



Land Use Committee Report

City of Newton **In City Council**

Thursday, November 8, 2018

Present: Councilors Schwartz (Chair), Lipof, Auchincloss, Kelley, Markiewicz, Crossley, Laredo

City Staff Present: City Solicitor Ouida Young, Chief Planner Jennifer Caira, Senior Planner Neil Cronin, Senior Planner Michael Gleba, Planning Associate Katie Whewell

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.

#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.

Action: **Land Use Approved Withdrawal without Prejudice 5-2 (Crossley, Kelley Opposed)**

Note: Attorney Frank Stearns, Holland and Knight, Boston, Massachusetts, represented Kessler Woods, LLC. to present the request the request to withdraw without prejudice the Special Permit petition to allow off-site relocation of some of the inclusionary units previously approved for the Kessler Woods Development. Atty. Stearns stated that while the petitioner believed the proposal would benefit the City; the proposal was met with opposition from Councilors as well as members of the community. Atty. Stearns confirmed that the petitioner has begun the process to lease the remaining affordable units at the approved site.

Councilors stated that questions remain relative to whether the existing Special Permit is in compliance with the Special Permit Order approved and noted that a withdrawal without prejudice does not restrict a petitioner's ability to reapply for a Special Permit. As a similar proposal was presented to the Council in 2017, some Councilors expressed the desire to prohibit the petitioner from submitting another proposal relative to the off-site relocation of the affordable units. City Solicitor Ouida Young confirmed that if the Council denies the petition, the petitioner may still submit a petition that has been determined to be substantially different within the two-year period. Some Committee members noted that they were dissatisfied to see the request to amend the petition and strongly discouraged the petitioner from returning with another petition. Some Councilors felt that it was

unnecessary to prohibit the petitioner from returning, given that they are proceeding with leasing of the on-site affordable units. With that, Councilor Lipof moved approval of the withdrawal without prejudice. The Committee voted 6-2-0, Councilors Crossley and Kelley opposed.

#496-18 Petition to amend Special permit #19-15 to allow veterinary hospital on Needham St
VETERINARY EMERGENCY GROUP/WELLFORD CORP./NEWTON TECHNOLOGY PARK
LLC./CROSSPOINT ASSOCIATES petition for SPECIAL PERMIT/SITE PLAN APPROVAL to
amend Special Permit #19-15 to locate a veterinary hospital in an existing Newton Nexus
building at 131-181 Needham Street, Ward 5, on land known as Section 51 Block 28 Lots
10, 11, 12, 13, 14, and 15, containing approximately 11 acres of land in a district zoned
MULTI USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 7-0; Public Hearing Closed 11/8/2018**

Note: Attorney Frank Stearns, Holland and Knight, Boston, Massachusetts, represented the petitioner and presented the request to amend Special Permit Order #19-15 at 131-181 Needham Street to allow the location of a veterinary hospital in the Newton Nexus development. Atty. Stearns stated that the proposed veterinary hospital will provide emergency services overnight as well as on the weekend and stated that the petitioner is requesting permission to be open during daytime hours for special circumstances. President of Veterinary Emergency Group David Glattstein and Dr. Lauren Crone provided an overview of the proposed business model. Atty. Stearns confirmed that there will be no kennel or boarding and stated that all animals will be supervised. He noted that because the proposed use is primarily during evening hours, it complements the existing use at the site. Atty. Stearns noted that only interior construction will be necessary to accommodate the proposed business.

Planning Associate Katie Whewell reviewed the requested relief, criteria for consideration, land use, zoning, photos and the proposed site plan as shown on the attached presentation. Ms. Whewell stated that access to the site will be through an underused driveway adjacent to the proposed hospital and confirmed that the Planning Department has no concerns relative to the petition.

The Public Hearing was Opened.

Rachel Maman, 14 Harrington Street, is in support of the proposed veterinary hospital.

Committee members were supportive of the proposed veterinary clinic, particularly in the commercial Nexus development where the parking demand is complementary. Councilor Lipof motioned to close the public hearing which carried unanimously. A Committee member questioned how access into the building will work. It was confirmed that there is a ramp in the front of the building and customers typically call prior to their arrival, allowing the petitioner to plan. Kerry McCormick confirmed that the development is close to full occupancy. He stated that it is anticipated that Stop & Shop will open on December 14, 2018 and Ideal Image will open in January 2019. Councilor Crossley motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation. Committee members amended the draft conditions to remove the limitations relative to daytime hours. Chief Planner Jennifer Caira confirmed that the Council Order can allow primary business hours from 6:00 pm – 8:00 am during the weekdays, 24 hours on the

weekends and operations during the day, if necessary. With that, Committee members voted unanimously in favor of the motion to approve.

#514-18 Special Permit Petition to allow garage in excess of 700 sq. ft. at 244 Dudley Road
RUIHUA GU petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story detached garage, greater than 700 sq. ft. containing accommodations for ten vehicles at 244 Dudley Road, Ward 8, Newton Centre, containing approximately 267,786 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3, 7.4, 3.4.2.B.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 6-0 (Crossley not Voting); Public Hearing Closed 11/8/2018**

Note: Architect Timothy Burke, 142 Berkeley Street, Boston, Massachusetts represented the petitioner to present the request for a Special Permit to locate a two-story garage with space for ten vehicles. Mr. Burke noted that the proposed ten-car garage would be connected to the house. Senior Planner Michael Gleba reviewed the requested relief, criteria for consideration, land use, zoning and photos of the site as shown on the attached presentation. Mr. Gleba explained that the property at 244 Dudley Road is landlocked by the Kennard Estate and conservation land. It was noted that the dwelling is accessed by a 20" wide easement through the park.

Committee members questioned what the second story in the garage will be used for. Mr. Burke stated that the space above the garage is primarily for storage but may be used for exercise space. He confirmed that the storage will not be used for storage of car parts. Committee members acknowledged the unique location of the six-acre parcel, surrounded by conservation land. A Committee member questioned whether the proposed garage may be used as living space by a future owner. Ms. Caira stated that the use of the garage can be changed to include additional living space within the approved configuration without an amendment to the Special Permit but noted that the FAR for the site is well below what the petitioner could build as a matter of right. Ms. Caira noted that the site is zoned single residence and stated that an amendment to the Special Permit would be required for changes to the number of dwellings or to locate an office at the site.

The Public Hearing was Opened. Seeing no member of the public who wished to speak, Councilor Lipof motioned to close the public hearing. Councilor Lipof moved approval of the petition. Committee members reviewed the draft findings and conditions as shown on the attached presentation. A Committee member suggested that a condition should be included in the Special Permit to prohibit storage of construction vehicles at the site. In response to a Planning Department concern, Mr. Burke confirmed that the petitioner is willing to work with the Planning Department on screening. Committee members expressed no other concerns relative to the petition and voted unanimously in favor of approval.

#513-18 Petition to exceed FAR at 43 Kenwood Avenue
MARK AND MARTHA FISHMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 161 sq. ft. second floor addition, in the existing footprint of the house,

exceeding the maximum allowable FAR of .37 where .42 exists and .44 is proposed at 43 Kenwood Avenue, Ward 6, Newton Centre, on land known as Section 64 Block 20 Lot 22, containing approximately 10,652 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3, 7.4, 7.8.2.C.2, 3.1.9 of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Approved 6-0 (Crossley not Voting); Public Hearing Closed 11/8/2018**

Note: Architect Steven Potts, 1103 Spruce Street, Philadelphia, Pennsylvania, represented the petitioners Mark and Martha Fishman. Mr. Potts presented the request for a 161 sq. ft. second floor rear addition within the footprint of the existing house. Senior Planner Neil Cronin presented an overview of the requested relief and criteria for consideration as shown on the attached presentation.

Mr. Potts noted that the petitioner has spoken with abutters on either side of the dwelling. And they have expressed no concerns relative to the proposed plans. Seeing no member of the public who wished to speak, Councilor Auchincloss motioned to close the public hearing which carried unanimously. Councilor Auchincloss motioned to approve the petition. Committee members reviewed the draft finding and condition as shown on the attached presentation. Ms. Caira confirmed that the proposed project would be a by-right project under the proposed draft zoning ordinance. Committee members expressed no concerns relative to the petition and voted unanimously in favor of approval.

#497-18 Petition to allow single-family attached dwellings at 10 Pillion Court

MICHAEL MOSKOWITZ/TEN PILLION, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an attached dwelling unit to the existing single-family structure, reduce lot area, frontage and lot coverage requirements, to reduce front and side setback requirements and to allow a driveway along the side lot line, requiring an amendment to Variance #99442 at 10 Pillion Court, Ward 2, on land known as Section 22 Block 7 Lot 46, containing approximately 10,559 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.2, of the City of Newton Rev Zoning Ord, 2017.

Action: **Land Use Held 6-0 (Crossley not Voting)**

Note: The Chair explained that the Committee received correspondence from the petitioner indicating that due to an emergency, they would not be present for the public hearing. The Chair opened the public hearing to allow abutters an opportunity to speak.

Felice and Mark Whitum, 11 Pillon Court, are opposed to the petition. Mr. Whitum noted that the plans submitted as part of the Special Permit application are different than the plans that were originally propose. Mr. Whitum stated that to enter the proposed garage, the petitioner will need to cross his property and he does not want to grant an easement. He stated that the proposed design will have a serious impact on the property. Mr. & Mrs. Whitum stated that they are more supportive of the previous design.

Committee members asked that the Planning Department work with the petitioner to resolve the issue raised prior to the continuance of the public hearing. Committee members also questioned

whether a community meeting was held. Seeing no other member of the public who wished to speak, Councilor Lipof motioned to hold the item which carried unanimously.

The Committee adjourned at 8:05 pm.

Respectfully Submitted,

Greg Schwartz, Chair

Department of Planning and Development



PETITION #496-18
131-181 NEEDHAM STREET

SPECIAL PERMIT/SITE PLAN
APPROVAL TO AMEND
COUNCIL ORDER #19-15
AND TO ALLOW A
VETERINARY HOSPITAL IN A
MIXED USE-1 DISTRICT

NOVEMBER 8, 2018



Requested Relief



- Amend Council Order #19-15
- Allow a veterinary hospital in the Mixed Use 1 (MU-1) zoning district (§4.4.1 and §7.3.3)

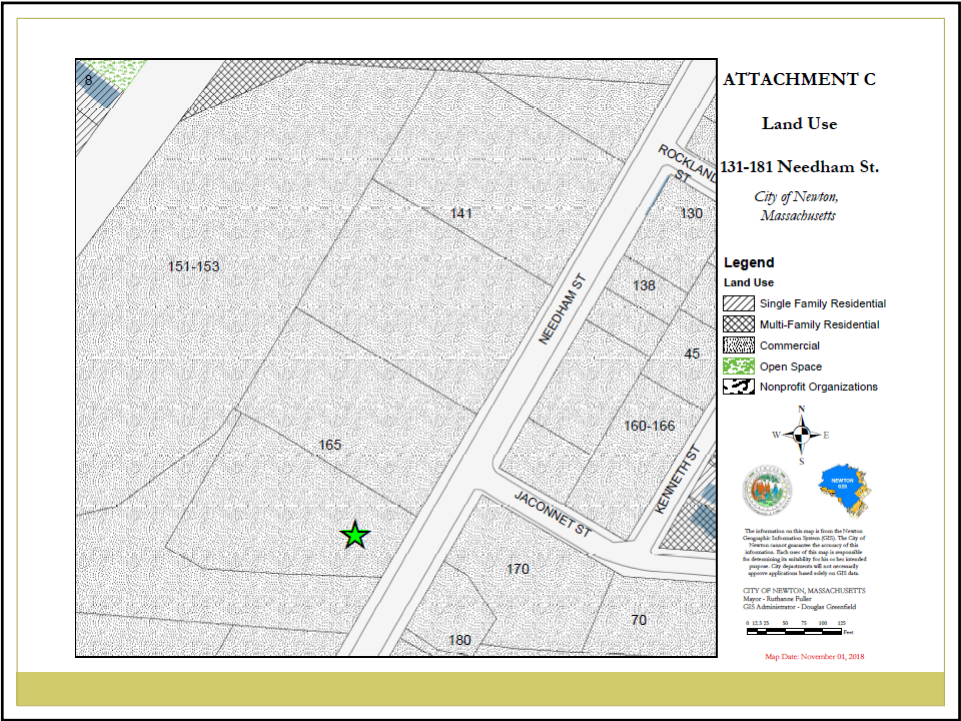
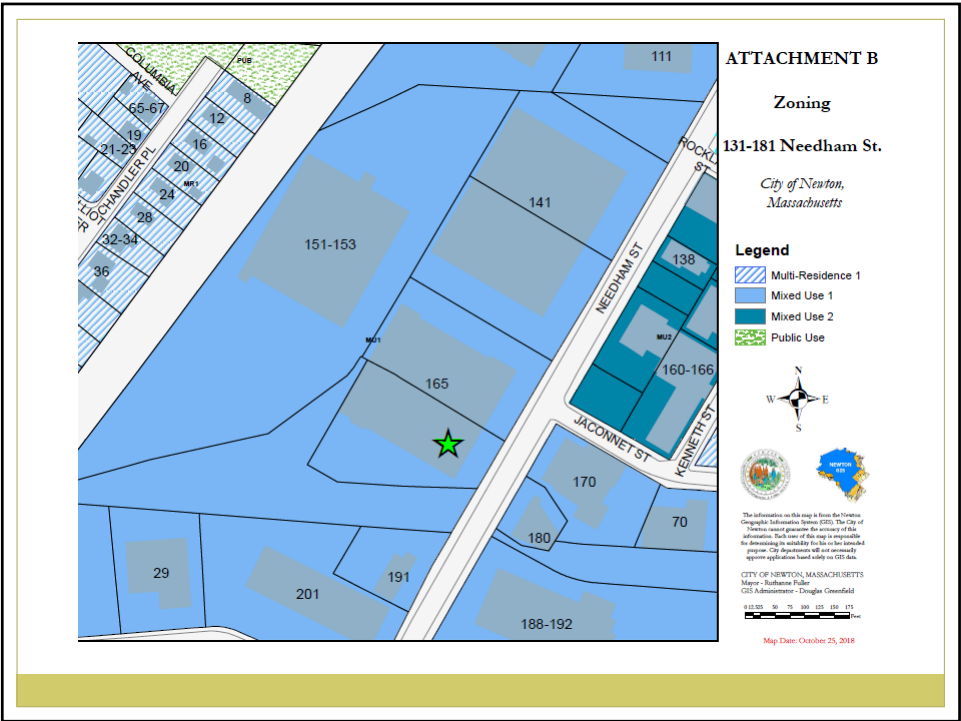
Criteria to Consider

When reviewing this request, the Council should consider whether:

- The site is an appropriate location for veterinary hospital (§7.3.3.C.1);
- The proposed veterinary hospital will adversely affect the neighborhood (§7.3.3.C.2);
- The proposed veterinary hospital will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

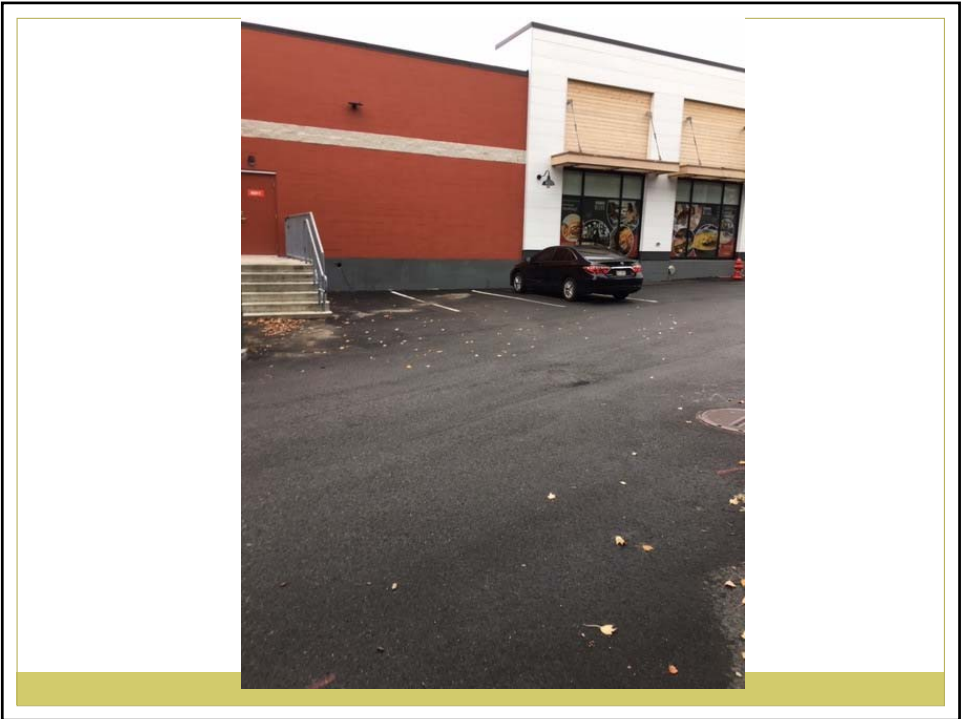
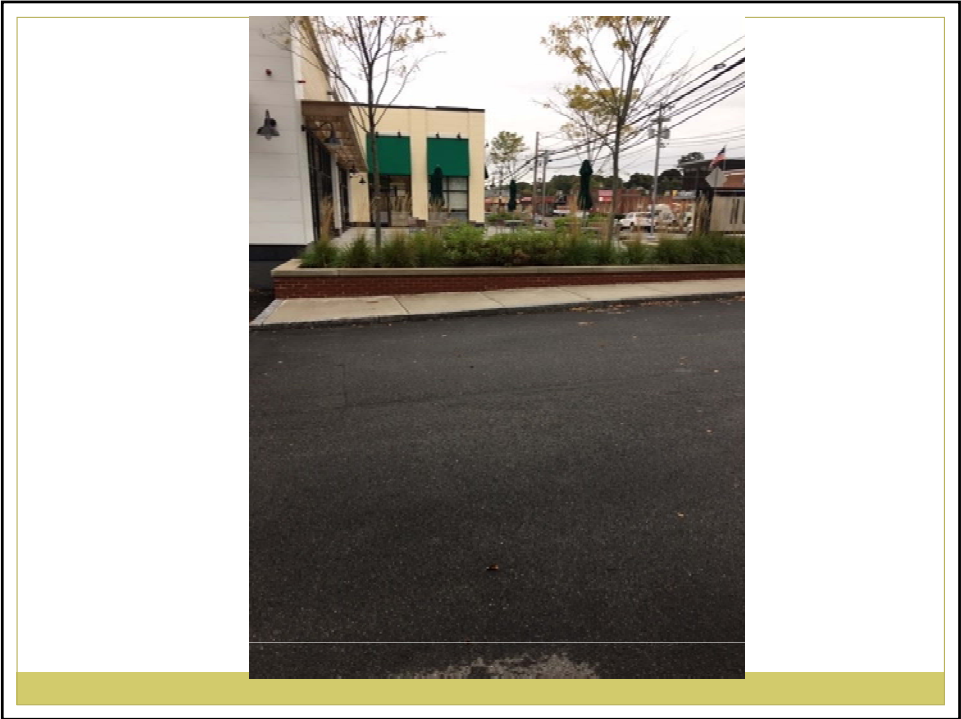
AERIAL/GIS MAP



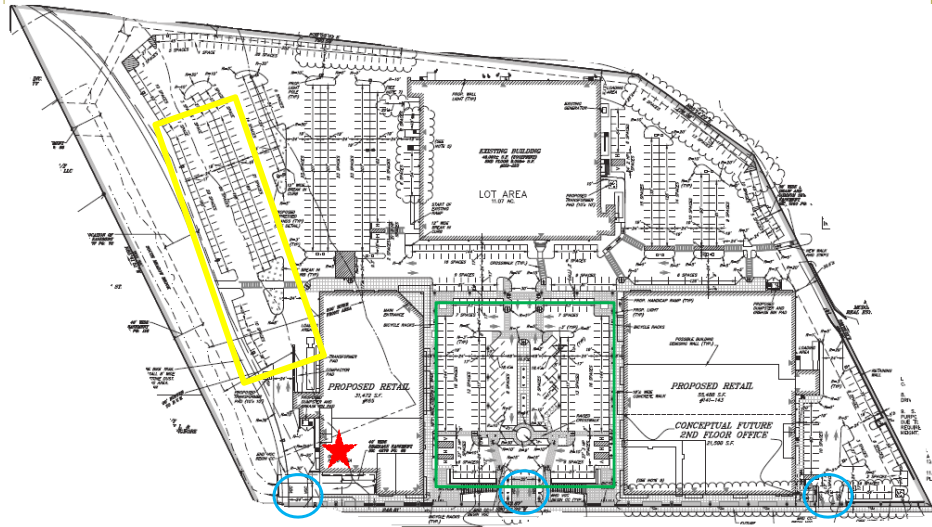


Photos





Site Plan



Proposed Findings

1. The specific site is an appropriate location for the proposed veterinary hospital because the site is located in an area containing a mix of uses and the proposed use is compatible with that mix. (§7.3.3.C.1.)
2. The proposed veterinary hospital will not adversely affect the neighborhood given the mixed use nature of the area. (§7.3.3.C.2)
3. The proposed veterinary hospital will not create a nuisance or serious hazard to vehicles or pedestrians because the use does not require any alterations to the site. (§7.3.3.C.3.)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4)

Proposed Conditions



- Standard plan referencing condition
- Standard building permit condition
- Standard Certificate of Occupancy condition
- The petitioner shall adhere to the following hours of operation: 6:00 p.m. to 8:00 a.m. Monday through Thursday and 24 hours from Friday at 6:00 p.m. through Monday at 8:00 a.m.
- The petitioner shall not board animals overnight nor provide outdoor space for said animals.
- All signage shall be reviewed and approved by the Urban Design Commission.

Department of Planning and Development



PETITION #514-18
244 DUDLEY ROAD
SPECIAL PERMIT/SITE PLAN
APPROVAL TO CONSTRUCT
A TWO-STORY DETACHED
GARAGE, GREATER THAN 700
SQ. FT. CONTAINING
ACCOMMODATIONS FOR TEN
VEHICLES

NOVEMBER 8, 2018



Requested Relief



Special permit per §7.3.3 to

- to allow a private garage accommodating more than three vehicles and with more than 700 square feet (§3.4.2.B.1)

Criteria to Consider

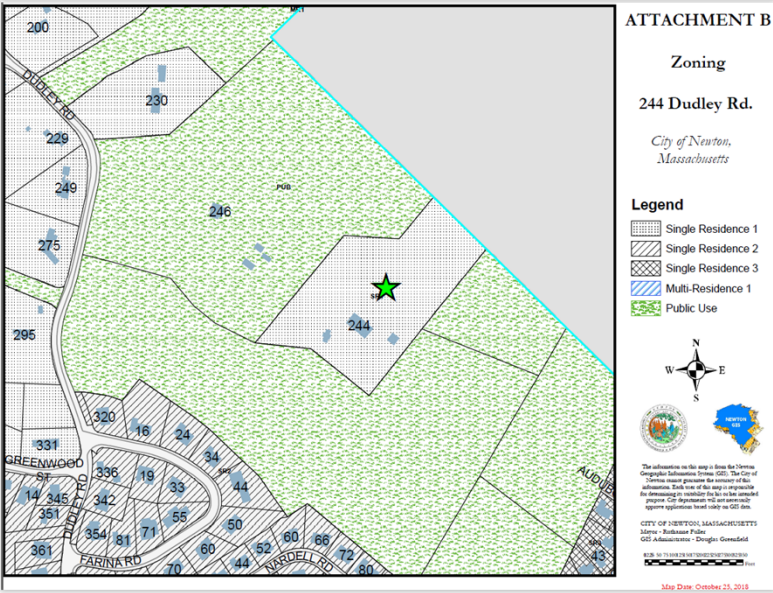
When reviewing the requested special permits the Council should consider whether:

- The site is an appropriate location for the proposed garage with provision for more than three cars and exceeds 700 square feet (§7.3.3.C.1);
- The proposed garage as developed and operated will adversely affect the neighborhood (§7.3.3.C.2);
- There will be no nuisance or serious hazard to vehicles or pedestrians; (§7.3.3.C.3);
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

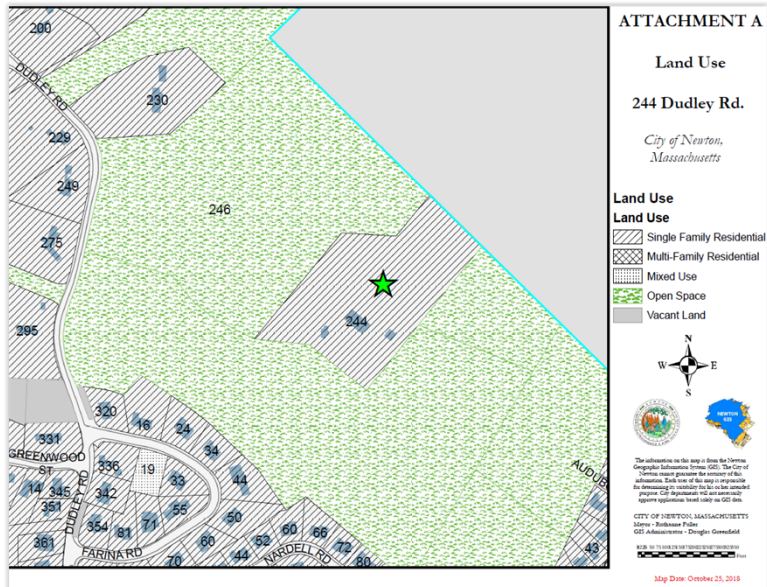
AERIAL/GIS MAP



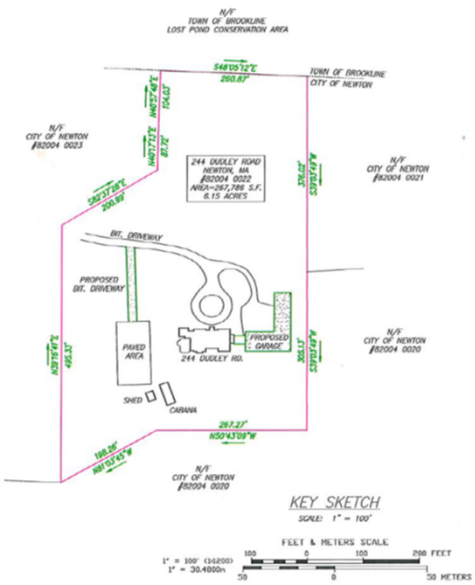
Zoning



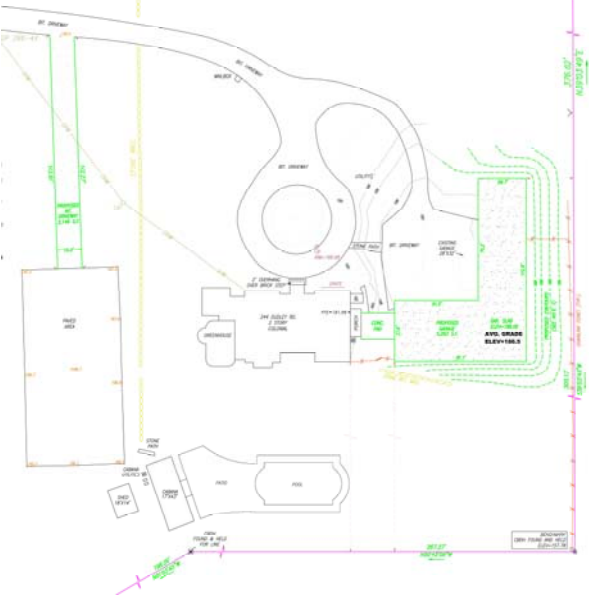
Land Use



Site Plan



Site Plan- detail



Elevations- East, South West, North



Photos



Photos



Proposed Findings

1. The site is an appropriate location for the proposed private ten-vehicle garage with a footprint of approximately 5,396 square feet given the property's large size and seclusion (§7.3.3.C.1);
2. The proposed private ten-vehicle garage with a footprint of approximately 5,396 square feet as developed and operated will not adversely affect the neighborhood as the topography and size of the site is such that there will be limited visibility of the garage from adjacent public ways and parkland (§7.3.3.C.2);
3. There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4).

Proposed Conditions

1. Plan Referencing Condition (Date)
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.

Department of Planning and Development



PETITION #513-18
43 KENWOOD AVENUE

SPECIAL PERMIT/SITE PLAN
APPROVAL TO FURTHER INCREASE
THE NONCONFORMING FLOOR
AREA RATIO



NOVEMBER 8, 2018

Requested Relief



Special Permit per §7.8.2.C.2 and §7.3.3 of the NZO to:

- Further increase the nonconforming floor area ratio. (§3.1.9)

Criteria to Consider

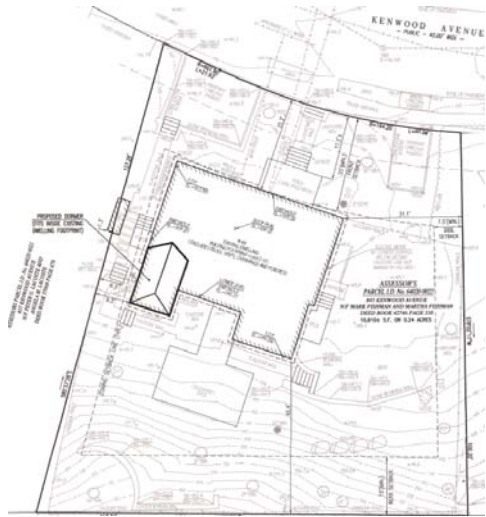
When reviewing this request, the Council should consider whether:

- The proposed increase in the nonconforming FAR from .42 to .44, where .37 is the maximum allowed is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.9 and §7.8.2.C.2).
- The proposed increase in the nonconforming FAR will be substantially more detrimental than the existing nonconforming structure is to the neighborhood (§3.1.9 and §7.8.2.C.2).

Aerial/GIS Map



Site Plan



Proposed Left Elevation



**Proposed Rear
Elevation**



**Proposed Right
Elevation**



Proposed Finding

1. The proposed increase in the nonconforming floor area ratio from .42 to .44, where .37 is the maximum allowed by right is consistent with and not in derogation of the size, scale, or design of other structures in the neighborhood and will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition is to the rear of the structure, not visible from the street, and within the footprint of the existing structure (§3.1.9 and §7.8.2.C.2).

Proposed Conditions

1. Plan Referencing Condition.
2. Standard Building Permit Condition.
3. Standard Final Inspection/Certificate of Occupancy Condition.