



Land Use Committee Report

City of Newton In City Council

Thursday, September 20, 2018

Present: Councilors Crossley (Acting Chair), Greenberg, Auchincloss, Kelley, Markiewicz, Laredo

Also Present: Councilors Albright, Baker, Grossman

City Staff Present: City Solicitor Ouida Young, Chief Planner Jennifer Caira

All Special Permit Plans, Plan Memoranda and Application Materials can be found at http://www.newtonma.gov/gov/aldermen/special_permits/current_special_permits.asp. Presentations for each project can be found at the end of this report.

#198-18 President's Appointment of Hynrich Wieschhoff to the Kessler Liaison Committee
PRESIDENT LAREDO appointing Hynrich Wieschhoff, 140 Vine Street, Chestnut Hill as a member of the Kessler Woods Liaison Committee for a term to expire December 31, 2019.
Action: **Land Use Voted No Action Necessary 5-0 (Laredo not Voting)**

#199-18 President's Appointment of Barbara Sird to the Kessler Liaison Committee
PRESIDENT LAREDO appointing Barbara Sird, 125 Pond Brook Road, Chestnut Hill as a member of the Kessler Woods Liaison Committee for a term to expire December 31, 2019.
Action: **Land Use Voted No Action Necessary 5-0 (Laredo not Voting)**

#252-18 President's Appointment of Marilyn Wolman to the Kessler Liaison Committee
PRESIDENT LAREDO appointing Marilyn Wolman, 47 Rangeley Road, Chestnut Hill/Brookline, as a member of the Kessler Woods Liaison Committee for a term to expire December 31, 2019.
Action: **Land Use Voted No Action Necessary 5-0 (Laredo not Voting)**

Note: It was noted that the Kessler Liaison Committee met for six months after which a Kessler Working group, hosted by Councilor Lapping met for an additional six months. Because the Kessler Liaison Committee is no longer meeting, Councilor Lapping recommended a vote of No Action Necessary. Councilor Greenberg moved No Action Necessary of items #198-18, #199-18 and #252-18. Her motion carried unanimously.

#358-18 Appointment of Karine Alexander to the Boston College Neighborhood Council

PRESIDENT LAREDO appointing KARINE ALEXANDER, 107 Monadnock Road, Chestnut Hill, as a member of the BOSTON COLLEGE NEIGHBORHOOD COUNCIL for a term to expire December 31, 2019.

Action: Land Use Approved 5-0 (Laredo not Voting)

Note: The Committee invited Ms. Karine Alexander to discuss her appointment to the Boston College Neighborhood Council. Ms. Alexander stated that she is part of the Chestnut Hill Association and she is looking forward to representing the City on the Boston College Neighborhood Council. A Committee member questioned what Boston College could be doing better, if anything. Ms. Alexander stated that she hopes to learn more about BC's plans and that she lives close to the main campus and has no complaints. She did note that she was not aware of the new Beacon Street structure prior to its construction. Committee members thanked Ms. Karine for volunteering and expressed no Councilor Markiewicz moved approval of the appointment and Committee members unanimously supported his motion.

#495-18 Extension of Time for #289-18 – Garden Remedies

AGREEMENT TO AN EXTENSION OF TIME in which to ACT on petition #289-18 GARDEN REMEDIES, INC/697 WASHINGTON STREET REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Board Order #167-14 to allow the retail sale of recreational marijuana and medical marijuana, to delete Condition #3 relative to customer appointments, to amend Condition #4 to allow up to 12 employees at one time, to amend Condition #5 to modify the hours of operation, to expand the premises to include additional space, to allow waivers to perimeter screening requirements, to allow waivers to interior landscaping requirements, to allow waivers for parking facility requirements for; parking in the front setback, waivers to interior landscaping, waivers for interior planting area requirements, waivers to requirements for tree planting, waivers to requirements for bumper overhang area landscaping, waivers to requirements for 1-foot candle lighting, waivers for retaining walls over 4' in height and a waiver for 5 parking stalls to the extent necessary in Ward 2, Newton at 697 Washington Street (Section 23 Block 19 Lot 01B), 691 Washington Street (Section 23 Block 19 Lot 01A), 681 Washington Street (Section 23 Block 19 Lot 01) and 2 Court Street (Section 23 Block 19 Lot 23), containing approximately 16,669 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: 7.3.3, 7.4, 5.1.8.A.1, 5.1.13, 5.1.9.A, 5.1.9.B, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1, 5.4.2.B of the City of Newton Rev Zoning Ord, 2015, said extension will run from SEPTEMBER 24 to OCTOBER 19, 2018.

Action: Land Use Approved 5-0 (Laredo not Voting)

Note: Attorney Franklin Schwarzer, office of Schlesinger and Buchbinder, 1200 Walnut Street, represented the petitioner to present the agreement to allow the City Council to act on the Special Permit Petition #289-18 for Garden Remedies at 697 Washington Street. Committee members expressed no concerns relative to the item. Councilor Greenberg motioned to approve the item which carried unanimously.

#420-18 Petition to allow multi-family dwellings at 424-432 Cherry Street

DENNIS CAMERON/CRM MANAGEMENT, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert an existing single-family dwelling to a three-story, six residential unit building with ground floor units, to construct a second three-story, three residential unit building with ground floor units, to allow a reduction in the parking requirements to 1.25 per dwelling unit, to allow parking within 5' of a building with residential units, to allow a reduction in the minimum stall width, to waive perimeter landscape screening requirements and to waive lighting requirements in Ward 3, West Newton, at 424-432 Cherry Street, Section 33 Block 11 Lot 2, containing approximately 14,204 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 4.1.2.B.3, 4.1.3, 5.1.4.A, 5.1.13, 5.1.8.A.2, 5.1.8.B.1, 5.1.9.A, 5.1.10.A of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Postponed to October 23, 2018

Note: Acting Chair Councilor Crossley noted that the public hearing for this item will be postponed to October 23, 2018 and re-advertised.

#422-18 Petition to amend Special Permits to allow salon use at 148 California Street

UNITED PROPERTIES GROUP petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Orders #162-88, #199-99(2), and #175-12 to change the existing non-conforming restaurant use to allow a non-conforming salon use in Ward 1, Newton, at 148 California Street/171 Watertown Street, Section 11 Block 12 Lot 11, containing approximately 523,642 sq. ft. of land in a district zoned MANUFACTURING. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017.

Action: Land Use Approved 5-0 (Laredo not Voting)

Note: Attorney Frank Stearns, Stearns, Holland and Knight, represented the petitioner; United Properties Group and presented the request for a Special Permit Petition to allow a salon in the former Papa Ginos at 148 California Street/171 Watertown Street. The existing building has a mix of office and retail use. Because the property is zoned manufacturing, a Special Permit is required for the non-conforming salon use. Atty. Stearns noted that zoning at the site has not been updated since the 1940s-1950s and the existing uses at the site are considered pre-existing nonconforming uses. When new tenants propose to locate in the space, the City evaluates whether the use has previously been permitted, if it has not, the special permits for the site must be amended. The petitioner proposes to locate a nail salon (personal service establishment) in the 2100 sq. ft. former Papa Ginos. No exterior changes to the site will be made and the nail salon use requires less parking than the Papa Ginos. The Council must find that the use will not be substantially more detrimental than the existing use.

The Public Hearing was Opened. No member of the public wished to speak. Councilor Greenberg motioned to close the public hearing which carried unanimously. Councilor Greenberg motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation and expressed no concerns. Committee members voted in favor of approval 5-0-1, Councilor Laredo abstaining as he was not present for the presentation.

#421-18 Special Permit to amend Special Permit for Kessler Woods

KESSELER WOODS, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit #102-06(15) at Kessler Woods to allow off-site relocation of the inclusionary zoning units as well as 24 additional units at 219 Commonwealth Avenue (Section 63 Block 08 Lot 19), containing approximately 10,347 sq. ft. of land in a district zoned MULTI RESIDENCE 1 from the approved site at 200 Estate Drive, Ward 8, on land known as Section 82 Block 37 Lot 95, containing approximately 640,847 sq. ft. of land in a district zoned MULTI RESIDENCE 3. Ref: 7.3, 7.4, 5.11.4, 5.11.6, 7.8.2.C of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Note: The Proposal allows off-site relocation of 4 of the 13 required inclusionary zoning units in conjunction with additional income and rent restricted units at 219 Commonwealth Avenue.

Action: Land Use Held 6-0

Note: Attorney Frank Stearns, Holland and Knight, represented the petitioner, Kessler Woods, LLC. On September 20, 2018, the petitioner received correspondence from Livable Newton, raising a number of concerns relative to the proposal. This correspondence is attached. Atty. Stearns requested a continuance of the public hearing to October 9, 2018 to thoughtfully address the correspondence from Livable Newton. Committee members agreed that the proposed amendment to the Special Permit should not be discussed or deliberated prior to the presentation from the petitioner. Some Councilors expressed concerns relative to hearing from members of the public who were in attendance in anticipation of speaking at the public hearing. Councilors agreed that barring any legal prohibition of opening the public hearing, testimony should be taken from members of the public in attendance. City Solicitor Ouida Young confirmed that there is no legal prohibition of opening the public hearing, but discouraged full discussion and deliberation until after the presentation by the petitioner.

The Public Hearing was Opened.

Gail Silberstein, 55 Woodlawn Drive, noted that the developer may not be aware of the ongoing traffic and parking issues in the area, particularly at the intersection of Commonwealth Avenue and Manet Road. Ms. Silberstein has concerns that the change from students to non-students at 219 Commonwealth Avenue will negatively impact traffic. She stated that the neighborhood has a significant amount of parking overflow and she urged the Committee to look at a parking study for the area.

David Dreher, 36 Travis Drive, noted that parking is an issue in the neighborhood. He noted that the developer questioned whether members of the community would be willing to rent their available parking spaces.

Ronald Herzlinger, 300 Commonwealth Avenue, noted that while only four units will be relocated from Kessler Woods, the entire makeup of the building at 219 Commonwealth Avenue will be different than it has been historically and stated that he would like more information about the proposal.

Madeline Bell, 55 Waban Hill North, noted that the building at 219 Commonwealth Avenue has historically been reserved for student housing. Ms. Bell emphasized that there is a limited amount of parking at the site.

Susan Servais, 4 Garrison Street, is opposed to the proposal to change the building at 219 Commonwealth Avenue to a fully affordable building and urged the developer to follow existing guidelines to create mixed income living as is encouraged by the City. She stated that separating the affordable housing units from Kessler Woods will discourage full maintenance at 219 Commonwealth Avenue. Ms. S stated that Kessler Woods will have a theater, an exercise room, a community center and a business center and noted that these amenities are not comparable to the conditions at 219 Commonwealth Avenue.

Jennifer Walkowiak, 3 Garrison Street, reiterated the concerns raised relative to parking and traffic. She noted that parking and traffic is an ongoing issue and stated that she has concerns that the proposed use for 219 Commonwealth Avenue will be constrained by transportation issues.

David Edelman, 209 Commonwealth Avenue, requested that the petitioner bring pictures of the units at Kessler Woods and 219 Commonwealth Avenue at the next meeting.

Rebecca Valette, 16 Mount Alvernia Road, believes that Kessler Woods should maintain their commitment to 13 units at the approved site. Ms. Volette noted that she toured Kessler Woods who could not provide her with information for the affordable units and redirected her to a separate website where she could apply. She questioned what the lease terms are for the affordable units.

Gene Ferrari, Trustee at 209 Commonwealth Avenue, expressed concerns relative to the maintenance of the building at 219 Commonwealth Avenue and noted that the property owner is not currently properly maintaining construction materials or trash.

The Chair noted that the letter from Livable Newton raises matters relative to the current Special Permit and whether or not it is compliant as currently built and occupied with the City and state's laws. Councilors questioned whether Inspectional Services and Planning can evaluate whether and to what degree the existing permit is consistent with what was approved with regard to inclusionary housing and the states rules. Chief Planner Jennifer Caira confirmed that the City is holding the temporary certificate of occupancy for 13 units representing the approved inclusionary units in addition to 13 additional market rate units as is required in the Ordinance when there is a pending request to locate inclusionary housing off-site. Ms. Caira stated that the Department of Housing and Community Development (DHCD) requires simultaneous marketing of the inclusionary housing units with market rate units. She explained that when the Board Order was written, the City did not have standards for drafting conditions relative to inclusionary units. She stated that it was after issuance of some temporary Certificates of Occupancy, that it was realized that the petitioner must comply with the marketing regulations for the inclusionary units. After this determination was made, issuance of the Certificates of Occupancy ceased, and the City required the petitioner to submit the appropriate documentation. Ms. Caira confirmed that there is an existing regulatory agreement which has been approved by DHCD for nine units. If the Special Permit Petition to locate four off-site inclusionary units

is not approved, the petitioner will be required to submit a new regulatory agreement. A new lottery will be held for the remaining four inclusionary units and the City will continue to hold Certificates of Occupancy for one market rate unit per inclusionary unit that is unoccupied. Councilors requested that the Planning Department provide additional information relative to the new process for drafting conditions for inclusionary housing at the next public hearing. With that, Councilor Kelley motioned to hold the item and Committee members voted unanimously to hold.

#294-18 **Special Permit Petition to allow development at 1314 Washington and 31, 33 Davis St. HQ, LLC** petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a three-story addition in the BU1 district to be used for mixed uses, to allow a building in excess of 20,000 sq. ft., to extend the existing non-conforming structure with regard to height, to extend the existing non-conforming structure with regard to side setback, to allow a restaurant with more than 50 seats, to waive the requirement of using the A-B+C parking formula, to allow a reduction in the overall parking required by 1/3, to waive 27 parking stalls, to allow parking in the front and side setback, to allow reduced parking stall dimensions, to waive end stall maneuvering space requirements, to allow reduced aisle width, to waive perimeter screening requirements, to waive interior landscaping requirements, to waive requirements for interior planting area, tree planting, and bumper overhang area landscaping, to waive lighting requirements, to waive off-street loading facility requirements in Ward 3, West Newton, at 1314 Washington Street, 31 Davis Street and 33 Davis Street (Section 33 Block 10 Lots 01, 11, 12), containing approximately 30,031 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 7.8.2.C.1, 7.8.2.C.2, 4.4.1, 6.4.29.C.1, 5.1.3.B, 5.1.13, 5.1.4, 5.1.4.C, 5.1.8.A.1, 5.1.8.A.2, 5.1.8.B.2, 5.1.8.B.6, 5.1.8.C.1, 5.1.8.C.2, 5.1.9.A, 5.1.9.B.1, 5.1.9.B.2, 5.1.9.B.3, 5.1.9.B.4, 5.1.10.A.1, 5.1.12 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held 6-0**

Note: Attorney Steve Buchbinder, Schlesinger and Buchbinder, 1200 Walnut Street, presented updates to the Special Permit Petition at 1314 Washington Street, 31 and 33 Davis Street in West Newton. At the public hearing on August 7, 2018, the development team presented modifications to the original proposal to locate a 150-seat restaurant at the site. The amended request was to reduce the number of seats in the restaurant to 120, reducing the necessary parking waiver from 27 to 21 stalls. The modified request incorporated a 6' cedar fence of the site as well as a proposal to construct an 18-stall parking facility for the First Unitarian Universalist Church (FUSN) at the petitioner's cost. The petitioner has supplied information to the Planning Department relative to the inclusion of efficient resources, how deliveries will be made to the site, and details of the how the petitioner proposes to incentivize reduced automobile trips to the site. Regarding bicycle storage, the petitioner proposes to add a bike rack on Highland and/or Washington Street and will provide bicycle storage in the building for tenants. Atty. Bubhbinder noted that the Stantec parking study highlights available parking spaces within a 3-4 minute walk to the site. The Planning Department received an updated study and will review it prior to the next public hearing. Atty. Buchbinder stated that the petitioner believes that the

proposed on-site parking can sufficiently accommodate the proposed uses for the site. He noted that while patrons have historically used the Santander lot, that arrangement was always subject to change. He stated that the petitioner is aware that Councilors and residents remain concerned and would like to come to a workable solution but should not be responsible for solving all of the existing parking issues in the square. Atty. Buchbinder noted that the FUSN parking facility will benefit congregants as well as community groups who use the church space. The petitioner is hoping to receive feedback prior to the next public hearing.

A Committee member noted that the mix of uses at the site (restaurant, bank, office) is positive, but expressed concern relative to the ability to accommodate the intensity of uses on site as well as the true availability of parking in the square. Additionally, it was asked how parking will be managed for local businesses during construction. Committee members shared concerns relative to the parking study and asked that the petitioner submit a parking study that reflects public parking spaces. Attorney Buchbinder confirmed that for the next public hearing, the petitioner can provide a clearer overview of the parking availability.

Public Comment

Valerie Miller, owns Artitudes, is supportive of the lot for FUSN, but noted that public transportation remains an issue in West Newton Square and questioned whether the site can accommodate the proposed spaces. Ms. Miller noted that the enhancements project is not adding many spaces to that end of the square and emphasized that they need to maintain as many spaces as possible.

Ted Hess-Mahan, 871 Watertown Street, is supportive of the proposed Special Permit and urged Committee members to support the project. He noted that the Panera Bread Special Permit petition in Newton Centre threatened to clog the streets and encompass all the parking in Newton Centre. He noted that the Newton Centre Panera is not a burden on the neighborhood and some who were originally opposed now note that Panera has been favorable for businesses in Newton Centre. He noted that some businesses have gone thorough special permits for expansion with no parking spaces (ie. Paddys, Lumieres) and he emphasized that the petitioner did not create the parking problems in West Newton and shouldn't be asked to fix them.

David Bramante, owns West Newton Cinema, is concerned about the parking demand in West Newton Square. He noted that the bank allowed visitors to park at the bank which was beneficial. The elimination of this arrangement will cause pressure on the existing parking spaces in the square. He has concerns that the parking crisis will be intensified and that the proposed uses will further burden the parking demand.

Laurel Farnsworth, 73 Perkins Street, Vice President of Operations for FUSN, is appreciative of the petitioner's offer to construct a parking facility for the church and feel that it will help take people out of the public parking spaces. Ms. Farnsworth believes the proposed development will make the square

more attractive and hopes that further parking solutions will improve conditions in the square in the future.

Chris Krebs, Chair of the Board of Trustees of FUSN, stated that the Board of Trustees voted unanimously to offer support for the Special Permit.

Committee members agreed that the public hearing should continue until the petitioner submits additional information. A Councilor requested that the Planning Department address how to solve the parking inadequacies in village centers. A Committee member questioned whether any West Newton businesses have enrolled in the Shared Parking Program. Ms. Caira confirmed that no businesses have signed up for the Shared Parking Program yet, but the Planning Department has begun to work on targeting candidates.

Attorney Buchbinder stated that the petitioner is willing to drop the seating in the restaurant to 90 seats, which will reduce the parking waiver to 20 parking stalls. Committee members urged the petitioner to submit a revised proposal to the Planning Department for review. Councilor Laredo motioned to hold the item which carried unanimously.

The Committee adjourned at 9:15 pm.

Respectfully Submitted,

Greg Schwartz, Chair

Department of Planning and Development



PETITION #422-18

148 CALIFORNIA STREET/171 WATERTOWN STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO AMEND SPECIAL
PERMIT ORDERS #162-88,
#199-99(2), AND #175-12 TO
CHANGE THE EXISTING
NON-CONFORMING
RESTAURANT USE TO ALLOW A
NON-CONFORMING SALON USE



SEPTEMBER 20, 2018

Requested Relief



To allow the change of use of a 2,100 square foot portion of the existing shopping area from a nonconforming restaurant use to a salon use with a maximum of 14 employees

Special permit per §7.3.3 to:

- allow the conversion of one nonconforming use to another (§4.4.1, §7.8.2.C.2).

Criteria to Consider



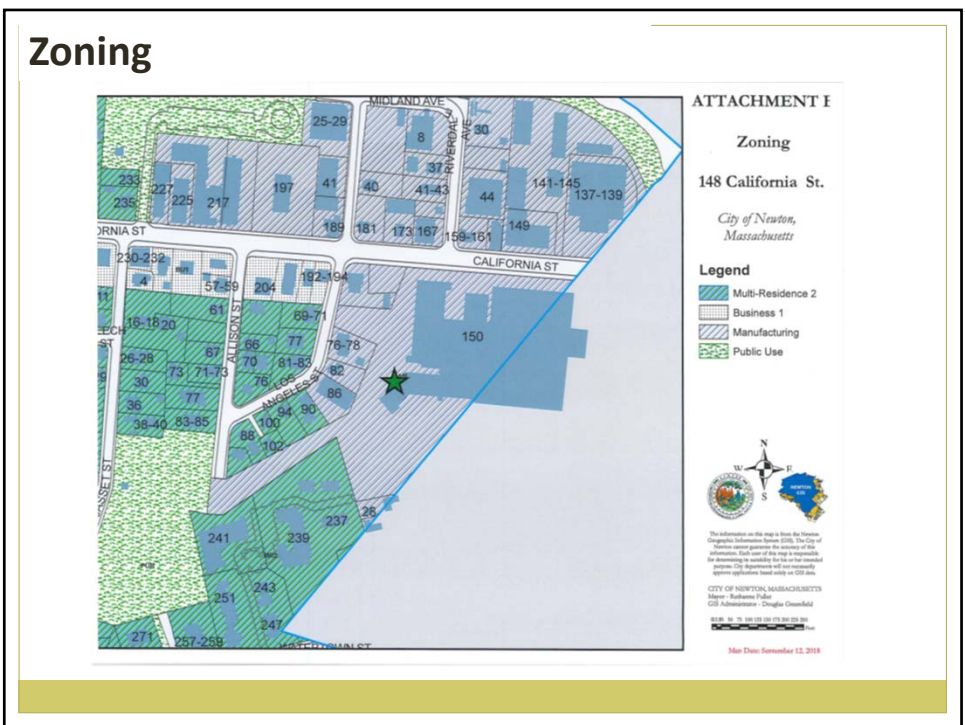
When reviewing the requested special permits the Council should consider whether:

- the change from a nonconforming restaurant use to a nonconforming salon use will be substantially more detrimental than the existing nonconforming use to the neighborhood (§7.8.2.C.2).

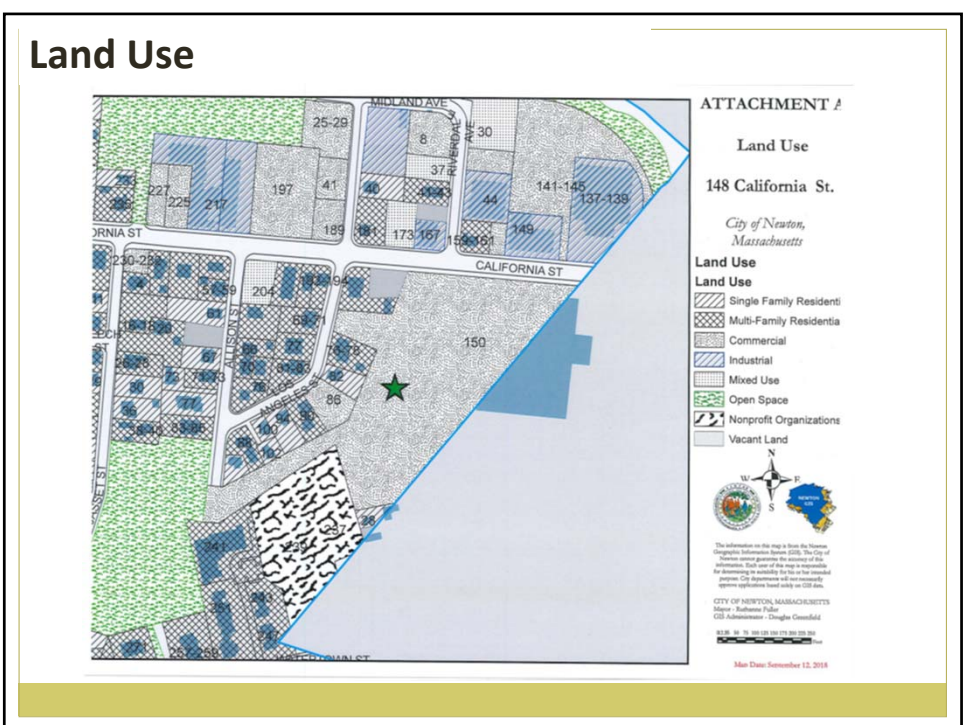
AERIAL/GIS MAP



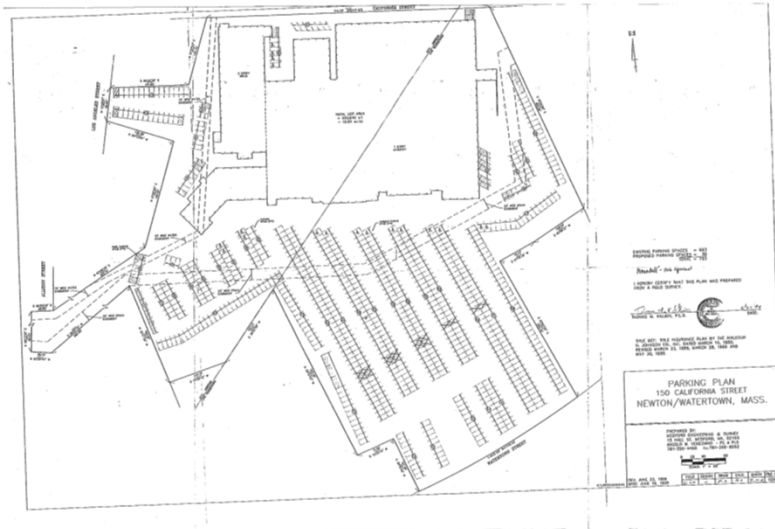
Zoning



Land Use



Site Plan



Photos



Photos



Photos



Photos



Photos



Proposed Findings

1. The proposed nonconforming salon use will not be substantially more detrimental to the neighborhood than the existing nonconforming restaurant use (§7.8.2.C.2) as:
 - a) The site is an existing shopping center and is an appropriate location for a salon use;
 - b) The site is well contained and the use will not have any impacts on the surrounding neighborhood;
 - c) Access to the site is appropriate and there is sufficient parking to accommodate the use.

Proposed Conditions

1. Plan Referencing Condition
2. *The salon staff is limited to fourteen employees on the largest shift.*
3. *Any changes to signage shall be subject to review by the Urban Design Commission and approval of the Commissioner of Inspectional Services.*
4. Standard Building Permit Condition.
5. Standard Final Inspection/Certificate of Occupancy Condition.

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September 19, 2018

Via E-mail (c/o Nadia Kahn, nkhan@newtonma.gov)

RE: Hancock Estates (formerly Kessler Woods) – Special Permit #102-06(15) Amendment

Dear Chair Schwartz and Members of the Newton City Council Land Use Committee:

For the reasons set forth below, we urge the Newton City Council and Mayor Fuller to conduct a prompt and thorough review of (1) the compliance of Hancock Estates with Newton's Inclusionary Zoning Ordinance (IZ Ordinance) and Special Permit; and (2) the City's practices and protocols implementing the IZ Ordinance to ensure full compliance in future developments. We also urge the Land Use Committee to reject the proposal to "swap" four 2-bedroom family-sized apartments at Hancock Estates.

Hancock Estates does not comply with Newton's Zoning Ordinance and its Special Permit:

- **The type of units included as inclusionary units at Hancock Estates do not reflect the unit mix at the development** – The inclusionary units at Hancock Estates include 1- and 2-bedroom units, all with either 1, 1 ½, or 2 bathrooms. The market rate units, however, include thirteen (13) 2-bedroom units with "dens" and forty-three (43) 2-bedroom units with 2½ bathrooms. None of the 2-bedroom units with "dens" or the 2-bedroom units with 2½ bathrooms are inclusionary units. The plans approved in conjunction with the Special Permit for the development showed only 2-bedroom units and no "dens." Sized larger than the 2nd bedrooms and with windows, it appears that the "dens" meet all state code requirements for bedrooms and that these units with "dens" (3rd bedrooms?) are not in compliance with the Special Permit. Please note also that, while the sizes of the inclusionary units appear to comply with the minimum square footage requirements in the ordinance, many of the market rate 2-bedroom units are almost twice the size the inclusionary 2-bedroom units (1,900+ square feet v. the largest 2-bedroom inclusionary units at 1,025 square feet) and many of the market rate 1-bedroom units (with 1,187 square feet) are larger than the inclusionary 2-bedroom units.
- **The distribution of the inclusionary units by floor in Hancock Estates does not comply with the dispersion requirements** – Section 5.11.7 of Newton's Zoning Ordinance requires that inclusionary units "be dispersed throughout the development and ... sited in no less desirable locations than the market rate units." At Hancock Estates, 46.2% of the inclusionary units are on the first floor (comprising 21.4% of the 1st floor units), 38.5% of the inclusionary units are on the more desirable second floor (comprising 16.6% of the second floor units), and only 15.3% of the inclusionary units are on the most desirable third floor of the development (comprising just 6.6% of the 3rd floor units). This does not meet the design and construction requirements of

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Section 5.11.7 of Newton's Zoning Ordinance. Moreover, since one of the inclusionary 2-bedroom units proposed to be "swapped" is on the second floor and one is on the third floor, the concentration of inclusionary units on the first floor and the lack of integration required by Section 5.11.7 of Newton's Zoning Ordinance would be further exacerbated if the "swap" is approved.

- **The Hancock Estates rent-up did not comply with the proportional rent-up requirements**— Section 5.11.4 of Newton's Zoning Ordinance requires that "Inclusionary units shall comprise at least 15 percent of the units to have been offered for sale or rental *at each point* in the marketing of the development." (emphasis added) To date, and starting in 2017, at least 62 market rate units at Hancock Estates have been marketed and received certificates of occupancy and many have been rented and occupied. At the same time, marketing of only some of the inclusionary units (9 of 13) only recently commenced. To date, no inclusionary units have been rented and the lottery for the 9 units isn't scheduled until October 3, 2018.
- **The advertising of the Hancock Estates apartments does not comply with the requirements for Local Action Units and counting on the state's Subsidized Housing Inventory (SHI)** – An advertisement for the "Brand New Luxury" apartments at Hancock Estates published most recently in the Newton Tab on September 12, 2018 depicts a handsome white couple (copy attached). No other pictures of persons are included. This violates the requirements of the Massachusetts Department of Housing and Community Development (DHCD), applicable to the development and to all units at the development, per the Ordinance, Special Permit and Regulatory Agreement. DHCD's Affirmative Fair Housing Marketing and Resident Selection Plan Guidelines require that "all advertising and marketing materials portraying persons should depict members of classes of persons protected under fair housing laws, including majority and minority groups as well as persons with disabilities." Moreover, the advertisement does not contain the HUD Fair Housing logo or the "Equal Housing Opportunity" slogan. This discriminatory advertising renders the Hancock Estates inclusionary units ineligible for the SHI.

The proposed "swap" of four family-sized 2-bedroom inclusionary units at Hancock Estates should be rejected:

- **The swap will be a financial windfall for the developer** – Based on a preliminary valuation analysis, we believe the developer will realize an almost \$1.8 million profit by transferring Hancock Estate's market rate units to 219 Commonwealth Ave. The analysis utilizes current cap rates, estimated operating expenses and vacancy for each asset type, the developer's published rents for Hancock Estates and the affordable rents provided on the memorandum entitled "Inclusionary Unit Swap Proposal" dated August 1, 2018 and provided to the City of Newton by the developer. We believe the developer's projected 219 Commonwealth Ave market rate rents are significantly overstated from the actual market rents and therefore we adjusted these downward based on recent actual market rate comparables. By inflating these market rate rents, the developer makes it appear that the market rate value of the units at 219

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Commonwealth Ave are worth significantly more than they actually are worth. Our projections estimate the market value of the four 2-bedroom units at Hancock Estates is approximately \$4 million, while the total affordable value for the same units is only approximately \$425,000. The difference in these values is \$3.575 million. The approximate market value of the proposed nine units at 219 Commonwealth Avenue is \$3.22 million, while the affordable value for the same units is approximately \$1.43MM. The difference in these values is \$1.79 million. Subtracting the differences in value generates the developer's realized profit of almost \$1.8 million due to the transfer (\$3.575 million less \$1.79 million).

- **The swap is inconsistent with the clear intent and preference of the Newton Zoning Ordinance**
– The clear intent and preference of Newton's Zoning Ordinance is to have units created and made available to low- and moderate-income households at the actual location of each development, thereby increasing diversity in that neighborhood location and at each specific development.
- **The swap does not provide a better public benefit for the City of Newton** –The Inclusionary Housing Plan for Hancock Estates states that: “The affordable units will have the same finishes as the market rate units including granite countertops, stainless steel appliances, in-unit washers and dryers, hardwood floors, and access to on-site amenities such as an exercise facility, Wi-Fi café, business center, theatre, community room, and underground parking.”¹ Moreover, all of the units at Hancock Estates are accessible to those with disabilities as the development is serviced by an elevator. While detailed plans for the units to be rehabilitated at 219 Commonwealth Avenue have not been submitted by the petitioner, it is unlikely that they will be of the quality of the inclusionary units at Hancock Estates or will have the amenities or accessibility of the inclusionary units at Hancock Estates.
- **With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Avenue, it is not possible to determine if the public funding limitation of Newton's Zoning Ordinance would be complied with** – Section 5.11.10 of Newton's Zoning Ordinance prohibits an applicant from using public development funds to construct inclusionary units. Given the great disparity in the quality of the units at 219 Commonwealth Avenue, the 9 units proposed for the “swap” should not be considered “a greater number of affordable units that are otherwise required” within the meaning of Section 5.11.10. With no information provided by the petitioner regarding the development budget and financing for 219 Commonwealth Ave, it is impossible to determine what the developer's investment in that property will be and whether Section 5.11.10 of Newton's Zoning Ordinance would be complied with if the swap were to be approved.

¹ Despite this statement in the Inclusionary Housing Plan, the Revised Plans for the development (10/15/2015) identify the level of finishes for the units as “standard,” “deluxe” or “premium.” All of the inclusionary units have standard finishes.

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We are not writing this letter in opposition to affordable housing at 219 Commonwealth Avenue. Rather, our concerns relate to the compliance by the Hancock Estates developer with the requirements of the Newton Zoning Ordinance, Special Permit, Inclusionary Housing Plan and Regulatory Agreement and to urge the City Council and the Mayor to ensure that the objectives of Newton's Inclusionary Zoning Ordinance are accomplished and that the developer is not being enriched by moving some of the required units off-site. Our City government must examine its practices and deploy sound real estate expertise and procedures to create transparency and fairness in this development and in future developments.

Sincerely,

Engine 6
League of Women Voters of Newton
U-CHAN

...

And the following individuals:

Dolores Acevedo-Garcia	Penny Hauser-Cram	Tatjana Meschede
Bryan Barash	Betsy Hecker	Judy Norsigian
Liz Baum	Philip Herr	Scott Oran
Bill Berman	Susan Heyman	Susan Parsons
Pia Bertelli	Kathleen Hobson	John Pelletier
Tom Bledsoe	Ann Houston	Bertil Peterson
Tamara Bliss	Judy Jacobson	Roxan Peterson
Elizabeth Sonia Cooper	Marcia Johnson	Helen Rittenberg
Patrick Dober	Rhanna Kidwell	Jeffrey Sacks
Sarah Ecker	Marian Knapp	Geoffrey Sherwood
Regina Eliot-Ramsey	Jason Korb	Doris Ann Sweet
Louise Freedman	Henry Korman	Doris Tennant
Sarah Gant	David Koven	Lexi Turner
Hattie Gawande	Sarah Laski	Jay Walter
Wanda Getchell	Kathy Laufer	Lynn Weissberg
Nanci Ginty Butler	Marion Lipson	Dan Wiener
Kimberly Gladman Jackson	Bart Lloyd	Marianne Ulcickas Yood
Fran Godine	Robyn Maltz	Steven Yood
Janet Goldenberg	Kevin McCormick	Nancy Zollers
Laurie Hackett	Josephine McNeil	

Cc: Mayor Ruthanne Fuller
Newton City Council
Community Preservation Committee (original funders of Kessler Woods site)

Hancock Estates

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