



# Land Use Committee Report

## City of Newton In City Council

**Thursday, September 10, 2020**

**Present:** Councilors Lipof (Chair), Kelley, Greenberg, Auchincloss, Markiewicz, Downs, Bowman, Laredo

**Also Present:** Councilors Albright, Gentile, Humphrey, Ryan

**City Staff Present:** Chief Planner Neil Cronin, Associate City Solicitor Jonah Temple

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](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.

**#313-20      Petition to extend nonconforming single-family dwelling at 12 Hanson Road**

ESTHER DEZUBE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze the existing single-family dwelling and construct a two-family dwelling, extending the nonconforming residential use in the BU1 zoning district, to allow extension and altering of a nonconforming side setback, and to allow a structure with 28.4' in height at 12 Hanson Road, Ward 8, Newton Centre, on land known as Section 84 Block 15 Lot 03 containing approximately 7,829 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2, 4.1.3 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 7-0 (Auchincloss not Voting) Public Hearing Continued**

**Note:**      The petitioner requested a continuance of the public hearing to update the plans. The public hearing was opened. Councilor Bowman motioned to hold the item which carried 7-0 (Auchincloss not Voting).

**#129-14(2)      Petition to amend Board Order #129-14 to increase nonconforming FAR at 96 Lenox St**

JEREMY SHINEWALD petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit orders #129-14 to raze an existing detached three-car garage and construct an attached two-car garage and mudroom addition, as well as enclose an existing porch, creating an FAR of .43 where .39 exists and .29 is allowed and to further increase the nonconforming height at 96 Lenox Street, Ward 3, West Newton, on land known as Section 32 Block 49 Lot 07, containing approximately 19,071 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.1.3, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 7-0 (Auchincloss not Voting) Public Hearing Continued**

**Note:** Due to an error in the FAR calculation and the need to update the permit documents, the petitioner requested a continuance of the public hearing. The public hearing was opened. Councilor Bowman motioned to hold the item which carried 7-0 (Auchincloss not Voting).

**#312-20**      **Petition to allow three-unit dwelling and extend lot area per unit at 350 Cabot St**  
PETER LEIS AND JENNIFER STORO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert one unit within the existing two-family dwelling into two units, creating a three-unit multi-family dwelling in the SR2 district, extending the nonconforming residential two family and extending the nonconforming lot coverage at 350 Cabot Street, Ward 2, Newtonville, on land known as Section 22 Block 19 Lot 05, containing approximately 12,594 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Held 8-0; Public Hearing Continued**

**Note:** Attorney Terry Morris, with law offices at 57 Elm Road, represented the petitioners Peter Leis and Jennifer Storo. Atty. Morris presented the request to allow a three-unit dwelling at 350 Cabot Street. The existing dwelling at 350/352 Cabot Street was constructed in the 1880s as a duplex in the Single Residence district. In 1961, there are records that indicate three-units existed at the site. 352 Cabot Street is owned by a separate owner. 350 Cabot Street appears to have two internal units; one unit on the first floor and one unit on the second and third floor. The petitioners purchased the property in March 2020 with the intent to legalize the second unit at 350 Cabot and rent it to their mother. Atty. Morris noted that the proposed plans include the rebuilding of a structure currently within the setback four parking spaces in a tandem configuration for use by 350 Cabot Street. He suggested that the proximity to Newtonville Square as well as multi-modal transportation is consistent with the draft Zoning Ordinance. Atty. Morris confirmed that upon legalization of the third unit, the condo documents would have to be redone to reflect three units. Mr. Leis noted that he shared the proposed plans and neighbors at 347, 346, 359 and 352 Cabot Street all expressed support for the project.

Chief Planner Neil Cronin presented the requested relief, criteria for consideration, land use, zoning and proposed plans as shown on the attached presentation. Mr. Cronin confirmed that an existing attached pergola, within a nonconforming setback will be rebuilt as a standalone structure and will bring the setback into compliance.

The Public Hearing was Opened.

Orr Shepherd, 364 Cabot Street, expressed concern relative to the three-family use in the single-family district as well as concern relative to the sale of the condos after conversion of the unit. In response to a question from Mr. Shepherd, Atty. Morris confirmed that the height of the free-standing structure will remain the same.

The Chair noted that the Committee must review the petition with the understanding that the property can be sold to a new owner at any point. The Committee shared concerns relative to the conversion of the unit to a third condo, noting that an accessory apartment can be located in the unit as a matter of right. Mr. Leis stated that his immediate family is renting a house in the neighborhood with a lease that terminates at the end of 2021, which makes them unable to owner-occupy 350 Cabot Street as is required

by the accessory apartment ordinance. Committee members agreed that the accessory apartment ordinance was created with this type of scenario envisioned. Atty. Morris noted that there is a significant investment associated with the site plan improvements and reiterated that an accessory apartment might not be the best fit for the petitioner. The Committee remained concerned, questioning whether the proposed permit is appropriate given the alternative options. Councilor Laredo motioned to hold the item which carried 8-0.

**#26-20**      **Request to Rezone Approximately 4.4 acres to MU-3 to Create a Contiguous MU-3 Zone**  
MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for a change of zone to Mixed Use 3/Transit Oriented District for portions of land located at 355 Grove Street (currently zoned BU-2) and 399 Grove Street (currently zoned BU-5), also identified as Section 42, Block 11, Lots 3, 4, and 4A, abutting the existing MU-3 Zone.

**Action:**      **Land Use Held 8-0; Public Hearing Continued**

**#27-20**      **Petition to allow Mixed Use Transit Oriented Development at Riverside Station**  
MD 399 GROVE OWNER, LLC/RAMIREZ CONCORD, LLC/BH NORMANDY RIVERSIDE, LLC/MASSACHUSETTS BAY TRANSPORTATION AUTHORITY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use, transit-oriented development of residential units, office, retail, personal services, restaurant, hotel, and related commercial uses not to exceed 1,025,000 square feet of gross floor area, with residential uses comprising not less than 60% of the total gross floor area with a residential density of not less than 800 square feet per unit with not less than 560 units nor more than 620 units with special permit relief and/or waivers as follows: as to dimensional standards, a development of more than 20,000 square feet of gross floor area, building height of up to 170 feet, buildings up to 11 stories, Floor Area Ratio of up to 2.5, beneficial open space of not less than 15%, increase of height of certain buildings with the Grove Street Area Corridor (to the extent necessary), and reduction in setback from Grove Street for certain buildings within the Grove Street Corridor Area (to the extent necessary); as to design standards, waiver of the sustainable development design standards and placement of a retaining wall greater than 4 feet in height located in a setback; as to uses, for-profit educational use, retail sales of over 5,000 square feet, restaurant with more than 5,000 square feet of gross floor area, personal service use of over 5,000 square feet, place of amusement, health club on ground floor, animal services, hotel, bank up to and over 5,000 square feet, theatre/hall, laboratory/research facility, parking facility, accessory, multi-level, parking facility, non-accessory, single level; as to parking, reduction of the residential parking requirement to 1.25 stalls per unit, reduction of the overall commercial parking requirement by 1/3, and waiver of parking stalls not to exceed 685 stalls, above and beyond the reductions specified above; as to parking facilities, waivers of the parking stall dimension requirements, the end stall maneuvering space requirements, the driveway entrance and exit requirements, the 5% interior landscaping requirements, the interior planting area requirements, the tree requirements, the bumper overhang requirements, the one-foot candle lighting requirement, the parking stall striping requirements (to the extent necessary), the curbing, wheel stop, guard rail, or bollard requirements, and the number of off-street loading facilities requirements; and as to signage, waiver of the

number, size, type, location, and design requirements, all at 355 and 399 GROVE STREET on land known as Section 42, Block 11, Lots 3, 4 and 4A, containing approximately 13.05 acres of land in districts zoned Mixed Use 3 Transit Oriented (MU3), BU2 (a portion to be rezoned to MU3), BU5 (to be rezoned to MU3). Ref: Sec. 4.2.2.B.1, 4.2.2.B.3, 4.2.3, 4.2.4, 4.2.4.A.4, 4.2.4.B.3, 4.2.4.G.2, 4.4.1, 5.1.4, 5.1.4.A, 5.1.4.C, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.4, 5.1.8.B.6, 5.1.8.D.1, 5.1.8.D.2, 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, 5.1.10.B.3, 5.1.10.B.5, 5.1.12, 5.1.12.B.4, 5.1.13, 5.2, 5.2.13, 5.4.2.B, 5.12, 6.4.29.C.5, 7.3.3, 7.3.5, 7.4 of the City of Newton Revised Zoning Ordinance, 2017. Additionally, as to infiltration and inflow mitigation, an abatement of the infiltration/inflow mitigation fee pursuant to Section 29-170 of the City of Newton Revised Zoning Ordinance, 2017.

**Action:** **Land Use Held 8-0; Public Hearing Continued**

**Note:** Chief Planner Neil Cronin presented updates to the Committee on the Design Guidelines and the Transportation Demand Management Plan (TDM). It was explained that the Design Guidelines were revised to contain more site-specific information that relates to the project. Mr. Cronin noted that the TDM was also rewritten for increased specificity and relatability to the Riverside project.

In response to questions from the Committee, Mr. Cronin confirmed that the petitioner may choose to use primary façades on any secondary or tertiary facades. He explained that the Design Guidelines require them to use at least the façade specified but higher-grade façades can be used anywhere. Atty. Buchbinder noted that some progress has been made with regard to when initial testing will begin (at occupancy of 80% of the gross square footage), and the duration/timing of testing. The Committee agreed to continue discussion of the proposal relative to the TDM at the meeting on September 29, 2020. It was noted that the zoning ordinance requires the petitioner to remedy the traffic situation in the event that they exceed 110% of the allowed number of trips, regardless of any cap on funding by the special permit.

Regarding the condition for Local Preference, the Law Department has suggested the following language:

*"The nature and extent of the local preference scheme included in the final AFHMP to be submitted to DHCD for its review and approval shall be in accordance with the applicable provisions of the City's Revised Ordinances and/or Zoning Ordinance governing the percentage of local preference for Inclusionary Units in a project in effect at the time of such submission to DHCD."*

The Committee noted that the acronyms should be defined somewhere in the document and questioned whether the petitioner will be subject to compliance with whatever local preference provisions are in place at the time each submission. Associate City Solicitor noted that its not likely that the ordinance will be amended multiple times. It was noted that the preference would be to require compliance with the provisions that are in effect at the time the units come online.

Mr. Cronin noted that the draft findings are separated into categories (i.e. general, special permit criteria, MU3/Transit-Oriented development, dimensions, uses, etc.) The Committee reviewed the draft findings and raised no concerns.

In response to a letter from the petitioner, it was noted that no guarantees were made that the special permit process would be faster than the process that has occurred. Additionally, it was stated that the

Woodland golf course has paid \$2.5 million dollars in taxes over the last ten years. Noting that there will be more units at Riverside (582) than there are in all of Lower Falls (499), the Committee was urged to continue their thoughtful review of the special permit.

Mr. Chaviano confirmed that the petitioner has committed to MBTA charging station for the bus in the event that that is an opportunity and stated that they are talking to the MTBA about installing conduit for EV charging readiness so that the MBTA could install charging stations in the future. He confirmed that the site can include charging stations at the bicycle facilities.

With that, that Committee voted unanimously in favor of a motion to hold items #26-20 and #27-20 from Councilor Markiewicz. The Committee adjourned at 10:00 pm.

**Respectfully Submitted,**

**Richard Lipof, Chair**

# Department of Planning and Development



**PETITION #312-20**

## **ADDRESS**

SPECIAL PERMIT/SITE PLAN  
APPROVAL TO CONVERT ONE  
UNIT WITHIN THE EXISTING  
TWO-FAMILY DWELLING INTO  
TWO UNITS, CREATING A THREE-  
UNIT MULTIFAMILY DWELLING  
IN THE SR2 DISTRICT,  
EXTENDING THE  
NONCONFORMING RESIDENTIAL  
TWO FAMILY

*SEPTEMBER 10, 2020*



# Requested Relief



Special permit per §7.3.3 to-

- further expand a nonconforming two-family dwelling in a SR2 district to three units (§3.4.1; §7.8.2.C.2)

# Criteria to Consider

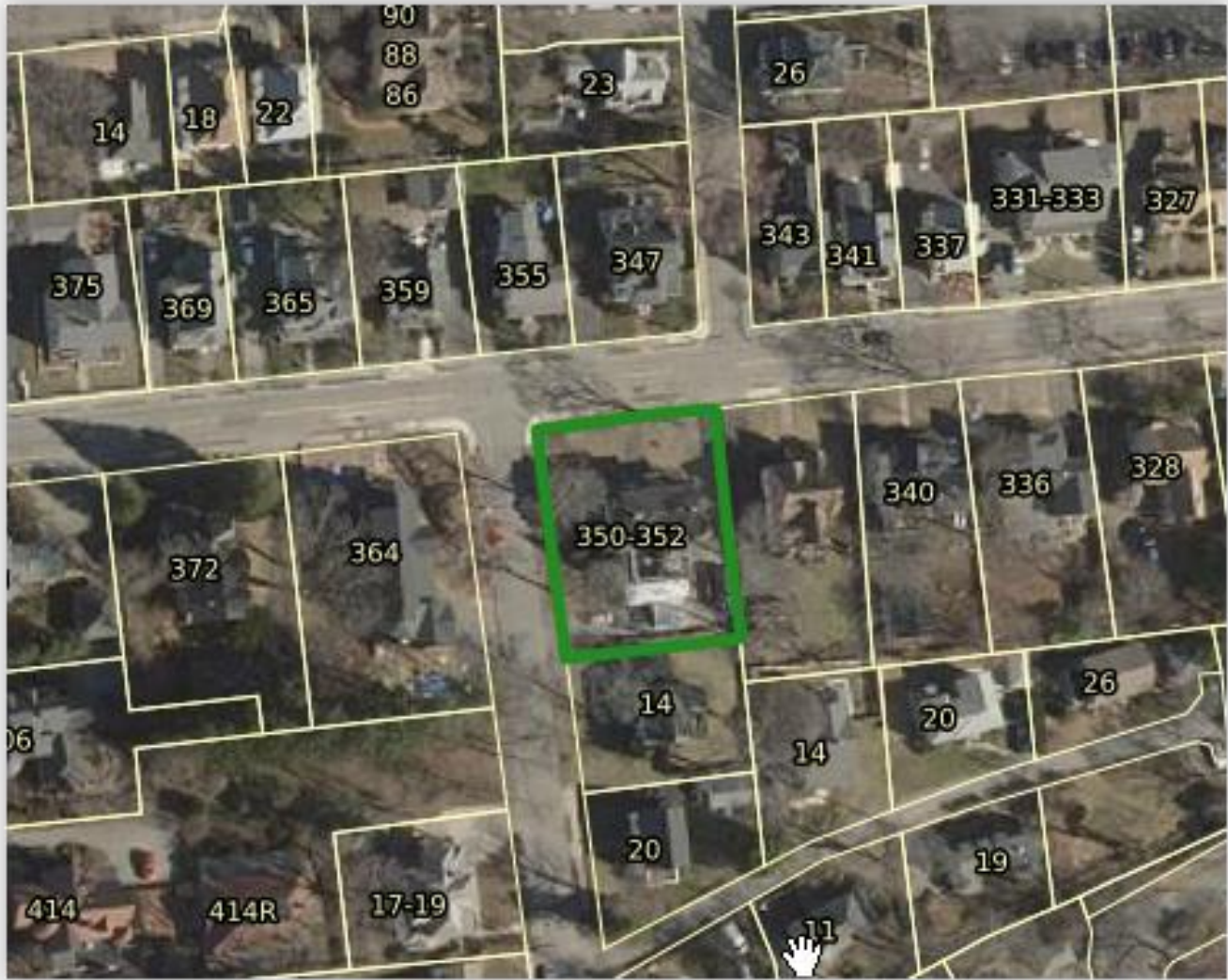


When reviewing the requested special permits the Council should consider whether:

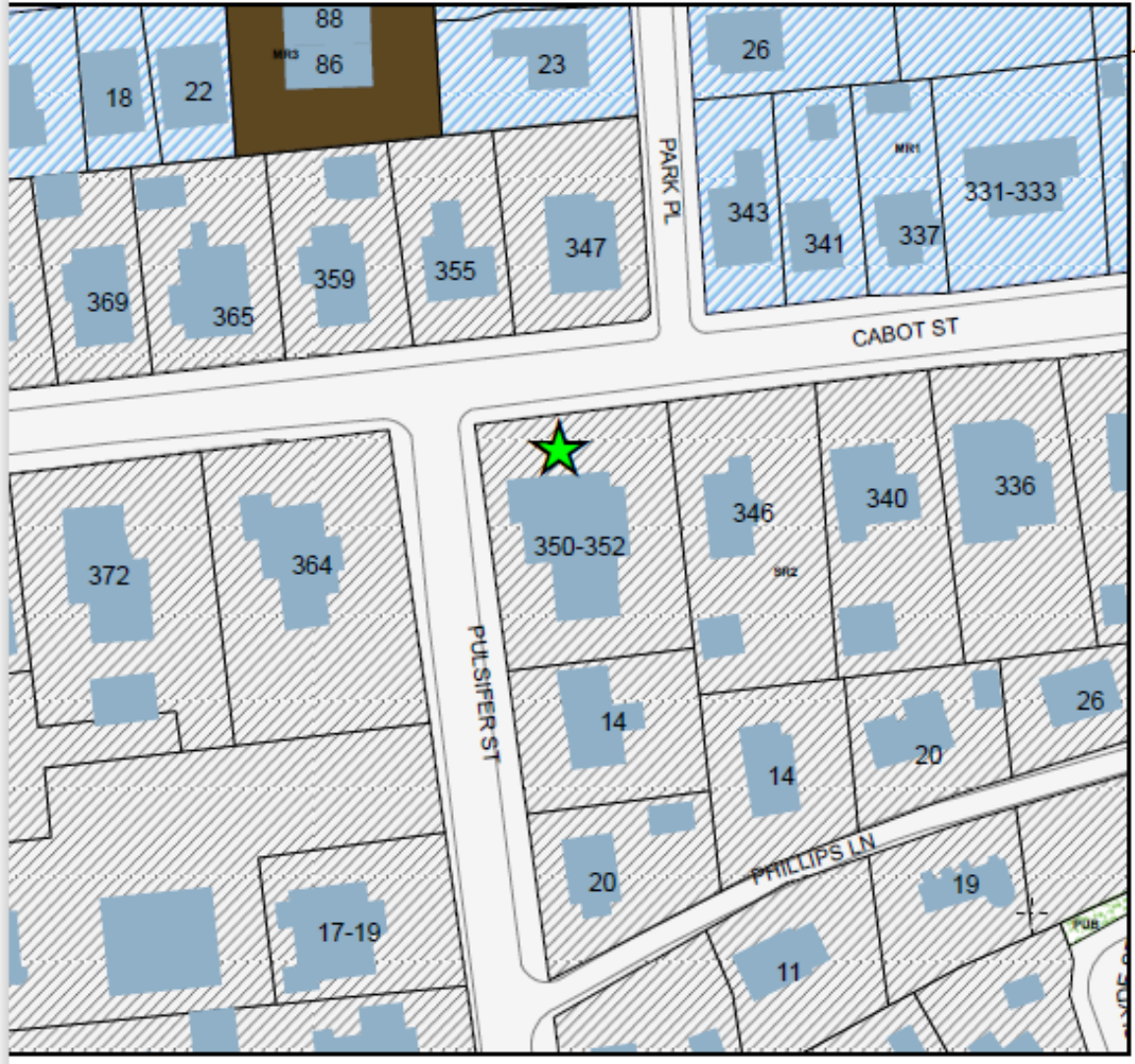
- the proposed modification of an existing nonconforming two-family use in the Single Residence 2 (SR2) zoning district to create a third dwelling unit within the existing structure would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)



# AERIAL/GIS MAP



# Zoning



## ATTACHMENT B

### Zoning

350-352 Cabot Rd.

City of Newton,  
Massachusetts

- Single Residence 2
- Multi-Residence 1
- Multi-Residence 3
- Public Use



The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve applications based solely on GIS data.

CITY OF NEWTON, MASSACHUSETTS  
Mayor - Barbara Polite  
GIS Administrator - Douglas Greenfield



Map Date: September 02, 2020

# Land Use



## ATTACHMENT A





### Land Use

350-352 Cabot Rd.

City of Newton,  
Massachusetts

### Land Use

#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Vacant Land



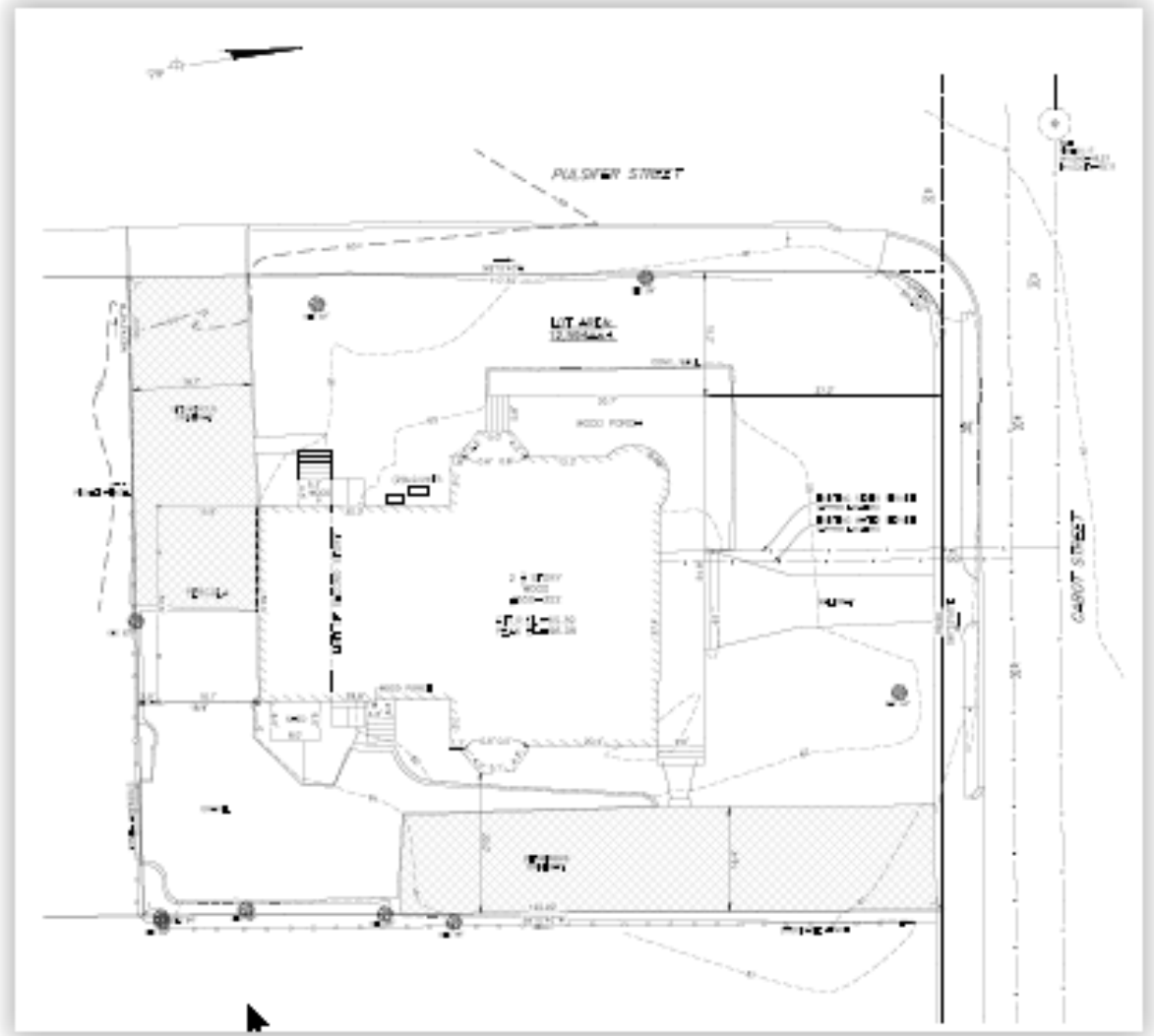
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CITY OF NEWTON, MASSACHUSETTS  
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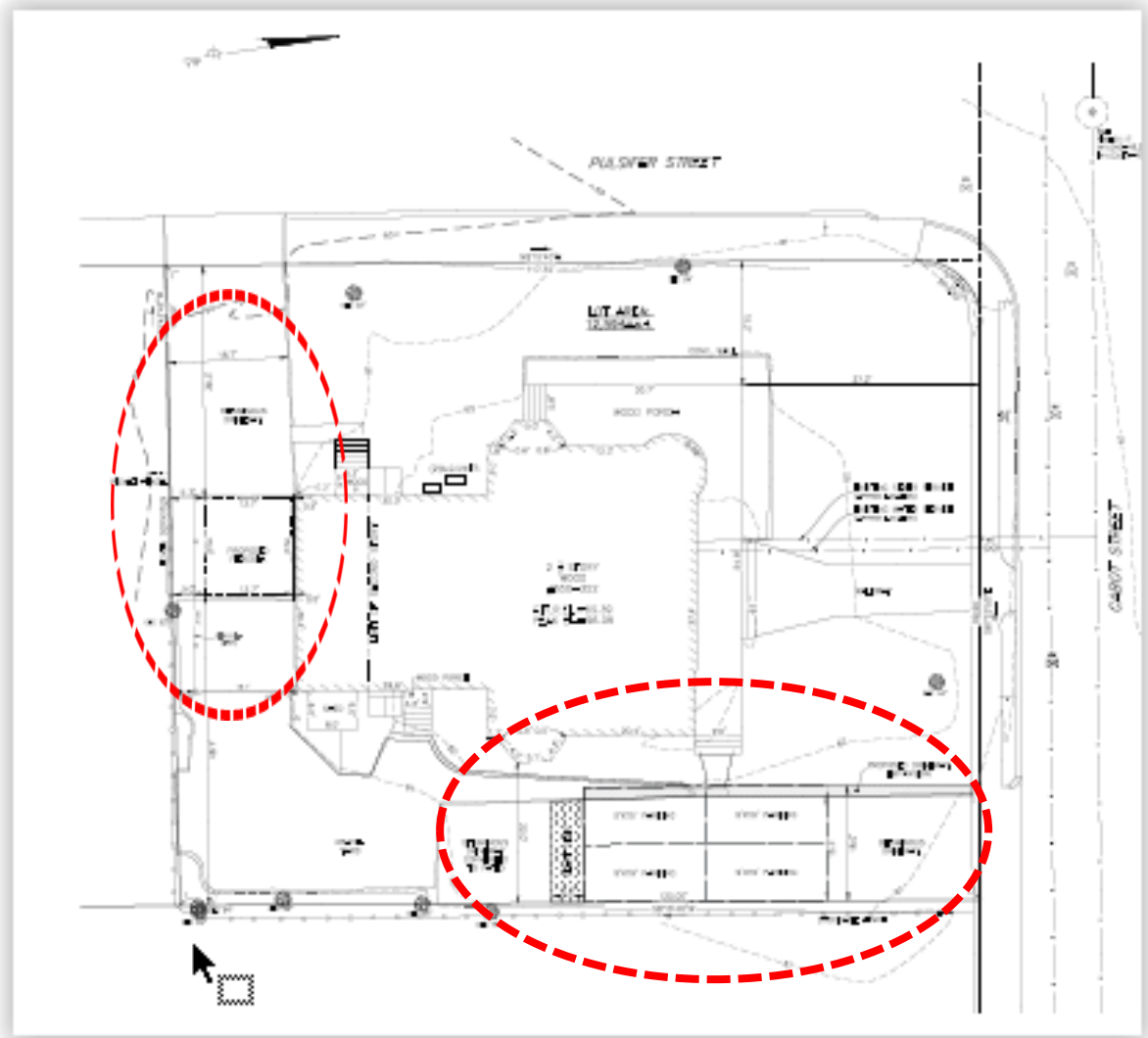


Map Date: September 02, 2020

# Site Plan- existing

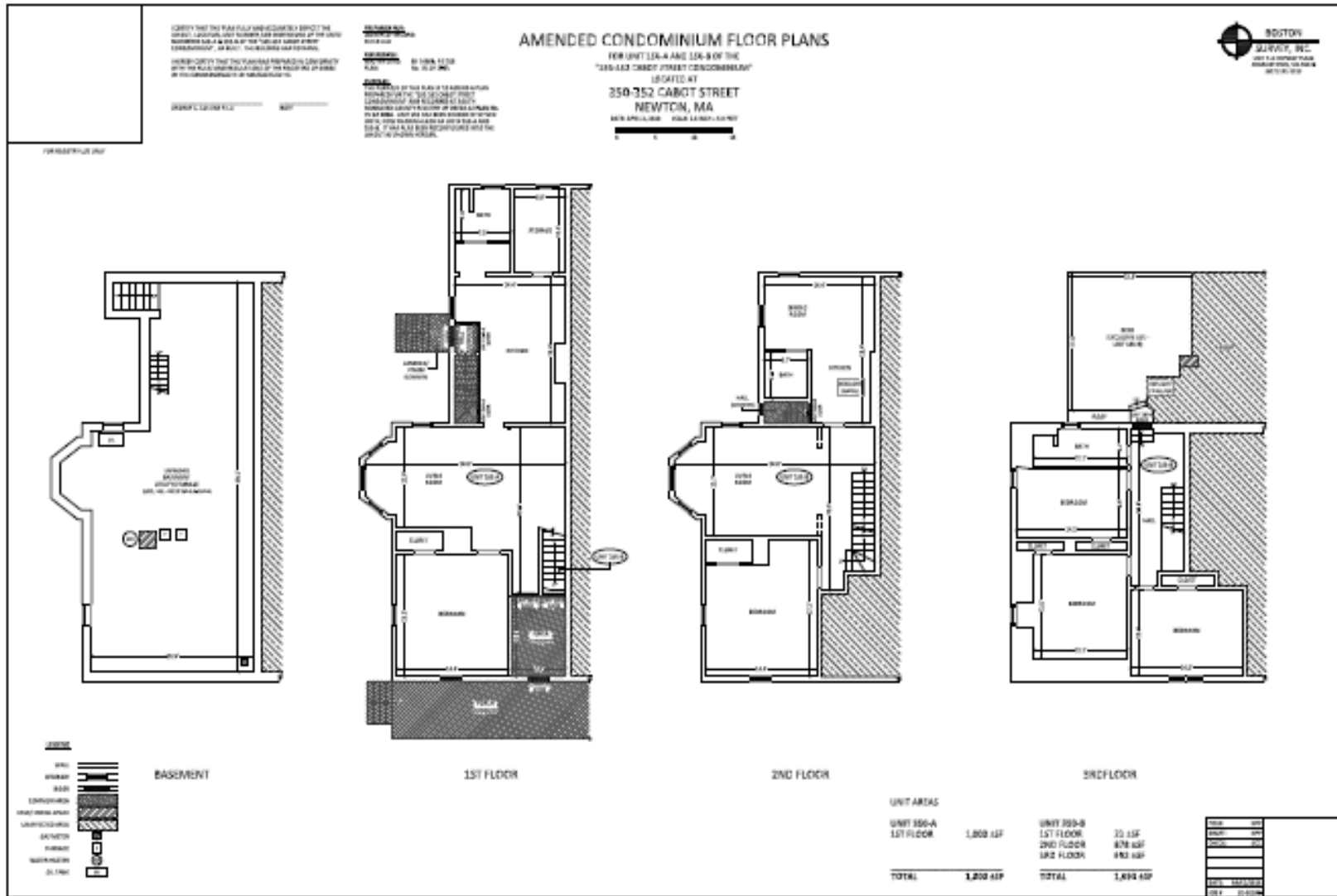


# Site Plan- proposed



# Floor plans:

## 350 Cabot St.- proposed Units 350-A & 350-B



# Photos



# Photos





# Photos



# Proposed Findings



1. The extension of the nonconforming two-family use to a three-unit multi-family use and the decreased Lot Area per Unit will not be substantially more detrimental than the existing nonconforming use is to the neighborhood as the structure will not be expanded, a nonconforming portion of the dwelling will be removed, and additional open space will be created on the property (§3.4.1 and 7.8.2.C.2.)

# Proposed Conditions



1. *Plan Referencing Condition*
2. *A copy of the Condominium Master Deed shall be submitted to the Department of Planning and Development and the Law Department for review to determine consistency with this Special Permit prior to recording.*
3. *Standard Building Permit Condition.*
4. *Standard Final Inspection/Certificate of Occupancy Condition.*