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Candace Havens
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Public Hearing Date:	March 19, 2013
Land Use Action Date:	May 21, 2013
Board of Aldermen Action Date:	June 3, 2013
90-Day Expiration Date:	June 17, 2013

DATE: March 15, 2013

TO: Board of Aldermen

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

SUBJECT: **Petition #60-13**, John & Carole deJong petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to locate a veterinary hospital and to waive two parking stalls at **602 Washington Street**, Ward 2, on land known as SBL 12, 16, 4 and 23, 18, 1, containing approx. 7,076 sq. ft. of land in a district zoned BUSINESS 2. Ref: Sec 30-24, 30-23, 30-11(g)(7), 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

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.



602 Washington Street

EXECUTIVE SUMMARY

The property at 602 Washington Street consists of two lots totaling 7,076 square feet and improved with an existing building constructed in 1992. The petitioners are proposing to locate a veterinary hospital in the existing building which requires a special permit in the Business 2 District. Although the property has ten parking spaces on site, the petitioners are also requesting a waiver of two parking spaces to allow for anticipated staff growth at some time in the future.

A Land Court decision granted the owner permission to build on the undersized property in 1990. The decision granted relief from certain setback requirements for the building and parking area, and prohibited certain uses on the site. However, the petitioners are not proposing any changes to the building or site, and a veterinary hospital would not violate the decision.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Board should consider whether:

- The site is an appropriate location for a veterinary hospital.
- The proposed use will not negatively affect the neighborhood.
- There will be no nuisance or serious hazard to vehicles or pedestrians.
- The waiver of two parking stalls is appropriate, and literal compliance with this requirement is impractical due to the location, size, frontage, depth, shape, or grade of the lot.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The property is located in a commercial area of Newtonville and abuts the Massachusetts Turnpike at its rear property line. The neighborhood primarily consists of commercial uses including Tedeschi's, Kaplanski Insurance, Sovereign Bank, Whole Foods and Marty's. Across the street from the subject property is an area zoned Multi-Residence 2 that consists primarily of two-family houses.

B. Site

The site consists of 7,076 square feet of land that slopes down away from the street towards the Turnpike. The site is primarily paved and is improved with a one-story building with a partial basement. There is a handicap ramp that leads to the front entrance of the building.

According to the existing conditions plan there are eight parking stalls (including one HC stall) located along the west property line. The slope of the site allows for two additional parking stalls under the rear portion of the first story of the existing building, for a total of

ten stalls on site. A wood stockade fence separates the parking area from the commercial property to the west and runs most of the property line though there is limited access between the two sites. NSTAR owns the property to the east which is improved with transformers and electrical equipment.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The previous use was a window showroom and a florist shop. The petitioners are now proposing a veterinary hospital which requires a special permit to locate in the Business 2 zone.

B. Building and Site Design

The petitioners are not proposing any changes to the building or site except to the interior of the existing building.

C. Parking and Circulation

The petitioners are not proposing any changes to the parking area and all stalls appear to be conforming. The Planning Department questioned whether stall #7 blocks access to 612 Washington Street and the petitioners responded that that access has been left open for convenience purposes only (there is no easement on the property) and could be blocked off if required by the Board of Aldermen. The petitioner should be prepared to address this issue at the public hearing.

The proposed use is considered a service establishment and needs a parking waiver of one stall to allow for up to three employees. However, the petitioners are anticipating the business will grow with time and are requesting a two-stall parking waiver so that they may hire up to three additional employees without being in violation of the special permit.

The Planning Department does not believe that parking will be a problem on site as the petitioner is proposing scheduled appointments for examinations and surgeries. Additionally, there is on-street parking on portions of Washington Street.

D. Landscaping

No changes are proposed to the existing landscaping which appears on the existing conditions site plan.

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 petitioner is requesting a special permit to allow for a veterinary hospital in the Business 2 zone, and to waive two required parking spaces.

B. Engineering Review: As the petitioners are not making any changes to the site the Engineering Division will review this project prior to the issuance of a building permit.

V. ZONING RELIEFS SOUGHT

Based on the completed Zoning Review Memorandum the petitioner is seeking the following approvals or relief:

- Section 30-11(g)(7), to allow a Veterinary Hospital in a Business 2 zone
- Section 30-19(d)(10), and 30-19(m), to waive two required parking spaces

VI. PETITIONERS' RESPONSIBILITIES

The petitioner's plans are considered to be complete at this time. The petitioners should clarify if they intend to continue to allow access to the abutting property or if they prefer to continue the existing fence and close off this access point.

ATTACHMENTS

- Attachment A:** Zoning Review Memorandum
Attachment B: 1990 Land Court Decision
Attachment C: Zoning Map
Attachment D: Land Use Map

ADMINISTRATIVE DETERMINATIONS:

1. A Land Court decision dated March 9, 1990 granted the owner permission to build on the undersized property, as well as relief from the setback requirements for both the building and the parking. The decision did prohibit certain uses on the site, however a veterinary hospital would not violate the decision.
2. Section 30-11(g)(7) specifically allows the Board of Aldermen to grant a special permit in the Business 2 District for a Veterinary Hospital use, subject to the dimensional controls set forth in Section 30-15 and the parking requirements set forth in 30-19. The 1990 Land Court decision spelled out dimensional controls which vary from the Ordinance, however the property and use are still subject to the standard parking regulations.

Zone BU-2	Required/Allowed by Variance	Existing	Proposed
Lot Size	7700 square feet*	NA	No change
Frontage	80 feet	NA	No change
Setbacks for existing structure <ul style="list-style-type: none"> • Front • Side • Rear 	No less than 20 feet* 0-3 feet on easterly line* Not less than 5 feet*	NA	No change
Setbacks for parking	Not less than 1 foot on the westerly line*	NA	No change
Parking requirements		9 spaces + 1 hp	No change

*Allowed by the 1990 variance

3. The Commissioner of Inspectional Services has determined this use to be a service business. As such, one (1) parking space per each 300 square feet of gross floor area is required, in addition to one (1) space per each three (3) employees. The applicant states that initially the hospital will have three employees, but will potentially grow to having one or two additional staff. To start, the use will require 11 parking spaces (see chart below). When additional staff is added in the future one additional parking space will be required for up to three additional employees. The property currently has ten spaces on site. To permit the proposed use and to allow for the future anticipated growth in the business, the applicant must obtain a special permit from the Board of Aldermen for a waiver of two parking spaces.

Proposed Use	Parking Requirement per Section 30-19(d)	Parking factors for Proposed Use	Total No. of Parking Spaces Required
Veterinary Hospital	1 space/300 sf of public space + 1 space/3 employees + 1 space/ 2,500 sf of storage space	2,437 sf of/300= 9 + 3 employ. = 1 + 385 sf/2,500 = 1	11 (9+1+1)
Veterinary Hospital with up to six (6) employees	Same as above	2,437 sf of/300= 9 + up to 6 employ. = 2 + 385 sf/2,500 = 1	12 (9+2+1)

4. See "Zoning Relief Summary" below:

Zoning Relief Required		
Ordinance		Action Required
§30-11 (g)(7)	Allow a Veterinary Hospital in BU-2 Zone	S.P. per §30-24
§30-19(d)(10), §30-19(m)	Waive two (2) required parking spaces	S.P. per §30-24

6. At a meeting of the Defendant Zoning Board of Appeals specially convened on January 23, 1990, to discuss this litigation, Defendant members voted 5-0 on each of the following dimensional requirements, to grant Plaintiff a variance therefrom:

Minimum lot area requirement of 10,000 sq. ft.

Rear setback of building, 15';

Parking setback westerly 5'.

Easterly sideyard setback of building, one half the building height.

7. Accordingly, the proposed building may be built on a Lot of 7077 sq. ft. with setbacks as follows:

westerly parking setback, no less than one (1) foot for the parking setback;

southerly rear setback of not less than 5 feet by the railroad right of way and the Massachusetts Turnpike;

easterly sideyard, may be zero to 3 feet for the building, by land occupied by a Boston Edison electrical transformer.

8. The reasons given for each and every variance are as follows:

The site of the proposed building is abutted by a Boston Edison Transformer and a two-story office building (easterly); the Massachusetts Turnpike and a railroad right-of-way (southerly); a complex of retail stores: L'il Peach grocery store, Auto Security store, glass store, Baseball card store, Tanorama (westerly). Washington Street (northerly) separates the proposed site from two single family and one four family dwelling.

The locality contains heterogenous uses and, specifically, uses similar to those proposed.

The parcel is specially affected by a severe downward slope from front to rear; in addition it is transversed by a culvert running from north to south over which no structure can be erected.

To deny these variances would impose a substantial hardship on Plaintiff. These variances may be granted without substantial detriment to the public good and

without nullifying or substantially derogating from the intent or purpose of such ordinances, and the building proposed would be a substantial benefit considering the conditions presently existing on the now vacant lot.

In addition, a reason given for the variance in regard to minimum lot size is that denial of said variance would deprive plaintiff of virtually all practical use of the property.

10. The front (northerly) building setback shall be no less than 20' from Washington Street.

11. The westerly sideyard setback of the building shall comply with the Newton Zoning Ordinance Table 3, Sec. 30-15.

12. The land is situated in a Business 2 zoning district. All uses allowed of right shall be permitted with the following exclusions:

- a. Video sales and/or rental store
- b. Restaurant
- c. Pizza and sub shop
- d. Stores selling food or drink of any type, including, but not limited to "fast food" establishments, stores selling food not requiring additional preparation by the customer (e.g., Boston Chicken), liquor stores, convenience grocery stores, donut shops and bakeries.
- e. Child day care center

13. A plan indicating appropriate landscaping for the front of the site must be submitted to and is subject to final approval by the Newton Planning Department, which approval shall not be unreasonably delayed or withheld.

14. All parking requirements established by the current Newton Zoning Ordinance must be satisfied for said building for all office and retail uses that shall exist on the site. In addition, a parking plan must be submitted to and is subject to final approval by the Newton Planning Department, which approval shall not be unreasonably delayed or withheld.

15. A plan indicating the curb cut for the proposed site must be submitted to and is subject to final approval by the Newton Traffic Engineer and Newton Planning Department so the location will best accommodate the ease and safety of traffic flow of vehicles from both the proposed building site and the existing Li'l Peach complex at 612 Washington Street (westerly) (entrance and exit), which approval shall not be unreasonably delayed or withheld.

16. The facade treatment and signage of said building shall be submitted to and is subject to final approval by the Newton Planning Department, which approval shall not be unreasonably delayed or withheld.

17. The roof of the proposed building may extend beyond the building footprint by two (2) feet on both sides (easterly and westerly) and to the rear (southerly) by the railroad right of way, and by no more than five (5) feet to the front (northerly) at Washington Street to provide an overhang or shelter for the building. Said overhang in front must be at least fifteen (15) feet from Washington Street, as per the front building setback as agreed.

18. In consideration of the mutual promises expressed herein, and other valuable consideration, the parties agree that there shall be no award of damages, costs or attorney's fees to either side.


19. All other outstanding claims shall be dismissed with prejudice.

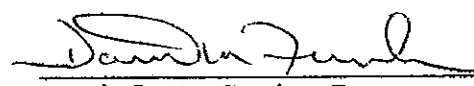
BRUNO DIFAZIO, TRUSTEE

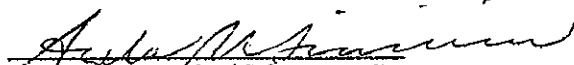
CITY OF NEWTON
NEWTON ZONING BOARD OF APPEALS

By his attorneys,

By their attorneys,


Robert P. Freeto, Esq.

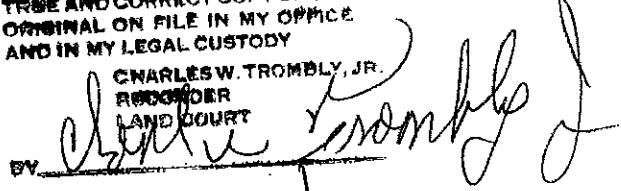

Daniel M. Funk, Esq.
City Solicitor


Angela M. Siciliano, Esq.


Michael D. Baseman, Esq.
Assistant City Solicitor

2/20/90
Date

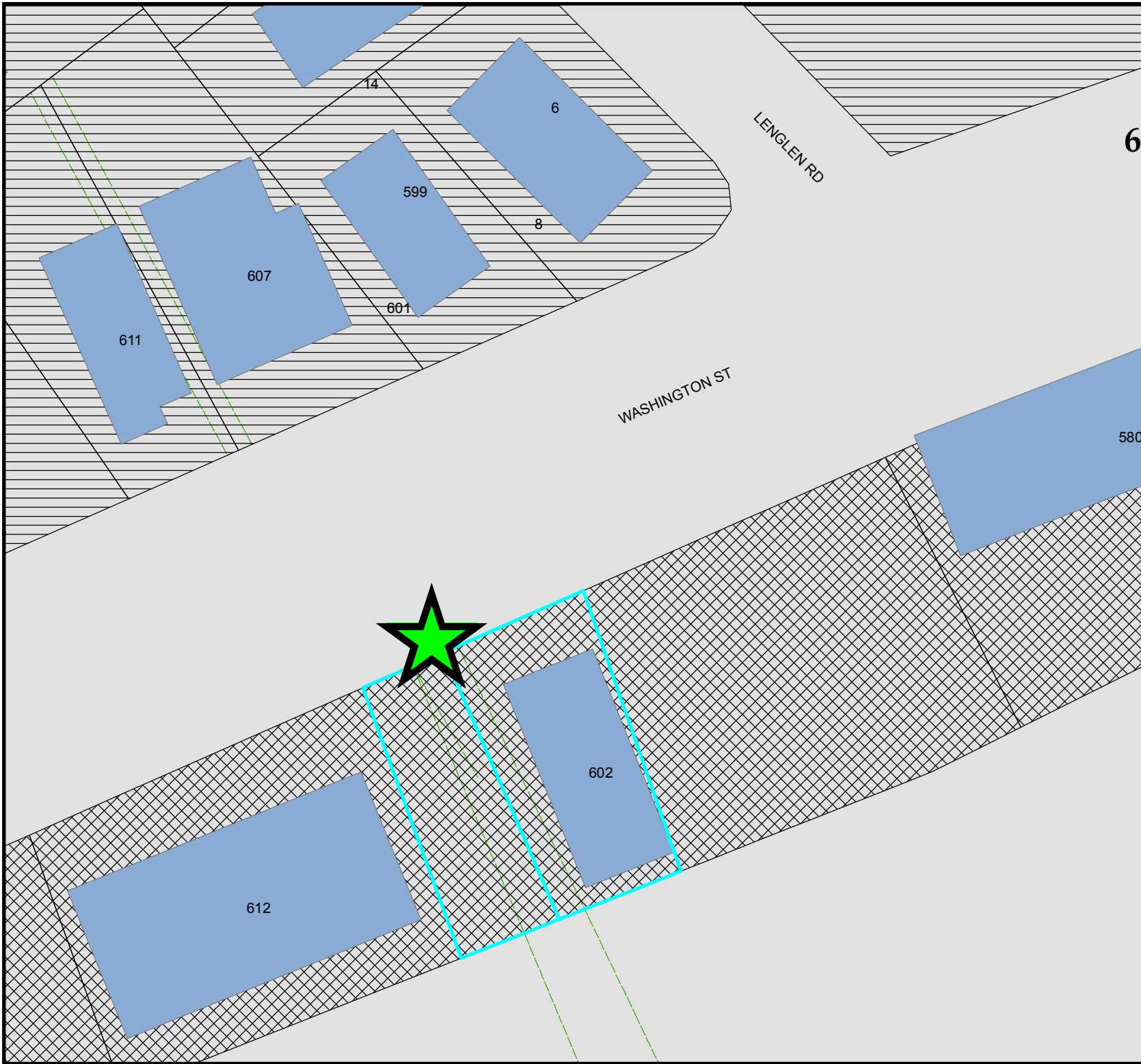
2-16-90
Date

I HEREBY ATTEST AND CERTIFY
MARCH 9 1990 THAT THE
FORGOING DOCUMENT IS A FULL
TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN MY OFFICE
AND IN MY LEGAL CUSTODY
CHARLES W. TROMBLY, JR.
RECORDER
LAND COURT
BY 
Recorder





60-13

Zoning Map 602 Washington St.

*City of Newton,
Massachusetts*



Legend

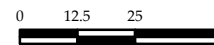
-  Multi-Residence 2
-  Business 2
-  Building Outlines
-  Surface Water



ATTACHMENT "C"

The information on this map is derived from a Geographic Information System. The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for their intended purpose. City departments will not be held responsible for approving applications based solely on this map.

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 Mayor - Setti D. Warren
 GIS Administrator - Douglas...



Map Date: March 2013

60-13

Land Use Map 602 Washington St.

*City of Newton,
Massachusetts*

Legend

Contour Lines

- Two Foot Contour
- Index (10 Foot) Contour
- Depression Contour
- Depression - Index Contour
- Bridge Abutment
- Culvert
- Wall

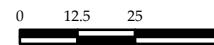
Land Use

- Multi-Family Residential
- Commercial
- Industrial
- Private Educational
- Building Outlines
- Surface Water



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ATTACHMENT "D"

