feet	No change
Setbacks			
• Front (½ Building Height)	30 feet	10.3 feet	40 feet
• Side (East)	30 feet	55.5 feet	45.9 feet
• Side (West)	30 feet	58.5 feet	30.7 feet
• Rear	30 feet	63.5 feet	84.2 feet
Building Height	36 feet (96 ft by SP)		<b>60 feet*</b>
Max Number of Stories	3 (8 by SP)	2	<b>5*</b>
FAR	2.25	±.15	1.12

**Zoning Relief Required**

<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
	Request to rezone parcel to BU4	
§4.4.1 §6.2.10	To allow an Elder Housing with Services facility	S.P. per §7.3.3
§4.1.2.B.1	Development of 20,000+ square feet of gross floor area	S.P. per §7.3.3
§4.1.2.B.3 §4.1.3	To allow a building with five stories	S.P. per §7.3.3
§5.4.2.B	To allow a retaining wall in excess of 4 feet in a setback	S.P. per §7.3.3
§5.1.8.A.1 §5.1.13	To allow parking within the front setback	S.P. per §7.3.3
§5.1.10.A §5.1.13	To waive lighting requirements	S.P. per §7.3.3
§5.2.13	To allow a free-standing sign	S.P. per §7.3.3

**SCHLESINGER AND BUCHBINDER, LLP**  
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October 17, 2023

**BY ELECTRONIC MAIL**

Richard Lipof, Chair  
Land Use Committee  
Newton City Council  
1000 Commonwealth Avenue  
Newton, MA 02459-1449

Re: Land Use Petitions #355-22 and #356-22/Sunrise Development, Inc./11 Florence Street

Dear Chairman Lipof,

On October 4, 2023, Curt Quitzau, civil engineer from VHB, Katherine Braucher Adams, and I met with a group of neighbors at the site (see Exhibit A for a list of attendees). We spent close to an hour walking the site and discussing the concerns of the neighbors. Following that meeting, we adjourned (with a smaller group of neighbors) to our offices, where Phil Kroskin of Sunrise joined us by Zoom. We spent an additional hour and a half discussing the topics listed below.

**Common Boundary Line**

- Screening: Sunrise agreed to install an 8' board fence upland of the common boundary line with neighbors on Florence Street and Tanglewood Road in order to maximize visual screening of the proposed Sunrise building. Plantings have been adjusted to ensure a screened understory buffer to the extent possible. The existing 4' chain link fence on the common boundary line will remain.
- Lighting: We reviewed the specs for the proposed post lanterns along the driveway. The lanterns can be shielded on the side adjacent to the neighbors. There are up lights shown on the plan only at the front of the building to illuminate the flagpole and monument sign.
- Existing trees: We discussed the fact that Sunrise will endeavor to not remove any trees on the common property line.

## **Stormwater Mitigation and Flood Prevention**

- Onsite stormwater treatment: we carefully reviewed the proposed stormwater treatment plans.

Drainpipe: As a result of our team notifying the City's Engineering Department on behalf of the Tanglewood Road neighbors, the Department of Public Works cleaned the drain line.

For the long term, our design team will engage with the City's Engineering Department to design a modification to replace the existing hole-in-the-ground/headwall configuration at the pipe entry with a drainage structure that will have a grate and possibly a sump. This enhanced design would capture leaves and sticks that fall from the trees along the back yards of the homes along Tanglewood Road which collect and clog the pipe.

Our project will have an immediate positive impact because, from the field observations of our civil engineering team, the source of the sediments that clogged the pipe in the first place was the stockpile of soils associated with the garden center business activities that flowed off the site unimpeded to the pipe. This source will be eliminated, and the new state of the art stormwater management system will collect and contain sediments from the project site.

## **On Street Parking in Front of Building**

- On-street parking ban: Sunrise and the neighbors are aligned in the desire to request a City ban of on-street parking in front of the site.
- Idling: Sunrise will instruct its employees and contractors not to idle during construction.

## **Construction Disruption**

- Neighborhood liaison committee: We discussed how the neighborhood liaison committee would work.
- City working hours: Sunrise has agreed to limit exterior work to 7:00 am – 4:00 pm M-F and 8:00 am - 4:00 pm on Saturdays. Construction will also respect federal holidays.

## **Entrance to Site**

- Preference to locate main entrance on Route 9: We discussed this request from the neighbors. Unfortunately, the layout of the site makes an entrance to the building on Route 9 impossible.



Chairman Richard Lipof  
October 17, 2023

Page 3

The attached landscape plan has been revised in accordance with the foregoing discussions. We will review these changes at the Land Use Committee meeting on October 24, 2023.

Please feel free to call with any questions.

Sincerely,

*Stephen J. Buchbinder*

Stephen J. Buchbinder

SJB/mer  
Attachment

cc: (By Email)

Councilor Andrea Kelley  
Councilor Maria Greenberg  
Councilor Tarik Lucas  
Councilor Christopher Markiewicz  
Councilor Andreae Downs  
Councilor Alicia Bowman  
Councilor Marc Laredo  
Ms. Katie Whewell  
Ms. Alyssa Sandoval  
Mr. Philip Kroskin



Attachment C

ZONE: MR2

ZONE: MR2

PARCEL A  
EXISTING ZONE: BU2  
PROPOSED ZONE: BU4

7,458 SF  
(0.17 ACRES)

PARCEL B  
EXISTING ZONE: MR1  
PROPOSED ZONE: BU4

75,487  
(1.73 ACRES)

ZONE: MR1

ZONE: BU1



0 10 20 40 Feet

### Sunrise of Chestnut Hill

11 Florence Street  
Newton, MA

No.	Revision	Date	Appr'd.
1	Fire Department Comments	10/18/2021	JS
2	Revised Site Plan	03/15/2022	JS

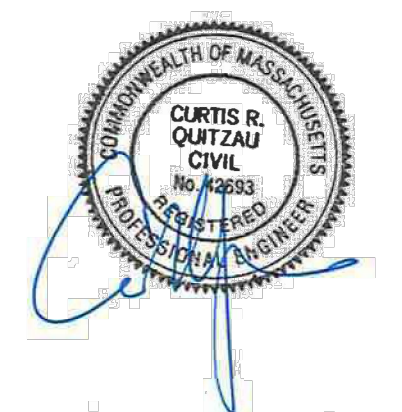
Designed by DDH/WAS Checked by GB

Issued for ATRIUM WELLNESS CENTER LLC Date 7/30/2021

### Special Permit Application

Not Approved for Construction

### Zone Change Plan



C3.00

Sheet 3 of 15

Project Number 73153.00

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, which grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow Elder Housing with services, to allow a development in excess of 20,000 sq. ft., to allow a five-story building, to allow a retaining wall greater than 4-feet in height within a setback, to allow a free-standing sign, to allow parking within the front setback, and to waive lighting requirements as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site is an appropriate location for the proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories. The Project's location along Route 9 and large lot area lends itself to a larger building and elderly housing with services use. The Project provides housing for seniors that have a need for a greater level of care and fills a need of this specific type of residential care. The location is an appropriate location for the proposed free-standing sign as the sign is designed to be visually integrated within the existing wall and is not obtrusive. The site is an appropriate location for the proposed retaining wall greater than four feet in height within a setback as the wall is well-designed and landscaped. (§7.3.3.1)
2. The proposed elderly housing facility will not adversely affect the neighborhood as the building is located on a property that was previously used as a commercial enterprise and the site has adequate access to major arterial roads, including Route 9. The Project's design has been carefully considered to minimize impacts on abutting properties and provides extensive landscape buffering so as not to impact adjacent and neighboring residential properties. (§7.3.3.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the Project provides safe vehicular access via two driveways to the main building and a pedestrian path to the existing sidewalk on Florence Street. The driveway on Boylston Street (Route 9) to the additional parking area will also include an improved sidewalk adjacent to the driveway. In addition, there will be improvements to the intersection of Boylston Street and Florence Street, which will provide for enhanced pedestrian accommodations as part of this Project. (§7.3.3.3)

4. Access to the site is appropriate for the types and numbers of vehicles involved because the Project complies with the parking requirements of the Ordinance and provides for a variety of visitor, employee, and resident parking. (§7.3.3.4)
5. The site and buildings as designed, constructed, and operated will contribute significantly to the efficient use and conservation of natural resources and energy, including through some or all of the following: (a) minimizing operating energy; (b) minimizing the use of fossil fuels; (c) implementing a transportation plan that will minimize carbon footprint. (§7.3.3.C.5)
6. Literal compliance with the dimensional parking requirements is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot, or that such exceptions would be in the public interest or in the interest of safety or protection of environmental features. (§5.1.13)
7. Literal compliance with the lighting requirements for parking facilities over five stalls is not in the public interest as allowing the Petitioner to provide lower levels of lighting will benefit nearby residential areas. (§5.1.13)
8. The proposed free-standing sign should be permitted and is appropriate due to the nature of the use of the premises, the architecture of the buildings or its location with reference to the street, such that such exception is in the public interest. (§5.2.13)
9. In accordance with Section 29-169 of the Revised Ordinances of Newton, Massachusetts, 2017 (the "Revised Ordinances"), the Council finds there is good cause, based on recommendations from the City Engineer and the Director of Planning and Development and in part on other mitigation and community benefits offered by the Petitioner, to waive 75% of the infiltration/inflow calculation for the Project. (§29-169)

PETITION NUMBER: #356-22

PETITIONER Sunrise Development, Inc.

LOCATION: 11 Florence Street and 318 Boylston Street also identified as Section 82, Block 4, Lots 49 and 47, containing approximately 82,945 square feet of land

OWNER: Seltzers Garden City, Inc. (11 Florence Street)  
Seltzers Realty LLC (318 Boylston Street)

ADDRESS OF OWNER: 160 Southampton Street  
Boston, MA 02118

TO BE USED FOR: Elderly Housing with Services Facility

RELIEF GRANTED: Special Permit per §7.3.3 to allow an elder housing with services facility (§4.4.1, §6.2.10), development of 20,000+ square feet of gross floor area (§4.1.2.B.1), allow a building with five stories (§4.1.2.B.3, §4.1.3), allow a retaining wall in excess of 4 feet in a setback (§5.4.2.B), allow parking within the front setback (§5.1.8.A.1, §5.1.13), waive lighting requirements (§5.1.10.A, §5.1.13), and allow one free-standing sign (§5.2.13)

ZONING: Business Use 4 district



Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
  - a. Site Plans, "Sunrise at Chestnut Hill", prepared by VHB, dated October 18, 2021, most recently revised May 12, 2023.
    - i. Sheet 5, Site Layout and Materials Plan
  - b. Architectural Plans and Elevations prepared by JSA, dated August 22, 2022:
    - i. A-04 Exterior Elevations, north, east, south, and west
  - c. Landscape Plan, prepared by JSA, dated July 19, 2021, revised October 10, 2023.
2. Prior to the issuance of any building permit for the Project, the petitioner shall provide an Approval Not Required ("ANR") plan combining the two lots into one lot to the City Engineer for review and approval. Once approved, the ANR plan must be recorded at the Middlesex South Registry of Deeds. A recorded copy of the ANR plan shall be submitted to the Engineering Division of Public Works and submitted with the building permit application.
3. Prior to the issuance of any building permit, the petitioner shall provide a final Site Plan for review and approval by the Department of Planning and Development, the Engineering Division of Public Works and the Fire Department.
4. Prior to the issuance of any building permit, the petitioners shall obtain a written statement from the Planning Department that confirms that the building permit plans are consistent with plans approved in Condition #1.
5. Prior to the issuance of any building permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval, should a system be required. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
6. The Petitioner shall do the following to remediate pest and rodent activity:
  - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate any activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
  - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.

- c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration.
  - d. Prior to issuance of the certificate of occupancy, the Pest Control Operator shall file a final report with the Department of Planning and Development and Inspectional Services Department summarizing the methods used, whether off-site migration occurred, the frequency and dates of service, and a post-construction assessment of the site and the neighborhood.
  - e. In the event any demolition or construction activity causes off-site pest migration, prior to the issuance of any certificates of occupancy (temporary or final), the petitioner shall offer and provide, at its sole cost and expense, rodent abatement services on an as needed basis for all direct abutters and abutters to direct abutters, subject to owner authorization of such properties and a waiver of liability.
7. Prior to the issuance of any building permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
  - a. 24-hour contact information for the general contractor. This information shall also be posted in a clear and visible manner at the construction site.
  - b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
  - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control.
  - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy
  - e. Proposed methods for dust control including, but not limited to: watering, covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
  - f. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that



- will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
- g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
  - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
8. All exterior construction activity shall be limited to 7:00AM-4:00PM Monday through Friday and 8:00AM-4:00PM on Saturdays, excluding federal, state, and local holidays, unless waived by the Mayor in accordance with Revised Ordinances, § 20-13.
  9. The Petitioner shall underground all lateral utility connections from the right of way to the structure(s).
  10. The parking facility shall provide access to electric vehicle charging stations for a minimum of 20% of parking spaces.
  11. The petitioner shall comply with the City's Tree Preservation Ordinance §21-80 et seq.
  12. The Petitioner shall be responsible for securing and paying police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
  13. Deliveries of construction materials shall not occur before 7:00 am or after 5:00 pm.
  14. Construction vehicles may not park on surrounding residential streets or public sidewalks.
  15. The Petitioner shall be responsible for repairing any damage to public ways and public property caused by construction activities or any construction vehicles traveling to or from the site. All repair work shall be done prior to the issuance of the final certificate of occupancy, unless the Commissioner of Public Works determines either: (a) that the damage to the public way is so extensive that it limits the use of the public way; (b) that the damage interferes with traffic flow; or (c) that the damage poses a threat to public safety. In such cases, the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
  16. The Petitioner shall design and construct, at no cost to the City, the Boylston Street (Route 9) and Florence Street mitigation improvements as shown on the Conceptual Plan by VHB, dated August 30, 2023, entitled Conceptual Intersection Mitigation Improvements.
    - a. To the extent required, it shall be the responsibility of the Petitioner to receive all necessary approvals from MassDOT to complete the Route 9 Intersection Mitigation Improvements. The Petitioner shall document its best efforts to diligently obtain all necessary approvals for the improvements.
    - b. Prior to issuance of a building permit, the Petitioner shall coordinate with MassDOT and provide proof of coordination to the Director of Planning and Development and Commissioner of Public Works.

- c. Prior to issuance of a certificate of occupancy (temporary or final), the Route 9 Mitigation Improvements must be substantially complete and operationally approved by MassDOT. The Petitioner shall provide proof of this completion and approval by MassDOT to the Director of Planning and Development and Commissioner of Public Works.
  - d. The final cost of the improvements shall be credited toward the payment referenced in Condition #19 herein, subject to review and approval from the Commissioner of Public Works. In the event MassDOT does not approve the proposed improvements, the Petitioner shall no longer be obligated to construct the improvements and there will not be any reduction of or credit toward to the payment amounts referenced in Condition #19.
17. The Petitioner shall implement the following measures to mitigate and reduce significant vibration impacts caused by construction equipment associated with demolition or ledge/rock removal:
  - a. Prior to the issuance of any demolition, foundation, or building permit, the Petitioner shall conduct a pre-construction survey of all buildings and structures within 250 feet of the Project (as measured from the Project's property lines) for which the owner of the building or structure has granted approval at no charge to the owners. The survey must include photos taken both inside and outside prior to construction to set a baseline of existing conditions. Copies of the survey and photos shall be provided to owners.
  - b. Prior to the issuance of any demolition permit, foundation or building permit, the Petitioner shall establish a \$100,000 vibration mitigation fund (or other security in a form satisfactory to the City Solicitor).
  - c. If a property owner has consented to a pre- and post- construction survey as set forth in this condition and the property owner believes its buildings or structures have suffered damage due to vibration impacts from the Project, the property owner may make a claim to the vibration mitigation fund by submitting its claim, along with supporting documentation and photographs, to an independent third party hired and paid for by the Petitioner, subject to review and approval by the City Solicitor, for the independent third party's review. Notice shall be provided to such private property owners on how to make a claim for damages. Only those property owners who consent to a pre-construction survey as set forth above shall be eligible to make a claim to the vibration mitigation fund. If a claim is approved by the independent third party, property owners receiving payment from the mitigation fund must sign a release of claims as a condition to the receipt of such payment. In lieu of seeking payment from the vibration mitigation fund, a property owner may pursue a claim for damages for any amount through private action.
  - d. The Petitioner shall engage a qualified professional to develop and prepare a vibration control plan demonstrating the following:

- Measurements of static ground vibration prior to construction.
  - Vibration level limits for demolition and construction activities based on building conditions and soil conditions. The limit should be determined using industry standards, provided that vibration level limits shall not exceed .50 peak particle velocity (PPV) at the property line of the Project.
  - Planned demolition and construction methods to ensure vibration levels will not exceed the identified limit.
  - Specific measures to be taken during construction to ensure the specified vibration level limits are not exceeded.
  - A monitoring plan to be implemented during demolition and construction that must include installation of vibration measuring devices and alarms.
- e. The Petitioner shall submit the vibration control plan to the Commissioner of Inspectional Services for review and approval prior to the issuance of any demolition, foundation, or building permit.
- f. The Petitioner shall implement the approved vibration control plan. Vibration levels shall be regularly monitored during demolition and construction. The Petitioner shall keep a record of all monitoring and shall provide copies to the Commissioner of Inspectional Services upon request.
- g. All work shall be performed within the vibration level limits established by the vibration control plan. If the vibration limit is exceeded, the construction activity causing the vibration shall cease and not resume until mitigation measures are implemented and notice is provided to the Commissioner of Inspectional Services.
- h. The Petitioner shall provide written notice to all property owners within 250 feet of the Project 48 hours prior to vibration-related activity that includes an explanation of the proposed activity, address of the site, date and time of the work, and contact information of the contractor overseeing the work.
- i. Following construction, the Petitioner shall re-inspect all homes, with approval of the owners, subject to the pre-construction survey to determine any damages caused by vibration. The Petitioner shall maintain records of all complaints it receives for vibration-related damages. All claims submitted to the mitigation fund shall be fully administered prior to the issuance of the final certificate of occupancy for the Project. Any monies remaining in the fund upon issuance of the final certificate of occupancy shall be retained by the Petitioner.
18. The Petitioner shall make payments in the aggregate amount of \$103,897.50 to the City for infrastructure improvements for infiltration and inflow (I&I). Payments shall be made as follows:
- a. \$51,948.75 prior to the issuance of any building permit for the Project.

- b. \$51,948.75 prior to the issuance of any certificate of occupancy (temporary or final) for the Project.
19. The Petitioner shall make payments in the aggregate amount of \$311,692.50 to the City for off-site transportation, pedestrian, or safety improvements or mitigation in the vicinity of the Project. The Petitioner's payments shall be made to a municipal account dedicated for such mitigation and improvements as follows:
- a. \$155,846.25 prior to the issuance of any Building Permit for the Project.
  - b. \$155,846.25 prior to the issuance of any certificate of occupancy (temporary or final) for the Project.

Funds from the account in which these payments will be held shall be appropriated only with the approval of the City Council and the Mayor in accordance with municipal finance law. The Director of Planning and Development, after consultation with the Commissioner of Public Works, shall recommend improvements for funding to the City Council.

20. The Petitioner shall implement a Transportation Demand Management Plan to reduce vehicle trips to the site. The Plan shall include, but not be limited to:
- a. Establish a Transportation Demand Management (TDM) Program coordinator.
  - b. Display all public transit schedules in a central location within the facility.
  - c. Transit map of the area provided for transit users that displays the location of MBTA trains, MBTA bus stops, sidewalks, and crosswalks. This information will be distributed to employees and will also be posted in common areas.
  - d. Provide secure bicycle storage area on site consistent with the Approved Plans.
  - e. Provide onsite locker room with showers.
  - f. Provide 20% Electric Vehicle (EV) Charging Stations.
  - g. Provide \$31,250 as a one-time contribution for employee Public Transportation Subsidies. If the \$31,250 is not dispensed/expended after a period of five years from any certificate of occupancy, the remainder shall be paid to the City for transportation related improvements or towards funding the City's shuttle system or other public transportation systems. Petitioner/Operator shall provide reports each year, annually on the anniversary of the issuance of the certificate of occupancy, of the number of transit passes issued and funds expended pursuant to this condition.
  - h. Provide a \$23,400 one-time contribution to the City prior to the issuance of a building permit for vertical construction toward City-initiated transit improvements such as bus shelter, transit, and/or City's shuttle system.
  - i. Provide a resident welcome package including all TDM initiatives that are offered.

- j. Provide an onsite car-pool rideshare program with guaranteed ride home for employees.
  - k. Provide preferential electric vehicle/low emission car parking in parking garage by designating spaces.
  - l. Provide a small-scale shuttle and/or sedan available to transport residents to medical and other necessary appointments off site.
21. In accordance with the City's Inclusionary Housing Ordinance, Section 5.11, based on the 120 beds, the Project shall include 6 affordable housing beds.
  22. The Project shall conform to the applicable Massachusetts Architectural Access Board (MAAB) requirements. The applicant shall retain a qualified accessibility consultant to independently review the building permit plans for compliance with MAAB requirements.
  23. All buildings shall be designed and constructed to achieve Passive House Rating program in accordance with the Sustainable Development Requirements set forth in Section 5.13.4 of the Zoning Ordinance.
  24. Prior to issuance of a building permit, the Petitioner shall submit to the Planning Department the following:
    - a. an updated Rating System Checklist enumerating the criteria set forth in the applicable Green Building Rating program and indicating which technical and design requirements will be met in the green building project design and the resulting rating level of the project.
    - b. an updated Rating System Narrative describing the technical and design elements of the project that will be utilized to achieve compliance with the applicable green building rating system.
    - c. an updated Energy Narrative, describing the energy efficiency, renewable energy, and other technical and design elements of the project that serve to minimize energy use, make use of renewable energy sources, and demonstrate how close the project is to achieving net zero energy use status.
    - d. a document demonstrating the credentials of the project's designated green building professional.
    - e. an affidavit signed by the green building professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project is being designed to achieve Passive House.
    - f. the credentials of the project's green commissioning agent.
    - g. the credentials of the Passive House rater/verifier who will perform testing and verification and letter of intent stating they have been hired to complete the on-site verification process.

- h. the credentials of the Certified Passive House Consultant who has provided design, planning, or consulting services.
25. Prior to issuance of a certificate of occupancy, the Petitioner shall submit to the Planning Department any updates to the above referenced documents along with the following:
  - a. An affidavit certifying that the pre-construction commissioning process requirements of Enterprise Green Communities have been met and that the post-construction commissioning process requirements of Section 5.13 of the Zoning Ordinance were included in the scope of work and will be met, including a schedule of when each commissioning requirement was or will be met.
  - b. Credentials of the project's accredited Green Building Professional and an affidavit signed by that professional stating that they have reviewed all relevant documents and that to the best of their knowledge, the documents provided indicate that the project was built to achieve the requirements of Section 5.13 of the Zoning Ordinance.
26. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
  - a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
  - b. Prior to vertical construction, the petitioner shall submit an Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development in accordance with this Order, and §5.11.8 of the Zoning Ordinance.
  - c. Submitted a recorded lot consolidation plan to the City Engineer and included a copy with the building permit application in accordance with this Order.
  - d. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
  - e. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with this Order.
  - f. Received approval from Inspectional Services for the Pest Control inspection report and the remediation action plan.
  - g. Received approval from Inspectional Services for the vibration control plan.

- h. Submitted documentation prepared and certified by a Green Building Professional to the Director of Planning and Development, indicating which points the building intends to realize to demonstrate meeting the requirements of Passive House.
  - i. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
27. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
  - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.
  - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
  - d. Submitted to the Law Department copies of a fully executed Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction in perpetuity. In addition, the Petitioner will provide evidence satisfactory to the Law Department that the Regulatory Agreement have been recorded at the South Middlesex District Registry of Deeds.
  - e. Inclusionary beds shall be completed no later than the completion of the market-rate beds. If the Inclusionary beds are not completed as required within that time, temporary and final certificates of occupancy may not be granted for the number of market-rate beds equal to the number of Inclusionary beds that have not been completed.
  - f. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
  - g. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
  - h. Filed with the Department of Inspectional Services and the Department of Planning and Development a certificate from a licensed architect certifying that all dwelling units in the building for which a certificate of occupancy is requested have been constructed and conform with MAAB requirements.

- i. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that utilities have been located underground for the portions of the Project for which a certificate of occupancy is requested to the extent required by this Order.
  - j. Filed with the Department of Inspectional Services and the Department of Planning and Development evidence that the criteria for Passive House level of construction of the subject building have been satisfied.
28. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material. In addition, the Petitioner shall ensure that landscape maintenance on the property near Route 9 is conducted as needed to improve sight lines.
29. Provided that all other requirements in Condition #27 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may in their discretion issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).
30. The trash and recycling disposal shall be handled by a private entity and shall comply with the City's Noise Control Ordinance.



CITY OF NEWTON

IN CITY COUNCIL

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON AS FOLLOWS:

Section 30 of the Revised Ordinances of Newton, as amended, be and is hereby amended by amending sheets of plans entitled "City of Newton, Massachusetts, Amendments to Zoning Plans, adopted July 21, 1951, as amended from time to time," and the City of Newton Official Zoning Map as shown and maintained as part of the City's Geographic Information System (GIS), as amended from time to time, by changing certain boundaries from present zoning district as described below:

**Zone Change Area**

Change the following described real estate: all of the land located at 11 Florence Street and 318 Boylston Street also identified as Section 82, Block 4, Lots 0049 and 0047, 11 Florence Street currently zoned Multi Residence 1 to Business Use 4 and 318 Boylston Street currently zoned Business Use 2 to Business Use 4 further described as follows:

Beginning at a point of curvature on the westerly sideline of Florence Street , being monumented by a stone bound, thence;

- |               |  |
|---------------|--|
| S 51°53'03" E | a distance of One Hundred Sixty One and Forty Eight Hundredths feet (161.48') by said sideline of Florence Street to a point; thence |
| S 15°35'23" W | a distance of Two Hundred Forty One and Seventy Four Hundredths feet (241.74') to a point; thence                                    |
| S 66°18'03" W | a distance of Sixty Nine and Thirty Two Hundredths feet (69.32') to a point; thence  |
| S 40°03'53" W | a distance of Forty Seven and Sixty Nine Hundredths feet (47.69') to a point; thence   |
| S 61°20'53" W | a distance of Seventy One and Thirteen Hundredths feet (71.13') to a point; thence   |
| N 71°15'07" W | a distance of Sixty Four and Thirty Five Hundredths feet (64.35') to a point; thence   |
| N 12°37'11" E | a distance of Three Hundred Four and Ninety Six Hundredths feet (304.96') to a point; thence   |

N 10°49'12" E	a distance of Eighty One and Sixty Six Hundredths feet (81.66') to a point; thence
N 79°55'02" W	a distance of Seventy Six and Twenty Four Hundredths feet (76.24') to a point; thence
S 16°13'58" W	a distance of Three and No Hundredths feet (3.00') to a point; thence
N 73°37'35" W	a distance of Twenty Four and Eighty Six One Hundredths (24.86') to a point; thence
N 10°43'58" E	a distance of Fifty and One Hundredths feet (50.01') to a point; thence
Northeasterly	and curving to the right along the arc of a curve having a radius of Twenty and Nineteen Hundredths feet (20.19'), a length of Twenty Five and Eighty One Hundredths feet (25.81') the last two (2) courses by the easterly sideline of Gasbarri Avenue to a point; thence
N 83°57'58" E	a distance of Nineteen and Twelve Hundredths feet (19.12') by the southerly sideline of Boylston Street (Route 9) to a point; thence
Easterly	and curving to the right along the arc of a curve having a radius of Eighty Nine and Thirty Five Hundredths feet (89.35'), a length of Thirty Nine and Fifty Nine Hundredths feet (39.59') and a chord length of Thirty Nine and Twenty Seven Hundredths feet (39.27') with a chord bearing of S 83°22'37" E to a point; thence
Southeasterly	and curving to the right along the arc of a curve having a radius of Three Hundred Five and Fifty Hundredths feet (305.50'), a length of One Hundred and Eighty Seven Hundredths feet (100.87') and a chord length of One Hundred and Forty One Hundredths feet (100.41') with a chord bearing of S 61°20'35" E to the point of beginning, the last two (2) courses by the westerly sideline of Florence Street.

Zone change areas "A" and "B" total 82,945 square feet or 1.904 acres more or less, and are shown on the plan entitled "Zone Change Plan, Sunrise of Chestnut Hill, 11 Florence Street, Newton, MA" dated July 7, 2021, revised October 18, 2021, March 15, 2022, and August 22, 2022 and prepared by VHB.

This change of zone Order accompanies Special Permit #356-22. The benefits of this change may only be exercised in accordance with the terms of such Special Permit #356-22, as defined therein.

To the extent any provision of this change of zone Order shall be deemed invalid or unenforceable, all remaining provisions shall remain in full force and effect regardless of such invalidity or unenforceability.

DRAFT



# CITY OF NEWTON

## Planning and Development Board

May 3, 2023

To: The Honorable City Council President, Susan Albright  
City of Newton  
1000 Commonwealth Avenue  
Newton, MA 02459

CC: Honorable Newton City Councilors  
Planning & Development Board

BCC: Carol Moore, City Clerk  
Cassidy Flynn, Deputy City Clerk  
Katie Whewell, Chief Planner  
Cat Kemmett, Senior Planner  
Michael Gleba, Senior Planner  
Joseph Iadonisi, Planning Associate

Ruthanne Fuller  
Mayor

Barney Heath  
Director  
Planning & Development

### Members

Kelley Brown, Chair  
Kevin McCormick, Vice Chair  
Lee Breckenridge, Member  
Amy Dain, Member  
Peter Doeringer, Member  
Jennifer Molinsky, Member  
Barney Heath, *ex officio*  
Laxmi Rao, Alternate

**SUBJ: Planning & Development Board Recommendation on Docket #355-22**  
Request to Rezone 2 parcels (11 Florence Street/ 318 Boylston Street) to  
Business Use-4 (BU-4)

Dear Honorable Council President Albright:

The Planning and Development Board joined with the Land Use Committee for the original July 19, 2022 public hearing on the above petition. Since that time, the Planning & Development Board has kept the public hearing open and on its monthly agenda. At its May 1, 2023 regular meeting, the Planning & Development Board closed the public hearing and voted 6-0-1 (Director Heath abstaining) to recommend approval of this rezoning request to the full City Council.

Sincerely,

Kelley Brown, Chair

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