

Land Use Committee Report

City of Newton In City Council

Tuesday, October 24, 2023

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

Councilor Greenberg

Also Present: Councilors Albright and Malakie

City Staff Present: Deputy Chief Planner Alyssa Sandoval, 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 October 24, 2023, Land Use Meeting can be found at the following link: October 24th
Land Use Meeting

The Committee will review a request for a consistency ruling for 26 Magnolia Avenue. The petitioner is seeking a consistency ruling from the Commissioner of Inspectional Services to install an inground pool and a detached hot tub. The Commissioner is seeking the opinion of the Land Use Committee on the matter.

Note: Chief Planner Katie Whewell presented the attached presentation regarding 26 Magnolia Avenue. The Commissioner of Inspectional Services is seeking the opinion of the Land Use Committee to install an inground pool and detached hot tub.

A councilor noted that by right this pool would not need to come in front of the committee as it is within the setbacks. It is in front of the committee due to the fact they had received a special permit.

A councilor questioned if the petitioner had spoken to the neighbors.

John Arone noted he spoke to the rear abutters to address any concerns they might have, but not the abutter on their side.

A councilor questioned if this was a one-off pool installation would they need a special permit.

Assistant City Solicitor Jonah Temple noted that not under all circumstances, but noted it came in front of the committee because the site plan changed, and that site plan was attached to a special permit.

Councilors voiced frustration that the neighbors were not involved in the process.

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Mr. Arone noted that the home was sold to a family moving to the area that wanted a pool. Noted the stormwater site plan got approved today by engineering. Felt the side neighbors would not see the pool, so felt he notified the impacted neighbors in the rear. Noted he would speak to the neighbors on the side.

A Newton resident, who abuts to the rear voiced concern about the removal of the tank to retain rainwater where the pool will be going.

Mr. Arone noted the holding tank was not required before, and stated the bedding underneath the pool will mitigate runoff better than the holding tank.

A councilor noted that the engineering department would not give the go ahead for the pool if the plans did not meet Newton stormwater standards.

The committee did a straw poll in favor of approving the pool which passed 5-1-1 (Councilor Kelley Opposed, and Councilor Downs Abstaining)

#327-23 Request for Extension of Time to Exercise Special Permit #414-22 at 35 Bracebridge Road

ANDREA ROMAN petition for Extension of Time to September 18, 2025to Exercise Special Permit Council Order #414-22 to raze and construct a new detached garage as well as replace the rear deck further extending nonconforming FAR, further reducing and extending a nonconforming a side setback for an accessory structure and further reducing nonconforming separation between the accessory and principal buildings at 35 Bracebridge Road, Ward 6, Newton, on land known as Section 64 Block 16 Lot 16, containing approximately 11,425 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2, 3.4.3.A.1, 3.4.3.A.2 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 7-0

Note: Andrea Roman noted that she would like an extension of time.

Councilor Bowman motioned to approve which passed unanimously.

#328-23 Request to amend Special Permit #67-20 to allow a Medical Marijuana Treatment Center at 1089 Washington Street

GREEN RE WEST NEWTON LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #67-20 to allow a medical marijuana treatment center (formerly known as Registered Marijuana Dispensary or "RMD") at 1089 Washington Street, Ward 3, West Newton, on land known as Section 31 Block 09 Lot 07, containing approximately 25,122 sq. ft. of land in a district zoned BUSINESS2. Ref: Sec. 7.3.3, 6.10.3.D, 4.4.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

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

Note: Deputy Chief Planner Alyssa Sandoval presented the attached request for a special permit at 1089 Washington Street. The request is to amend Special Permit #67-20 to allow Medical Marijuana Treatment at 1089 Washington Street. The presentation is attached, and additional back-up can be found at the following link: https://newtonma.viewpointcloud.com/records/804543. The City

requires a special permit for Marijuana Medical Treatment Centers. Ms. Sandoval noted that landscaping had died on the property, and they have notified the petitioner that it needs to be addressed.

Mike Ross, attorney for the petitioner, noted there is a need in the community for a Medical Marijuana Treatment Center. Mr. Ross reviewed the floor plan, and noted there would be no physical changes to the facility or operational changes. Mr. Ross noted that they will be planting new plants.

A councilor noted that the parking lot often appears full. Questioned if the number of employees is the same as when they started and expressed surprise with how full the lot is.

Mr. Ross noted that they are never exceeding 15 employees at a time. Stated that most of the employees are parking in the parking lot, and they are trying to remind the employees there are other methods to get to work or trying to get employees to use spots along Washington Street.

A councilor raised concerns about delivery drivers parking on the side streets, and noted they have to park in either the parking lot or on Washington Street.

Mr. Ross noted concern with the delivery drivers including one that was smoking cannabis in his car which is from only one company that they contract with. It is his understanding that the employee that was smoking cannabis in his car has been let go. Noted they have the right to cancel the delivery contract if they don't fix the issues.

A Newton resident expressed concern with customers urinating in the parking lot, and individuals are parking in their parking lot.

A Newton resident noted individual blocking the parking lot to the building to the right, and wished they would have security present like other Marijuana establishments.

Jackalyn Schrader, 17 Wiswall Street, expressed concern for drivers and customers parking on the side street.

Robert Desantis, 46 Parsons Street, raised issues with cars being parked in front of his driveway resulting in his trash not being picked up. Has now put his trash bins in the street. Noted traffic uses his road as a cut through now, making it more dangerous.

Tina Mingace, 1081 Washington Street, noted at their business they had to install extra security systems because individuals would try to enter their building thinking they were the dispensary. Noted customers often use their private parking lot, and would like to see more security at the location.

Tim Techler, 40 Cross Street noted concern with parking, and with trashing being left by customers. Noted pleasure that the landscaping would be addressed. Questioned if individuals would consume the product on site with the approval of this special permit.

A councilor noted that individuals would not be allowed to use cannabis on site. Expressed frustration with the trash and parking issues that were raised.

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A councilor recommended denial or that the petitioner withdraw the petition, and that they work with the neighbors to address these issues.

A councilor recommended they hold the petition.

A councilor questioned who the general manager is of the store, as they have not been able to talk to that person. Noted there was supposed to be a quality of life hotline established, but there does not seem to be one, or if there is one it has not been communicated with the neighbors.

Mr. Ross noted that the general manager's name is Aaron Bafford, and above him is Matt McKenna.

Matt McKenna, public affairs officer for Ascend, noted the issues are unacceptable and he would be reaching out to the direct GM to address the issues.

A councilor voiced frustration with Ascend not being a good neighbor for the neighborhood.

Mr. Ross noted that they would like to request a withdrawal without prejudice.

Councilor Laredo motioned to hold which passed unanimously.

#355-22 Request to Rezone 2 parcels to BU4

<u>SELTZERS GARDEN CITY, INC.</u> petition for <u>SPECIAL PERMIT/SITE PLAN APPROVAL</u> 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.

Land Use Held 5-0; Public Hearing Continued on 7/19/22 Land Use Held 8-0; Public Hearing Continued on 09/19/23

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

Note: Please see noted on #356-22, as these items were taken up together.

#356-22 Request to construct elderly housing with services at 11 Florence and 318 Boylston St

<u>SELTZERS GARDEN CITY, INC.</u> petition for <u>SPECIAL PERMIT/SITE PLAN APPROVAL</u> 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, 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.

Land Use Held 5-0; Public Hearing Continued on 7/19/22 Land Use Held 6-0; Public Hearing Opened on 6/27/23 Land Use Held 8-0; Public Hearing Continued on 09/19/23

Action: <u>Land Use Approved 7-0; Public Hearing Closed 7-0</u>

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Note: Deputy Chief Planner Alyssa Sandoval presented the attached request for a special permit at 11 Florence Street and 318 Boylston Street. The request is to rezone 11 Florence Street from MR1 to BU4, to rezone 318 Boylston Street from BU2 toBU4, and to construct elderly housing with services at 11 Florence Street and 318 Boylston Street. The presentation is attached, and additional back-up can be found at the following link: https://newtonma.viewpointcloud.com/records/745876. Since the meeting in September the petitioner met with neighbors and made adjustments to the plan by adding additional fencing and landscaping and shortening the hours of construction on Saturdays.

Katherine Brouker Adams, Schlesinger & Buchbinder, on behalf of the petitioner stated they had a site visit with neighbors and then later met with neighbors and Sunrise to discuss lighting, stormwater mitigations, and construction concerns.

Natasha Penner, 23 Tanglewood Road, expressed pleasure with some of the changes made including the fence, but noted concerned about the noise from the air conditioner and during construction. Raised concern about traffic mitigation and potential closures of Florence Street during construction. Concerned about damage from blasting. Noted their largest concern is flooding and wants to ensure the city reviews the plans and that the issue does not get worse.

A councilor noted there would be no blasting for this project, and that engineering would not sign off on the permit unless the engineering plan shows that flooding would not get worse.

A Newton resident expressed the desire to get the 4 spots in front of Florence Street removed.

Stephen Buchbinder, Schlesinger & Buchbinder noted that he would like to remove the 4 spots, but planning was not in favor of removing those spots. Noted they discovered a problem with the existing drain and when that gets fixed along with their mitigation proposals, they believe flooding will improve in the neighborhood. Stated that the air conditioning units will be on the roof, so the noise will be mitigated.

Ms. Sandoval stated she believes that traffic engineering had a concern with the removal of the spots.

Ms. Whewell noted that any change would have to go before the Traffic Council.

Marissa Flaviano, 29 Tanglewood Road, feels the project is to big for the neighborhood. Would like more residential units build here, not a large senior housing facility.

A councilor noted support and believed changes will help with traffic mitigation, and potential help with flooding.

A councilor noted that this is a great use for the area, ensuring there is assisted living units available for individuals in the City of Newton. Noted the City needs housing, and this is housing for individuals for a particular need.

A councilor noted that it would be rare that Florence Street would be shut down during construction.

A councilor noted that he would like a condition put in to stop cars from idling on the streets during construction.

A councilor asked where the AC unit would be.

Mark Moeller, JSA Design, noted that they are still designing the units, but anticipate 3 rooftop units. Noted the design of the perimeter of the building will act as a screen to the noise of the equipment.

A councilor noted that in the council order that it is made clear all the mechanicals are on the roof and it will be screened.

A councilor asked if the sidewalks would be replaced along Route 9.

Mr. Buchbinder noted that the sidewalks along Route 9 would be updated.

The public hearings were closed.

The draft council order was discussed.

A councilor asked if the replacement of the sidewalks would be in the order.

Mr. Temple noted that under city ordinance the sidewalks would have to be replaced, but it could be put in the council order.

A councilor noted the addition of language to stop the idling of vehicles during construction.

A councilor noted that language needs to be included about the AC units being on the roof.

Mr. Temple noted they would add language regarding the AC units and the idling of vehicles.

A councilor noted that it must be made clear that the petitioner will follow the vibration control conditions in the council order, and not the new ones that are being discussed by the council.

Mr. Temple noted that it would be made clear in the council order, and that he would add a condition requiring the petitioner to file a petition with the traffic council to remove the 4 spots on Florence Street.

Councilor Bowman motioned to approve #356-22 which passed unanimously.

Councilor Bowman motioned to approve #355-22 which passed unanimously.

The Committee adjourned at 08:45 pm.

Respectfully Submitted,

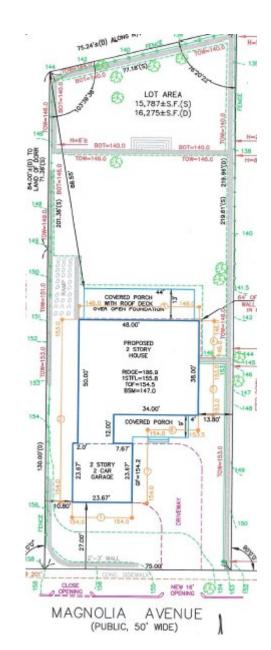
Richard Lipof, Chair

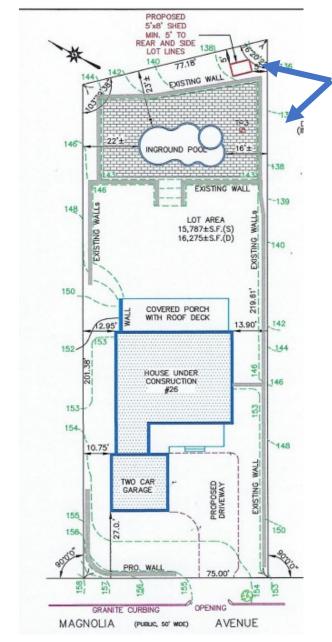
26 Magnolia Avenue Consistency

Approved

2022

SP: exceed FAR by constructing a single-family home and construct retaining walls exceeding 4' in height within a setback





Consistency request:

- Inground pool with associated hardscape
- shed

Proposed 10/24/23

City of Newton Planning and Development

Petition #328-23 Special Permit/Site Plan Approval Request to amend Special Permit #67-20 to allow a Medical Marijuana Treatment at 1089 Washington Street

October 24, 2023



1089 Washington Street

1

Zoning Relief

Zoning Relief Required				
Ordinance Required Relief		Action Required		
	To amend Special Permit #67-20			
§6.10.3.D §4.4.1	To allow a medical marijuana treatment center	S.P. per §7.3.3		

Background:

- 2020: Granted a special permit for retail marijuana store, Ascend
- December 2021: Ascend opens
- October 2023: Seeks special permit amend to open a marijuana treatment center at existing location for sale of medical marijuana

Criteria to Consider

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for the medical marijuana treatment center. (§7.3.3.1)
- The proposed medical marijuana treatment center as developed will not adversely affect the neighborhood. (§7.3.3.2)
- There will be no 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)

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Criteria to Consider

Medical Marijuana Treatment Center

- The lot is designed such that it provides **convenient**, **safe**, **and secure access and egress for clients and employees** arriving to and leaving from the site, whether driving, bicycling, walking or using public transportation.
- Loading, refuse and service areas are designed to be secure and shielded from abutting uses.
- The MTC/Marijuana Retailer is designed to minimize any adverse impacts on abutters.
- The MTC/Marijuana Retailer is **not located within a 500-foot radius of a public or private K-12 school.**
- Traffic generated by client trips, employee trips, and deliveries to and from the MTC will not create a significant adverse impact on nearby uses.

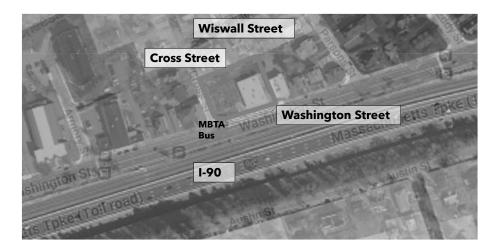
Criteria to Consider

Medical Marijuana Treatment Center

- The building and site have been **designed to be compatible with other buildings in the area** and to mitigate any negative aesthetic impacts that might result from required security measures and restrictions on visibility into the building's interior.
- The building and site are accessible to persons with disabilities.
- The lot is accessible to regional roadways and public transportation.
- The lot is located where it may be **readily monitored by law enforcement** and other code enforcement personnel.
- The MTC/marijuana retailer's hours of operation will have no significant adverse impact on nearby uses.

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Aerial Map



Photos





7

Photos





Additional Information

- Original special permit included site improvements such as new pedestrian crosswalk, perimeter fencing and landscaping, bike shelter, and rain garden
- No exterior physical or major operational changes proposed
- No change in hours of operation
- Plantings/landscaping in front of property should be replaced per SP Approved Landscape Plan



EXPANDING FOOTPRINT

7 states31 operating dispensaries

ILLINOIS

9 retail 1 retail pending close² 1 cultivation / processing

MASSACHUSETTS

3 retail 1 cultivation / processing

NEW JERSEY

3 retail 1 cultivation / processing

OHIO

2 medical retail 3 medical retail pending close² 1 cultivation / processing

MICHIGAN

8 retail 1 cultivation / processing

PENNSYLVANIA1

2 retail 4 planned medical retail licenses 1 cultivation / processing

MARYLAND²

4 retail licenses

2020 YE
 12 Dispensaries
 74,000 ft² Canopy

2021 YE
 20 Dispensaries
 175,000 ft² Canopy

CURRENT 6/14

25 Operating Dispensaries **14** Additional Dispensary Licenses^(1,2)

ILLINOIS

MICHIGAN

OHIO

245,000 ft² Canopy

2023 EXPECTED MID-2024

7 States⁽²⁾

MASSACHUSETTS 1

NEW JERSEY

39 Operating Dispensaries^(1,2)

PENNSYLVANIA

MARYLAND

[.] License is owned by AWH, but the site is not yet operational and/or under construction. Includes Century, MI; and 4 Pennsylvania dispensaries.

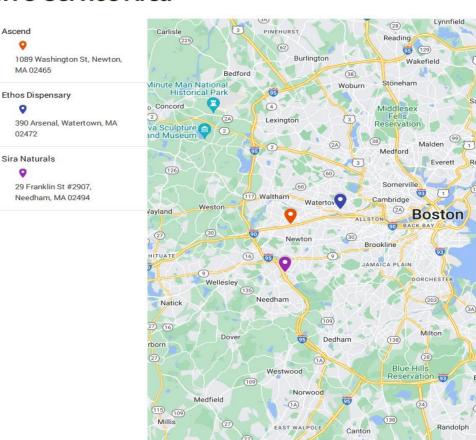
^{2.} Includes pending acquisition of Ohio Patient Access LLC (3 OH dispensaries), Homecoming paper IL dispensary license (to be sited in Tinley Park, IL), In Labs IL dispensary license (to be sited in Northlake, IL), and Devi Holdings Inc (4 dispensaries in MD). Note: Timeline illustrative; does not necessarily reflect scale. Canopy includes total canopy (vegetation, flower, and propagation).

Need For Medical Patients

Of the four Marijuana Retailers currently operational in Newton, only one is serving medical patients.

- 1. Within five miles of Ascend's Newton location, there are only two MTCs, one in Needham, MA and one in Watertown, MA.
- 2. In 2021, the CCC reported 100,000 certified medical marijuana patients in Massachusetts, the highest since marijuana was legalized for medical purposes in 2012.
- 3. That number is expected to grow as the market expands. Moreover, the CCC has remarked that the number of patients using medical marijuana increased significantly during the pandemic. Given these figures, it is estimated that approximately two percent of the population are expected to become patients.

MTC Service Area

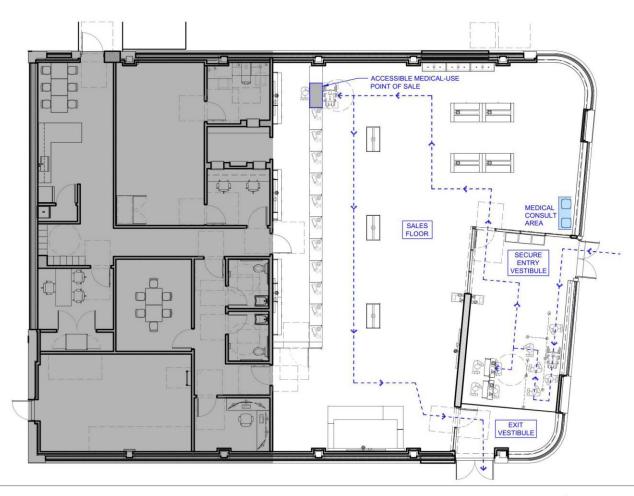


Amendment to Special Permit



• Ascend seeks to amend Special Permit #67-20 to include a Medical Marijuana Treatment Center (MTC) in its Marijuana Retailer operation. The Applicant is not proposing any other changes to the property nor an increase in the number of employees.

Revised Floor Plan







Bringing Jobs to Your Community



CULTIVATION:

- → Senior Management
- → Cultivation Technician
- → Harvest Associate
- → Production: Extraction & Processing
- → Packaging
- → Security & Logistics
- → Administration
- → IT Specialist



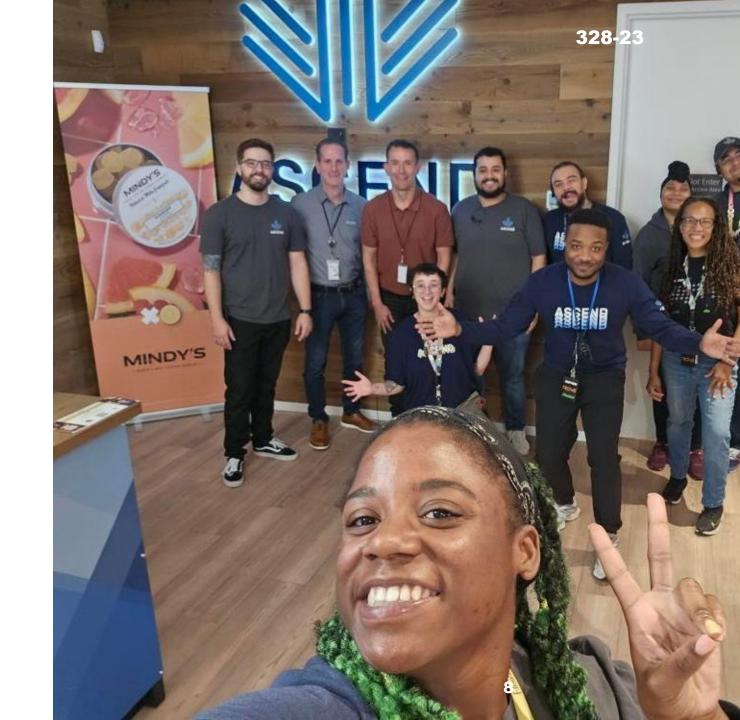
RETAIL:

- → Senior Management
- → Care Specialist: Patient Consultant
- → Data Analyst: Inventory, Reporting Analytics
- → Security & Logistics
- → Administration
- → Retail Associate
- → Purchasing



Employment

- We currently employ 30 people at the dispensary. 15 FT / 15 PT
- All full-time employees receive a full benefits package
- Salaries range from \$18 to \$100,000+



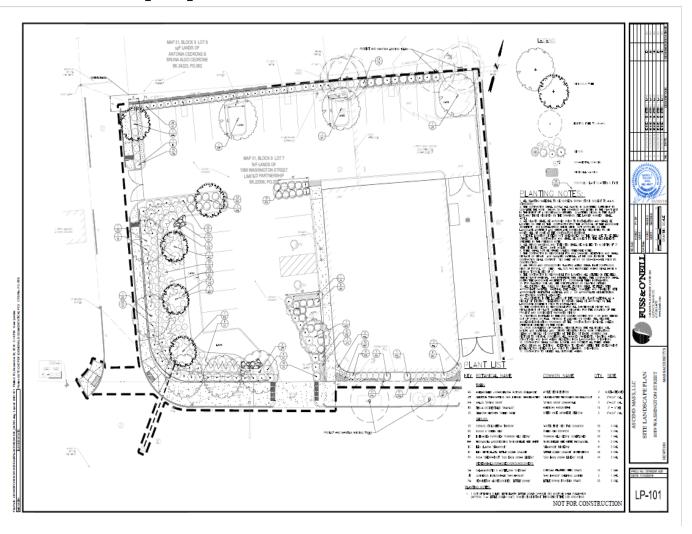


Ascending into the Community

- Since beginning our partnership with the city of Newton Ascend has contributed to the City via HCA payments, local sales marijuana sales tax, and community events
 - HCA Payments: \$416,782
 - 3% sales tax: \$386,886
- Community Events: Sponsor of New Art Center's yearly Gala



Appendix





City of Newton Planning and Development

Petition #356-22 Special Permit/Site Plan Approval Request to construct elderly housing with services at 11 Florence Street & 318 Boylston Street

Petition #355-22 to rezone 11 Florence Street from MR1 to BU4 and to rezone 318 Boylston Street from BU2 to BU4

October 24, 2023



11 Florence Street

1

Zoning Relief

Zoning Relief Required				
Ordinance Required Relief		Action Required		
	Request to rezone parcel to BU4			
§4.4.1	To allow an Elder Housing with Services facility	S.P. per §7.3.3		
§6.2.10				
§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	To allow a building with five stories	S.P. per §7.3.3		
§4.1.3				
§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	To allow parking within the front setback	S.P. per §7.3.3		
§5.1.13				
§5.1.10.A	To waive lighting requirements	S.P. per §7.3.3		
§5.1.13				
§5.2.13	To allow a free-standing sign	S.P. per §7.3.3		

Criteria to Consider

When reviewing this request, the Council should consider whether:

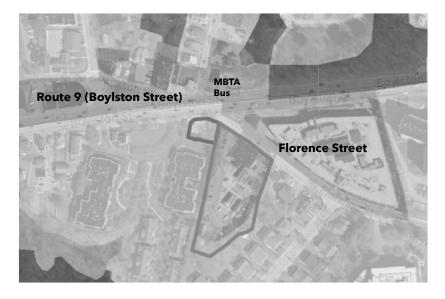
- The site is an appropriate location for the proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories, a free-standing sign, and a wall greater than four feet in height within a setback.
- The proposed elderly housing facility with more than 20,000 square feet in gross floor area and five stories as developed will not adversely affect the neighborhood.
- There will be not be a nuisance or serious hazard to vehicles or pedestrians.
- Access to the site is appropriate for the types and numbers of vehicles involved.

3

Criteria to Consider

- 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)

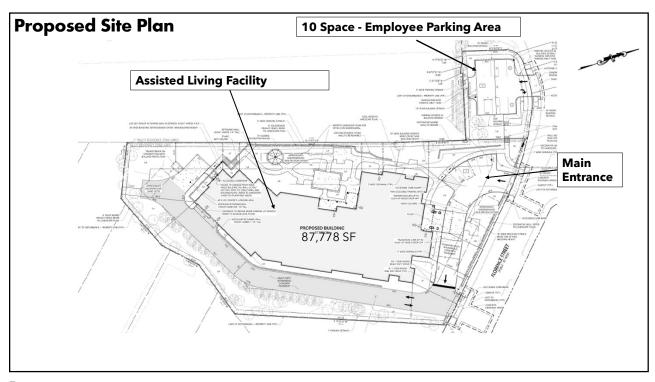
Aerial Map

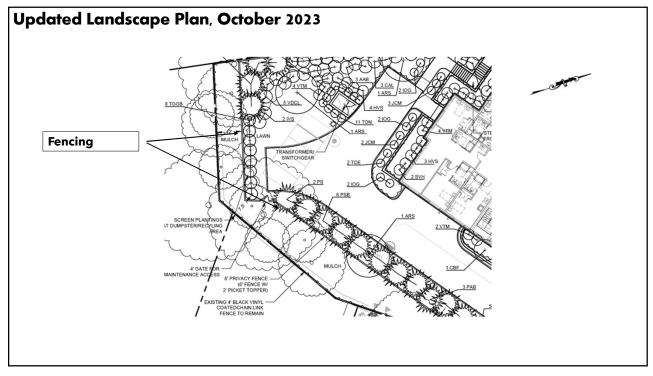


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Rezoning

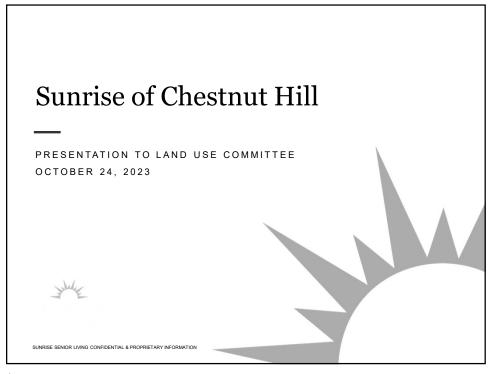
Proposed Rezoning to BU-4	As of Right	Special Permit	Proposed
Use	 Retail Personal services Office Bank Health club 	Elder Housing with Services	120 beds, 95 units - Elder Housing with Services
Height	36 feet 3 stories	96 feet 8 stories	60 feet 5 stories



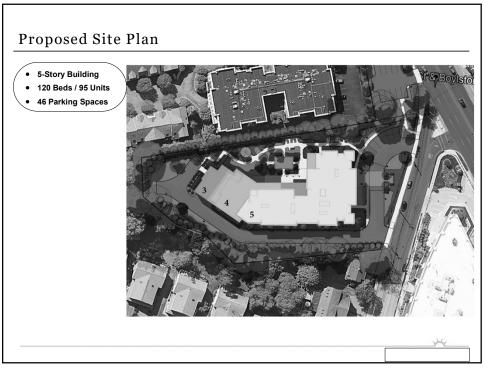


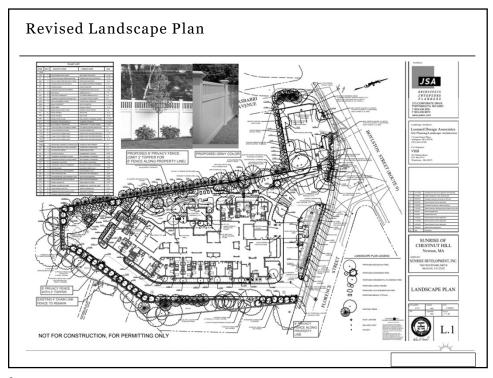
Additional Information

- Updated Landscape Plan to incorporate fencing and landscape screening in response to neighbor input
- Change of Green building designation from Enterprise Green
 Communities program to Passive House
- Hours of exterior construction changed on Saturdays to 8 am to 4 pm



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