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#650-86 (3)

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: October 10, 2019
Land Use Action Date: December 10, 2019
City Council Action Date: December 16, 2019
90-Day Expiration Date: January 8, 2020

DATE: October 4, 2019

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Jennifer Caira, Chief Planner for Current Planning
Katie Whewell, Planning Associate

SUBJECT: **Petition #650-86 (3), SPECIAL PERMIT/SITE PLAN APPROVAL** to amend Special Permit Board Order #650-86(2) to allow alteration to an existing structure, extending the existing nonconforming use by constructing an addition for an elevator, to reduce the nonconforming lot coverage and to further extend the nonconforming parking in the front setback at 7400 Centre Street/77 Paul Street, Ward 6, Newton Centre, on land known as Section 62 Block 13 Lot 9, containing approximately 30,023 sq. ft. of land in a district zoned MULTI RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.2.2.A.3, 4.2.3 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



77 Paul Street/1400 Centre Street

EXECUTIVE SUMMARY

The property at 1400 Centre Street/77 Paul Street consists of a 30,023 square foot site in a Multi Residence 3 (MR-3) zone in Newton Centre. The site is improved with a nonconforming commercial office building, as well as an attached two-story parking garage.

The petitioners propose to create an additional driveway to the site's parking garage, as well as construct two additions, one that would house a proposed elevator, and one with a stairwell expansion. The petitioners are also proposing to expand the parking lot, creating an additional five spaces of surface parking. The two levels within the parking garage are currently accessed by a single driveway from Paul Street. The ramp to the upper level, however, is steep and deteriorating from salt usage in the winter. The proposed second driveway from Paul Street would replace this ramp. Since the existing commercial building is nonconforming in use, the petitioner requires a special permit to extend/alter the nonconforming use, and to amend the original Board Order associated with the property. A special permit is also requested to further reduce nonconforming lot coverage and further extend nonconforming parking in the front setback.

Before making a recommendation, the Planning Department requires further information for analysis and review. The Director of Transportation has concerns regarding the Intersection Sight Distance where the proposed driveway intersects Paul Street and staff needs more information from the petitioner showing a clear sight triangle. The Planning Department also requires a landscaping plan showing any trees or landscaping be removed to accommodate the proposed ramp and sight distances as well as information and proposed locations of the replacement of plantings. The Planning Department's main concerns are site circulation, safety, and removal of landscaping.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The specific site is an appropriate location for the amendment to Special Permit #650-86 that creates an additional curb cut and other site changes. (§7.3.3.)
- The proposed amendment to Special Permit #650-86 that creates an additional curb cut and other site changes will not adversely affect the neighborhood. (§7.3.3.)
- There will be no nuisance or serious hazard to vehicles or pedestrians by the proposed amendment to Special Permit #650-86 that creates an additional curb cut and other site changes. (§7.3.3.)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.)
- The proposed alterations of the nonconforming structure and use are not

substantially more detrimental than the existing nonconforming structure and use. (§3.4.1, §7.8.2.C.2)

- The extension of the nonconforming parking in the front setback is not substantially more detrimental than the existing nonconforming parking facility. (§4.2.3, §7.8.2.C.2)
- The extension of the nonconforming lot coverage is not substantially more detrimental than the existing nonconforming parking facility. (§3.2.2.A.3, §7.8.2.C.2)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located in Newton Centre in the MR-3 district. There are a mix of zones in the surrounding area and the site serves as a transitional area as a multi residence zone with Business-2 zones to the north as well as single residence and public use zones surrounding the site on all other sides. The use of the site is commercial surrounded by residential, and open space uses (**Attachments A & B**).

The site is located between the commercial area of Newton Centre and the residential neighborhood of Paul Street, which has abutting single family homes as well as multi-family residential homes.

B. Site

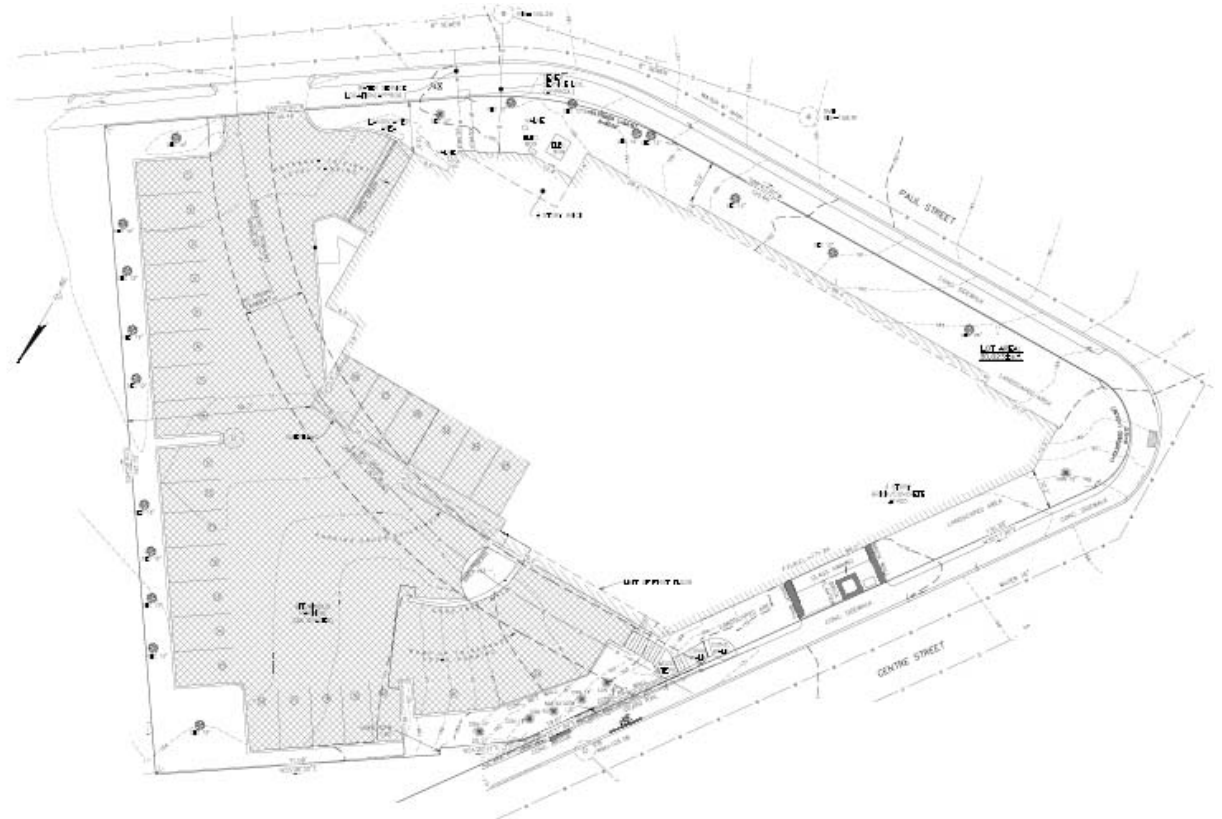
The property consists of a 30,023 square foot flat iron shaped lot. The site is improved with a three-story commercial structure with a parking garage and 28 surface parking stalls. The property has frontage on both Paul and Centre Streets. The building mimics the shape of the lot and is nonconforming in lot coverage, front setback, height and number of stories. As there is no lot coverage requirement for an office use in MR-3 zoning district, Section 3.2.2.A.3 states that the most restrictive shall be used. The most restrictive lot coverage standard is set forth in the Business 5 and Limited Manufacturing District, at 25%. The existing lot coverage is nonconforming at 44.3%. The existing nonconforming front setback is 10.2 feet at the Centre Street front. The nonconforming building height is 37.07 feet, consisting of 3 stories, where two stories and 24 feet are allowed as the most restrictive in Business 1 and 2 districts.

Board Order #650-86 allowed for the construction of the commercial building and parking on the basis of the building being in a residential area adjacent to commercial uses as well as the allowing the parking garage in order to manage the parking demand of the site due to the site's isolation from accessible public parking facilities.

Vehicular access to the site is provided via Paul Street, providing access to the surface

parking facility and first floor of the garage on site. At the rear of the surface parking lot is a ramp to the second level of parking within the garage.

Site Plan:



III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a nonconforming commercial use.

B. Site and Building Design

The petitioner is proposing an additional garage entrance/egress on the southern façade on Paul Street to the existing parking garage. This entry will provide direct access to the second level of the garage via a 20-foot-wide curb cut. This entrance is also located approximately 100 feet east of the intersection of Centre Street and Paul Street. The motivation behind the additional curb cut and garage entrance/egress is to remove an existing external ramp in poor condition to the rear of the site that

provides access to the second floor of the parking garage. To access the second floor of the garage from this location a steep ramp is necessary. The slope of the ramp has presented problems, particularly in the winter when it may be icy. The salt that has been necessary in the winter has deteriorated the concrete ramp. Replacing this ramp at this location would result in similar issues. The proposed ramp from a new driveway along Paul Street would directly access the second level at a lesser slope and would replace the deteriorating ramp entirely.

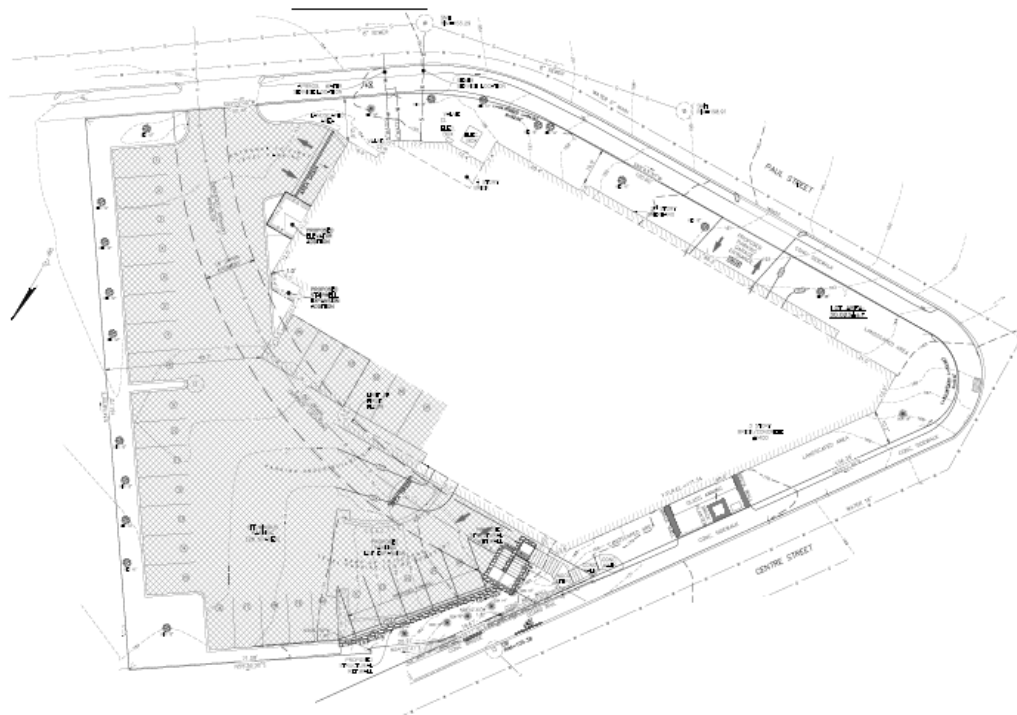
The petitioner proposes to construct two additions to the building. The first is a 96 square foot addition located next to the garage entrance. This addition will house an elevator. They are also proposing a stairwell expansion addition.

The petitioner is proposing an additional five surface parking stalls on site, at the northeastern property line.

The changes to the site to do not result in any of the setbacks changing. The lot coverage is increasing minimally from 44.3% to 44.7%.

The changes to the site require a special permit to extend several nonconforming aspects of the site, including: lot coverage, parking in the front setback, and the office use.

Proposed Site Plan:



C. Traffic and Parking

A sight distance assessment was performed by VHB which found that the westbound stopping sight distance approaching the proposed driveway would just meet the minimum sight distance requirements and the intersection sight distance looking left would not meet minimum site distance requirements. VHB recommends trimming or removing vegetative landscaping on the southeast corner of the site to improve the site distances and installing signage on Paul Street to inform motorists of the upcoming driveway and to increase driver awareness.

Board Order 650-86 requires the petitioner to maintain 82 parking stalls on site. The stalls that would be removed due to the proposed ramp would be relocated to the rear of the site to satisfy the original conditions of Board Order 650-86.

The Planning Department requires further information for review to address safety and circulation concerns. The Director of Transportation has concerns regarding the Intersection Sight Distance and staff needs more information from the petitioner showing a clear sight triangle as well as landscaping to be removed. The Petitioner should also provide information regarding the intended users for the second level of parking. Limiting this level to primarily employees would reduce turnover and limit the number of cars utilizing this new driveway.

D. Landscaping

The Planning Department requires a landscaping plan to be submitted with this petition should the petitioner be removing trees to improve upon the sight distance.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking a special permit per §7.3.3:

- to amend Special Permit #650-896
- to extend/alter the nonconforming office use (§3.4.1, §7.8.2.C.2)
- to further extend nonconforming lot coverage (§3.2.2.A.3, §7.8.2.C.2)
- to further extend nonconforming parking in the front setback (§4.2.3, §7.8.2.C.2)

B. Engineering Review

Review by the Engineering Division of Public Works is not required at this time.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:







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

Zoning

**77 Paul St.,
1400 Centre St.**

*City of Newton,
Massachusetts*

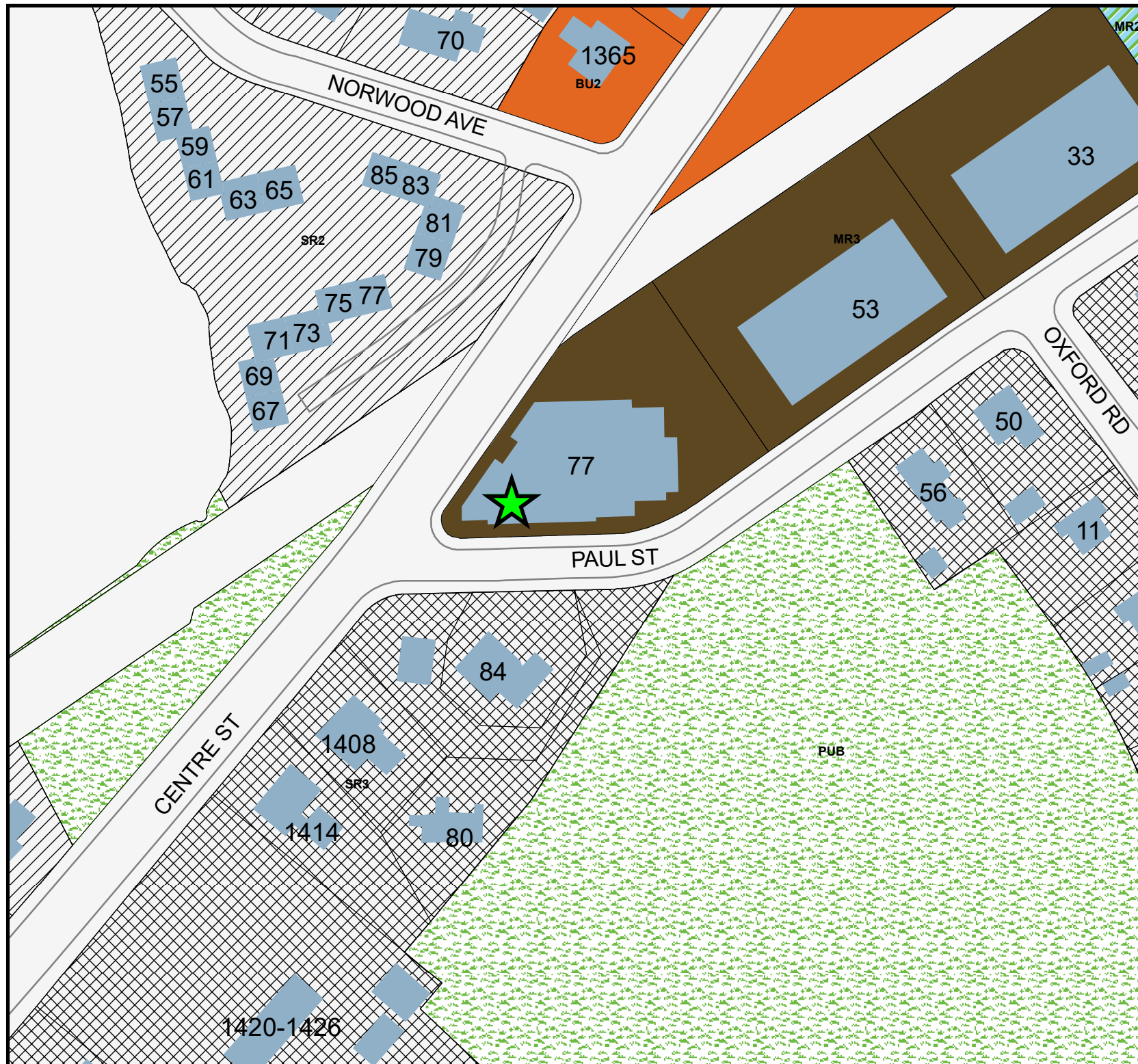
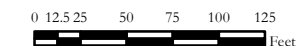
Zoning

-  Single Residence 2
-  Single Residence 3
-  Multi-Residence 2
-  Multi-Residence 3
-  Business 2
-  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 - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



ATTACHMENT B





Land Use

77 Paul St.,
1400 Centre St.

*City of Newton,
Massachusetts*

Land Use

Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Open Space

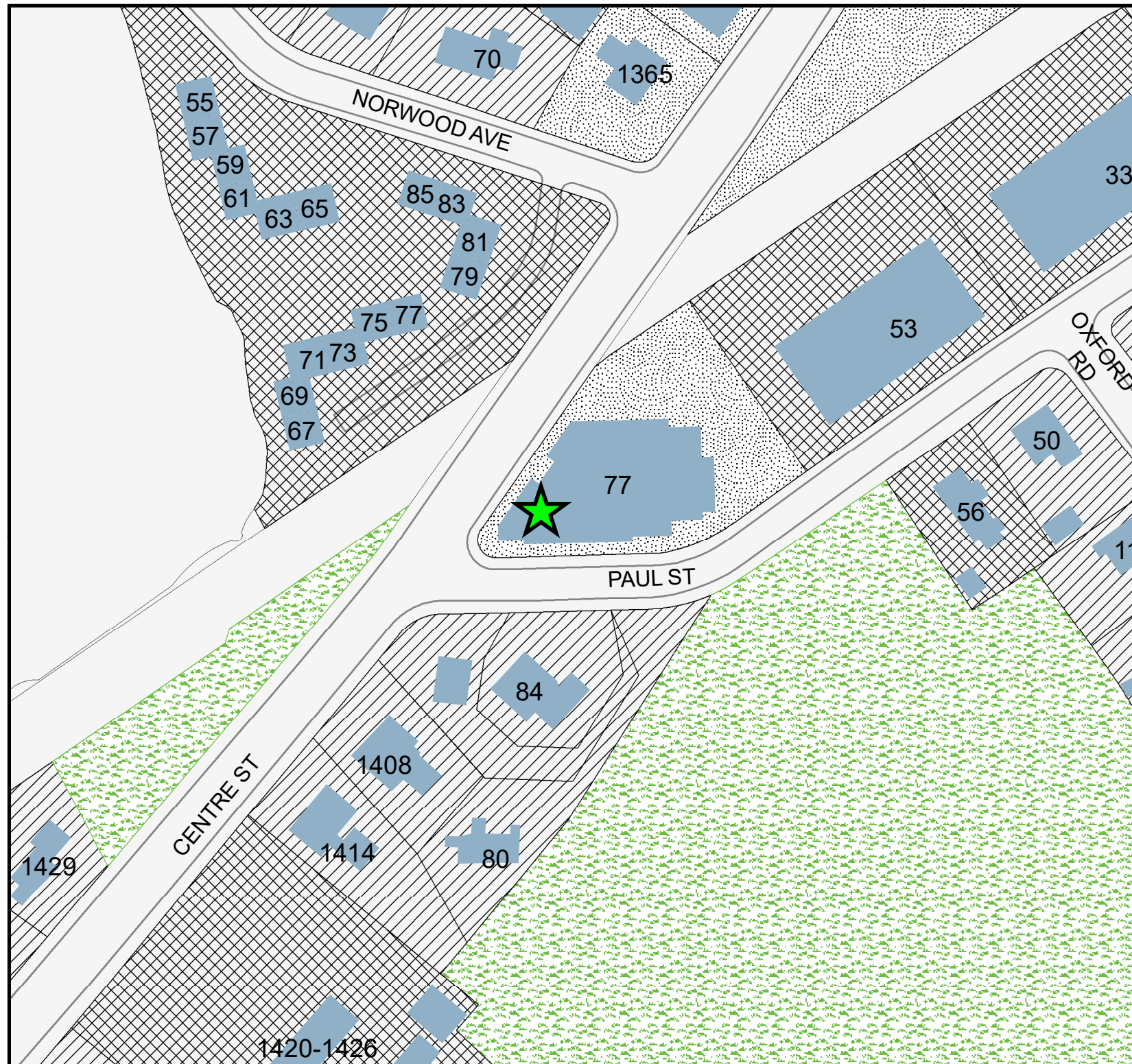


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield

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Feet

Map Date: September 30, 2019





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: August 19, 2019

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Jennifer Caira, Chief Planner for Current Planning

Cc: Mark F. Donato, Applicant
Stephen J. Buchbinder and Katherine B. Adams, Attorneys
Barney S. Heath, Director of Planning and Development
Jonah Temple, Assistant City Solicitor

RE: Request to allow an alteration to an existing nonconforming commercial structure, to amend Board Order #650-86(2), and to further extend nonconforming lot coverage and nonconforming parking in the front setback

Applicant: Mark F. Donato	
Site: 1400 Centre Street/77 Paul Street	SBL: 62013 0009
Zoning: MR3	Lot Area: 30,023 square feet
Current use: Commercial with parking garage	Proposed use: No change

BACKGROUND:

The property at 1400 Centre Street/77 Paul Street consists of a 30,023 square foot lot improved with a commercial office building constructed in 1987 by special permit. The special permit granted permission for the construction of an office building with an attached enclosed parking garage and surface parking. The petitioner seeks to amend the special permit to reorient one of the entrances to the parking garage and create an additional entrance to the garage via a second curb cut on Paul Street. The petitioner proposes to construct an addition housing an elevator connection to the two levels of the garage and to construct five additional surface parking stalls.

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

- Zoning Review Application, prepared Stephen J. Buchbinder and Katherine B. Adams, attorneys, dated 7/1/2019

- Area Plan, signed and stamped by Joseph R. Porter, surveyor, dated 6/18/2019
- Topographic Site Plan, Existing Conditions, signed and stamped by Joseph R. Porter, dated 4/26/2019
- Topographic Site Plan, Proposed Conditions, signed and stamped by Joseph R. Porter, dated 6/28/2019
- Parking Plan-Level 1, signed and stamped by Joseph R. Porter, dated 6/28/2019
- Parking Plan – Level 2, signed and stamped by Joseph R. Porter, dated 6/28/2019
- Special Permit #650-86

ADMINISTRATIVE DETERMINATIONS:

1. The existing nonconforming commercial office building is located in the Multi-Residence 3 zoning district, which prohibits commercial uses. The petitioner proposes to reorient one of the entrances to the site’s parking garage, create five surface parking stalls and construct an addition housing an elevator connecting the two levels of the parking garage. The petitioner requires a special permit to alter or extend the existing nonconforming commercial office use per sections 3.4.1 and 7.8.2.C.2.
2. Board Order #650-86 was granted to allow for the construction of the commercial structure and associated parking. In accordance with Condition #1 of the board order, the special permit must be amended to indicate the proposed changes to the structure and site.
3. The proposed alterations increase the lot coverage and reduce the open space. Section 3.2.2.A.3 states that where a density or dimensional control is not set forth in section 3.2 for a use granted by special permit, the most restrictive density or dimensional control applicable to such use in any district where the use is allowed as of right applies, unless otherwise required in the special permit by the City Council. Office uses are allowed by right in all of the commercial districts, excepting two mixed use districts. Only the Business 5 and Limited Manufacturing districts provide lot coverage requirements for the by right office use, both at 25% per sections 4.1.3 and 4.3.3. The existing lot coverage for the site is 44.3% and will further increase to 44.7%, requiring a special permit per sections 3.2.2.A.3 and 7.8.2.C.2.

There is no open space requirement in any district where office uses are allowed by right.

The alterations to the structure do not impact the existing setbacks, however the requirements for those setbacks are listed in the dimensional table below.

4. Board Order #650-86 required the petitioner to provide no fewer than 82 parking stalls on site. The petitioner currently provides 82 stalls and once the garage ramp is removed and the area is graded and striped, there will continue to be 82 parking stalls on site.
5. The five new surface parking stalls are located along Centre Street in the area of the existing ramp. The proposed stalls extend an existing parking area, located approximately 15 feet from Centre Street to as close as 10 feet, where section 4.2.3 requires a 20-foot front setback for parking in the MU1 district, which has the most restrictive dimensional requirement for parking setbacks. A special permit per sections 4.2.3 and 7.8.2.C.2 is required to extend the nonconforming parking within the front setback.

MR3 Zone	Required	Existing	Proposed
Lot Size ¹	40,000 square feet	30,023 square feet	No change
Frontage ²	0 feet	190.69 feet	No change
Setbacks <ul style="list-style-type: none"> • Front³ • Side⁴ • Rear⁵ 	37.07 feet 40 feet 20 feet	10.2 feet 45.7 feet N/A	No change No change No change
Max Number of Stories ⁶	2	3	3
Max Height ⁷	24 feet	37.07 feet	No change

1. Per §4.2.3 MU1
2. Per §4.1, §4.2 and §4.3 BU, MU, LM, MAN
3. Per §4.2.3 MU1, MU2
4. Per §4.3.3 LM
5. Per §4.2.3 MU1, MU2
6. Per §4.1.2.B.3, §4.1.3 BU1, BU2, BU3, BU4, BU5
7. Per §4.1.2.B.3, §4.1.3 BU1, BU2

1. See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Amend Board Order #650-86	S.P. per §7.3.3
§3.4.1 §7.8.2.C.2	To extend/alter the nonconforming office use	S.P. per §7.3.3
§3.2.2.A.3 §7.8.2.C.2	To further reduce nonconforming lot coverage	S.P. per §7.3.3
§4.2.3 §7.8.2.C.2	To further extend nonconforming parking in the front setback	S.P. per §7.3.3

Next Steps

Please contact a Planner by calling 617.796.1120 to obtain a copy of the Special Permit Application. If there have been any changes made to the plans since receipt of your Zoning Review Memorandum you must inform the Zoning Code Official to ensure additional relief is not required. You will need an appointment with a Planner to file your Special Permit Application. **Incomplete applications will not be accepted.**

The following must be included when filing a Special Permit Application:

2. Two (2) copies of the completed Special Permit Application (signed by property owner)
3. Filing Fee (see Special Permit Application)
4. Two (2) copies of the Zoning Review Memorandum
5. Plans (Thirteen sets signed and stamped by a design professional). Each set shall contain:
 - Site Plans showing existing and proposed conditions (including topography as applicable)
 - Architectural plans showing existing and proposed conditions (including façade materials)
 - Landscape plan (as applicable)
6. One (1) Floor Area Ratio (FAR) Worksheet, (signed and stamped by a design professional)
7. One (1) copy of any previous special permits or variances on the property (as applicable)
8. One (1) copy of any other review/sign-off (Historic, Conservation, Tree Removal, etc. as applicable)
9. Two (2) electronic copies of the application with all above attachments (USB or CD)

Copies of all plans shall either be 8.5 x 11 or 11 x 17, except as requested by staff

Special Permit Sign (\$20 fee)

Incomplete applications will delay the intake and review of your project.

Depending on the complexity of the project additional information may be requested to facilitate a full review of the application.

Has the proposed project been presented to and discussed with abutting property owners? Y/N