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Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
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**143-13**

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Candace Havens  
Director

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**MEMORANDUM**

Public Hearing Date: May 14, 2013  
Land Use Action Date: July 16, 2013  
Board of Aldermen Action Date: July 22, 2013  
90-Day Expiration Date: August 13, 2013

DATE: May 10, 2013

TO: Board of Aldermen

FROM: Candace Havens, Director of Planning and Development  
Eve Tapper, Chief Planner for Current Planning <sup>ET</sup>  
Alexandra Ananth, Senior Planner

SUBJECT: **Petition #143-13**, Dana J. Katz, Trustee, DK Realty Trust, for SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND a NONCONFORMING STRUCTURE to construct an addition of approx. 1,280 sf to an existing building, which addition includes relocating a front entrance that will create a new 2-story vestibule containing 122 sf; another 668 sf of first floor space for a new tenant (the remainder of the upper floor will be used for additional dressing rooms and storage); and to locate parking stalls within 2 feet of a side lot line and for various waivers from lighting, landscaping, and bicycle parking requirements for the existing *Miltons Store for Men* at **176 Boylston Street**, Chestnut Hill, Ward 7, on land known as SBL 82, 2, 18. Ref: Sec 30-24, 30-23, 30-21, 30-19(h)(1), 30-19(i)(1)a), and (2), 30-19(j), 30-19(k) of the City of Newton Rev Zoning Ord, 2012.

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The purpose of this memorandum is to provide the Board of Aldermen and the public with technical information and planning analysis which may be useful in the special permit decision making process of the Board of Aldermen. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Land Use Committee of the Board of Aldermen will want to consider in its discussion at a subsequent Working Session.



**176 Boylston St.**

## EXECUTIVE SUMMARY

The property at 176 Boylston Street consists of two lots totaling 64,007 square feet improved with an existing building constructed in 1968 and currently occupied by a men's clothing store, *Miltons Store for Men*. The petitioner is proposing two additions to the west side of the building totaling 1,400 square feet. These include relocating the front entrance to the west side of the building facing Chestnut Hill Square with a new 122-square foot vestibule at the new entrance, and a 1,280 square foot two-story addition at the southwest corner of the building. The first floor of this addition (approximately 668 square feet) will be available for a new retail tenant and the square footage on the second floor will be used for additional dressing rooms and storage for the existing Milton's clothing store. The petitioner is also proposing to expand their parking facility on the south side of the building, two feet from the side lot line, and parallel to the proposed interior access drive serving Chestnut Hill Square.

### I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this petition, the Board should consider whether the following apply:

- The proposed extension of a nonconforming structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.
- The proposed exceptions to the parking requirements are appropriate as literal compliance 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.

### II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

#### A. Neighborhood and Zoning

The site is located on a busy stretch of Route 9/Boylston Street in Chestnut Hill. It is bounded on the east by an attached commercial building, currently occupied by Barnes and Noble Booksellers. It is bounded on the west by Chestnut Hill Square, a mixed-use development currently under construction. The Mall at Chestnut Hill is located across Route 9 from the site.

#### B. Site

The Milton's site consists of 64,007 square feet of land within the Business 1 and Business 4 zones. It is located south of Route 9 and is improved with a building containing a retail store. The site abuts the Chestnut Hill Square development site on the west. Barnes and Nobles is in the adjacent building to the east. The

petitioner has parking both in front of the store close to Boylston Street and behind the building.

### III. PROJECT DESCRIPTION AND ANALYSIS

#### A. Land Use

The property will remain in commercial retail use. A portion of the addition will be available for a new tenant.

#### B. Building and Site Design

The petitioner is proposing to move the front entrance of the store from its current location at the corner facing Boylston Street to the west side of the building facing Chestnut Hill Square. The petitioners are proposing a new 122-square foot vestibule over existing paving in this location. In addition to the new vestibule the petitioners are proposing a 1,280 two-story addition to the southwest corner of the existing building, in effect squaring off this portion of the building. The ground floor of this new space will be available for a new tenant. The second floor will be used for additional dressing rooms and storage for the existing Milton's clothing store.

#### C. Parking and Circulation

The petitioner is currently reconstructing the existing parking lot located behind the building which was approved under a consistency ruling. The newly reconfigured lot improves access and converts previously parallel spaces to perpendicular spaces to gain an additional 21 conforming parking stalls. There is also a net gain in landscaping and open space.

Technically the petitioner needs waivers from the parking requirements to legalize the existing parking facility including waivers from the side setback, interior landscaping and lighting requirements, and bicycle parking. As the Miltons site has been redesigned to look like it is more a part of Chestnut Hill Square and access between the two sites is improved, the Planning Department has no concerns with the proposed waivers to the parking requirements.

Two striped pedestrian crossings will help to connect the Miltons site to Chestnut Hill Square.

### IV. TECHNICAL REVIEW

#### A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum, (**ATTACHMENT "A"**), provides an analysis of the proposal with regard to zoning. The petitioners are requesting a special permit to allow the extension of a nonconforming structure but with no changes to the building height or setbacks which are the dimensions that are nonconforming.

The petitioner is also seeking waivers from the parking requirements for the setback distance of parking stalls from the side setback, from interior landscaping and lighting requirements, and from the bicycle parking requirements.

B. Engineering Review

The Associate City Engineer completed a review of this project and notes that on-site drainage improvements will be required (**ATTACHMENT "B"**).

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum, the petitioner is seeking the following reliefs:

- Section 30-21, to permit the extension of a nonconforming structure.
- Section 30-19(m), 30-19(h)(1), 30-19(i)(1)a), 30-19(i)(2), 30-19(j)(1), and 30-19(k), to permit waivers to the setback distance of parking stalls from the side setback, from landscaping requirements, from lighting requirements, and from bicycle parking requirements.

VI. PETITIONERS' RESPONSIBILITIES

The petitioner is considered complete at this time.

**ATTACHMENTS:**

- Attachment A:** Zoning Review Memorandum  
**Attachment B:** Engineering Division Review Memorandum  
**Attachment C:** Zoning Map  
**Attachment D:** Land Use Map



Setti D. Warren  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
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**ATTACHMENT A**

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Candace Havens  
Director

## ZONING REVIEW MEMORANDUM

Date: April 18, 2012

To: John Lojek, Commissioner of Inspectional Services

From: Seth Zeren, Chief Zoning Code Official  
Eve Tapper, Chief Planner for Current Planning

ET

Cc: Timothy W. Sullivan, attorney representing applicant  
Candace Havens, Director of Planning and Development  
Ouida Young, Associate City Solicitor

RE: **Request to allow a free-standing sign**

Applicant: NED Chestnut Hill LLC	
Site: 176 Boylston Street	SBL: 82002 0018
Zoning: BU1 and BU4	Lot Area: 45,240 square feet
Current use: Retail Store	Proposed use: Retail Store with free-standing sign

### BACKGROUND:

The property at 176 Boylston Street consists of a 45,240 square foot lot improved with a retail store. The current tenant is Milton's, a men's clothing retailer. The development of Chestnut Hill Square (200-230 Boylston Street), now in progress, will obscure Milton's existing façade sign. Therefore, the applicant is seeking approval on Milton's behalf to move an existing free-standing sign located at 200-230 Boylston Street, repanel the sign, and locate it to 176 Boylston Street so that Milton's will have a sign visible to motorists on Boylston Street.

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

- Copy of Board Order #505-98
- Copy of consistency ruling signed by John E. Twohig and Commissioner John Lojek, dated 3/14/11
- Sign design and engineering plans, unsigned and unstamped by GenSign, Engineers, showing the proposed free standing sign, dated 1/16/12
- Existing site plan showing current location of sign, unsigned and unstamped by RJO'Connell & Associates, dated 1/23/12
- Proposed site plan showing completed Chestnut Hill Square development and proposed location of sign unsigned and unstamped by RJO'Connell & Associates, dated 1/23/12

**ADMINISTRATIVE DETERMINATIONS:**

1. The applicant proposes to locate a free-standing sign at 176 Boylston Road. Section 30-20(l) allows standing signs meeting specific criteria by special permit. A free-standing sign may be no larger than 35 square feet in area and ten feet in any linear direction, and no higher than sixteen feet from the ground. The applicant's plans show the proposed sign to be 34.55 square feet in area, less than ten feet in any linear direction, and 13.25 feet in height. The applicant must obtain a special permit from the Board of Aldermen, per Section 30-20(l), to locate the sign as proposed.
2. The applicant's plans indicate that the proposed free-standing sign will be internally illuminated. Illuminated signs are subject to specific requirements under Section 30-20(i). The proposed sign does not include any moving parts or flashing lights, as required by Section 30-20(i)(1). The proposed illuminated sign is red, and therefore must be approved by the Chief of Police so as not to represent a hazard to motor vehicle operation, as required by Section 30-20(i)(2). The proposed illumination is interior and must be of a reasonable intensity and shielded so as to not shine onto any street or nearby property, as required by Section 30-20(i)(3). The proposed sign must not be illuminated between the hours of 11:00 p.m. and 7:00 a.m., or up to one half hour before opening and after closing, except by special permit of the Board of Aldermen, as required by Section 30-20(i)(4).
3. Per section 30-20(j)(4), if the advertised business ceases operations on the premises, the accessory sign shall be removed within 30 days.
4. The proposed sign represents a modification of the site plan approved under B.O. #505-98. The applicant must obtain an amendment of the site plan from the Board of Aldermen to locate the sign as proposed. The site plan of 176 Boylston Street was last modified by a consistency ruling of the Commissioner of Inspectional Services to support access to the Chestnut Hill Square development at 200-230 Boylston Street. Though the proposed site plan removes one parking stall from the front parking lot to make space for two handicapped parking stalls, adequate parking remains on site, per Section 30-19(d)(10).
5. See "Zoning Relief Summary" below:

<b>Zoning Relief Required</b>		
<i>Ordinance</i>	<i>Sign</i>	<i>Action Required</i>
§30-20(f)(1) and (9), §30-20(l)	Permit a free-standing sign	S.P. per §30-24
	Modify an approved site plan	Amend B.O. #505-98 and site plan

CITY OF NEWTON  
ENGINEERING DIVISION

MEMORANDUM

To: Alderman Ted Hess-Mahan, Land Use Committee Chairman

From: John Daghlian, Associate City Engineer

Re: Special Permit – 176 Boylston Street

Date: April 26, 2013

CC: Lou Taverna, PE City Engineer (via email)  
Linda Finucane, Associate City Clerk (via email)  
Eve Tapper, Chief Planner (via email)  
Alexandria Ananth, Sr. Planner (via email)

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In reference to the above site, I have the following comments for a plan entitled:

*Milton's  
176 Boylston Street  
Area Plans  
Newton, MA  
Prepared by: Arrowstreet  
Dated: March 4, 2013*

Executive Summary:

The existing retail store has planned to add two spaces to the building, based on the architects calculations the impervious area has an additional 701 square feet, thus there is a requirement for on-site drainage improvement for the net additional stormwater runoff.

Drainage:

1. A drainage analysis needs to be performed based on the City of Newton's 100-year storm event of 6-inches over a 24-hour period. All runoff from impervious areas need to be infiltrated on site, for the project. The design of the proposed on site drainage system needs to comply with the MassDEP Stormwater Regulations and City Ordinances.

2. An Operations and Maintenance (O&M) plan for Stormwater Management Facilities needs to be drafted and submitted for review. Once approved the O&M must be adopted by applicant, incorporated into the deeds; and recorded at the Middlesex Registry of Deeds. A copy of the recording instrument shall be submitted to the Engineering Division.
3. It is imperative to note that the ownership, operation, and maintenance of the proposed drainage system and all appurtenances including but not limited to the drywells, catch basins, and pipes are the sole responsibility of the Homeowners Association.

Environmental:

1. Has a 21E investigation & report been performed on the site, if so copies of the report should be submitted to the Newton Board of Health and the Engineering Division.
2. Are there any existing underground oil or fuel tanks, are they to be removed, if they have been evidence should be submitted to the Newton Fire Department, and Newton Board of Health.

Construction Management:

1. A construction management plan is needed for this project. At a minimum, it must address the following: staging site for construction equipment, construction materials, parking of construction worker's vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of contractor. Anticipated dewatering during construction, site safety & stability. Impact to abutting properties.
2. Stabilized driveway entrances are needed during construction which will provide a tire wash and mud removal to ensure City streets are kept clean.



General:

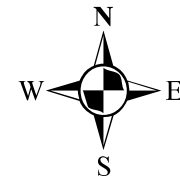
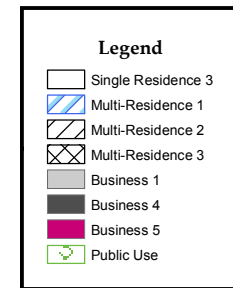
1. As of January 1, 2009, all trench excavation contractors shall comply with Massachusetts General Laws Chapter 82A, Trench Excavation Safety Requirements, to protect the general public from unauthorized access to unattended trenches. Trench Excavation Permit required. This applies to all trenches on public and private property. *This note shall be incorporated onto the plans*
2. All tree removal shall comply with the City's Tree Ordinance.
3. The contractor is responsible for contacting the Engineering Division and scheduling an appointment 48 hours prior to the date when the utilities will be made available for an inspection of water services, sewer service, and drainage system installation. The utility is question shall be fully exposed for the inspector to view; backfilling shall only take place when the City's Inspector has given their approval. *This note should be incorporated onto the plans*
4. The applicant will have to apply for a Building Permits with the Department of Inspectional Service prior to any construction.
5. Prior to Occupancy Permit being issued, an As-Built Plan shall be submitted to the Engineering Division in both digital format and in hard copy. The plan should show all utilities and final grades, any easements and final grading. *This note must be incorporated onto the site plan.*
6. If a Certificate of Occupancy is requested prior to all site work being completed, the applicant will be required to post a Certified Bank Check in the amount to cover the remaining work. The City Engineer shall determine the value of the uncompleted work. *This note must be incorporated onto the site plan.*

Note: If the plans are updated it is the responsibility of the Applicant to provide all City Departments [Conservation Commission, ISD, and Engineering] involved in the permitting and approval process with complete and consistent plans.

If you have any questions or concerns please feel free to contact me @ 617-796-1023.

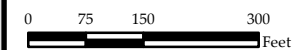
# 143-13 176 Boylston St Zoning

*City of Newton,  
Massachusetts*



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 - Setti D. Warren  
GIS Administrator - Douglas Greenfield



Map Date: May 01, 2013

Attachment C

