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Barney Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date:	June 16, 2017
Land Use Action Date:	July 18, 2017
City Council Action Date:	July 24, 2017
Expiration Date:	August 7, 2017

DATE: June 16, 2017

TO: City Council

FROM: Barney Heath, Director of Planning and Development
Michael Gleba, Senior Planner

SUBJECT: **Petition #101-17**, for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing detached truck storage structure into a residential unit and continue the office use in the front structure, constituting two uses on site at **46 FARWELL STREET**, Ward 3, Newtonville, on land known as SBL 21001 0014, containing approximately 8,529 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 5.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

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.



46 Farwell Street

EXECUTIVE SUMMARY

The property at 46 Farwell Street consists of a 8,529 square foot lot in a Multi-Residence 2 (MR2) zoning district. The property has two structures- a legally nonconforming (per Section 3.4.1 and a 1960 court decision) commercial office use within a former dwelling located in the front of the lot, and a detached two-story structure in the rear. The applicants propose to convert the detached rear structure into a dwelling unit while continuing the office use of the front structure.

Inspectional Services Department (ISD) records indicate that there has been a commercial use on the property since at least 1934. Historically, the detached rear structure, which was used to clean produce and later for vehicle and equipment storage, was only one story in height. However, at some undetermined point in time, that rear garage-like structure was modified into its current, two-story, brick clad form. This work was apparently done sometime after the issuance of a 2001 building permit related to repairing fire damage to the structure that explicitly stated that “no expansion” was allowed pursuant that permit.

As it currently exists, the rear structure is dimensionally nonconforming in several regards, including its side and rear setbacks; further, were it to be considered an accessory structure under the Newton Zoning Ordinance, at approximately 22 feet 10 inches it exceeds the maximum 22 feet in height allowed for an accessory structures with a sloping roof. However, it has been determined by the Commissioner of Inspectional Services that the rear structure has been in its current nonconforming configuration for at least ten years and, as such, is considered to be legally non-conforming under G.L. ch. 40A Section 7.

While a single family dwelling is an allowed use in a MR2 zoning district, the establishment of the proposed dwelling unit within the rear structure would result in two primary uses being located on one parcel, requiring a special permit to allow the expansion of the existing nonconforming commercial use so as to include the proposed residential use.

As the parking requirement for the proposed dwelling unit in the rear structure, namely, two stalls would be the same as its previous non-conforming use as a truck storage, it would not increase the number of stalls required on the site. However, the petitioner is proposing to “formalize” the previously existing nonconforming parking on the existing paved apron that spans the width of the property between the back of the sidewalk and the front of the front structure. As proposed, this area, which has apparently been used for informal parking for autos and various other vehicles associated with the site’s commercial use, would be striped with eight spaces that would be dimensionally nonconforming in several aspects, including their substandard dimensions (9 by 18 feet) and the lack of a buffer with the adjacent right of way (other paved driveway and parking areas on the sides and rear of the property would be removed and replaced with landscaping).

As such, the petitioner is seeking a special permit per §7.3.3 to extend the existing legally nonconforming use of the property so as to allow its use to include a single family dwelling in the rear structure and for relief from the requirements for parking facilities.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The site in the Multi-Residence 2 (MR2) district is an appropriate location for a single-family dwelling on the same lot as a commercial use (§7.3.3.C.1);
- Allowing a single-family dwelling on the same lot as a commercial use will adversely affect the neighborhood (§7.3.3.C.2);
- Allowing a single-family dwelling on the same lot as a commercial use 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);
- The proposed extension of the existing nonconforming commercial use so as to also include a single-family dwelling would be substantially more detrimental than the existing nonconforming use is to the neighborhood (§7.8.2.C.2)
- The proposed alterations to the existing nonconforming parking on the site would be substantially more detrimental than the existing nonconforming use is to the neighborhood (§7.8.2.C.2)
- Literal compliance with the requirements for parking facilities provided in §5.1 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 (§5.1.13).

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD:

A. Neighborhood and Zoning

The subject property is bounded to the north by Massachusetts Department of Conservation and Recreation (DCR) property along the Charles River. The neighborhood exhibits a mix of land uses. The properties to the east of the site are predominantly used for single-family dwellings, with exceptions including a mixed use property directly to the east and another on Anthony Road. The area directly to the south on the west side of Farwell Street is occupied several multi-family structures. The area to the west on the north and south sides of Farwell Street has a mix of commercial and industrial use; further to the west, on the west side of North Street, is Calvary Cemetery and a mix of single- and multi- family dwellings (**Attachment A**).

The site and all but one abutting properties are zoned Multi-Residence 2 (MR2), with the exception being a Limited Manufacturing (LM) parcel directly across Farwell Street to the southwest. Further afield, the neighborhood to the south is predominantly zoned for residential uses, with an MR2 district situated to the west, and a SR3 district to the east of Farwell Street. There is a seven-property

Manufacturing (MAN) district to the west and, to the west of North Street, a mix of Single Residence 2 (SR2), Multi-Residence 2 (MR2) and Public Use (PUB) zoned properties (**Attachment B**).

B. Site

The subject property at 46 Farwell Street consists of an MR2 zoned, 8,529 square foot lot, much of which is enclosed with fencing. It is improved with the two structures discussed herein.

Reflecting its history of commercial uses, much of the site is covered by asphalt and concrete. Much of the front yard is paved with asphalt, forming a long-existing informal parking area spanning the width of the property. Along the right (east side) of the parcel there is an asphalt driveway, with paving extending into the rear of the property up to the east façade of the rear structure. The area between the rear structure and Farwell Street is surfaced with pavers. Also, some concrete and/or other paved surfaces seemingly associated with previous uses of the property apparently encroach upon DCR property to the rear (north) that descends steeply downward to the Charles River.

III. PROJECT DESCRIPTION AND ANALYSIS:

A. Land Use

The applicant is requesting a special permit to convert the rear structure into a single-family dwelling unit while continuing to use the front structure for office use, resulting in two primary uses being located on the property.

The Planning Department notes that an elevation drawing of the rear structure submitted by the petitioner has a title block that identifies it as the "Rear Apartment Building." Given the five entrances to the structure, including two that lead directly to its basement, Planning staff has some concern that the building could be used for more than the one dwelling unit currently contemplated. As such, staff recommends that in the event the requested special permit is granted, any related order include a condition that the structure be occupied only as a single dwelling unit (with no commercial uses allowed in the structure), and that only one dwelling unit shall be allowed on the property so long as any commercial use is present on the lot.

B. Building and Site Design

The property at 46 Farwell Street consists of an 8,529 square foot lot in a Multi-Residence 2 (MR2) zoning district that, according to Inspectional Services Department (ISD) records, has been the site of commercial uses since at least 1934 which, per a 1960 court decision, is considered a legal nonconforming commercial use.

It is improved with two structures. The first is a 2,290 square foot, two-story former dwelling in the front of the lot, built circa. 1910, currently utilized as office space. The second structure is a 1,688 square foot, two-story, brick clad detached building in the rear left portion of the property. Historically, the latter was a one-story accessory structure used to clean vegetables, and, later for equipment and truck storage.

However, at some undetermined point in time, the garage-like structure was modified into its current, larger form. This work was apparently done after the issuance of a 2001 building permit related to the repair of fire damage to the structure and explicitly stated that "no expansion" was allowed pursuant that permit. The rear structure is dimensionally nonconforming in several regards, including its side and rear setbacks. Its rear setback is only 1.8 feet and left side setback may actually be a little as 6 inches owing to an enclosed "basement access" structure attached to the building (15 feet and 7.5 feet are required, respectively). Further, were it to be considered an accessory structure, at approximately 22 feet 10 inches the structure exceeds the maximum 22 feet in height allowed for an accessory structures with a sloping roof. However, based upon certain photographic evidence, it has been determined by the Commissioner of Inspectional Services that as the rear structure has been in its current two-story configuration for at least ten years and can be considered to be legally non-conforming under G.L. ch. 40A Section 7.

The petitioner proposes to convert the rear building into a dwelling unit while continuing the office use of the front structure. While such a residential use is a permitted use in an MR2 district, the creation of a dwelling unit on the property would result in two primary uses on one site, requiring a special permit to expand the existing nonconforming use.

The petitioner is not proposing to expand the footprint nor increase the floor area of either structure. With 4,608 square feet in the aggregate of countable floor space in the two structures (and including the second floor of the rear building), the property's floor area ratio (FAR) of 0.53 (the maximum allowed) will remain unchanged, as will the property's Lot Coverage. Similarly, the rear structure's dimensions would remain the same.

As the proposed site work includes the removal of an approx. 1,400 square feet asphalt driveway on the lot's right (east) side, as well as other paved surfaces on the property, the property's open space measurement will increase to 45.2%, less than the required 50%, but a significant improvement over the currently existing 18.8%.

Notably, asphalt and concrete pavement will also be removed from Department of Conservation (DCR) property between the rear (north) property line and the Charles River. This work would be done under an Order of Conditions issued by the Newton Conservation Commission on January 20, 2017 and is independent of the present

special permit petition.

C. Parking and Circulation

A single dwelling unit in the rear structure would not increase the parking requirement as the required two stalls would be the same, per Section 5.1.4, as the two parking spaces required for the previous non-conforming truck storage use (1 per 2500 SF plus 1 per 4 employees).

Parking on the site has apparently been provided by an existing asphalt driveway along the property's right (east) property line (which also provided vehicular access to the rear of the property) as well as in a paved "apron" along the length of the property's frontage (within the front and side setbacks) along Farwell Street within which trucks and cars associated with the site's legally non-conforming commercial use have informally parked in the absence of lined stalls.

The petitioner is proposing to remove the asphalt side driveway and replace it with a landscaped area. Eight lined parking stalls would then be located within the above-referenced "apron" located between the front structure and the street. A site plan submitted to the Planning Department shows that the spaces (two of which would be dedicated to use by the dwelling unit) would each measure 9 by 18 feet and be positioned perpendicular to the front property line, directly adjacent to the back of the sidewalk. Of the eight spaces, four would be directly in front of, and only 2.5 feet from, the front structure, and one would be located within the left side setback. Given these substandard dimensions and other nonconformities, including their location directly adjacent to a right of way, i.e., without the required five foot buffer, a special permit is required.

The Planning Department notes that the proposed scheme would organize the presently informal nature of parking on the site (which apparently dates back several decades and may be considered "grandfathered"), and remove excess paving on the site. However, staff does recommend that in the event the requested special permit is granted, the petitioner be required to install some form of physical barrier that would prevent the entry of vehicles beyond the existing paved apron, i.e., into the sides and rear of the property, and that this be made a condition of any related order.

D. Landscaping

The petitioner proposes to, as referenced above, remove asphalt and concrete paving that is present on much of the property, replacing it with lawn and landscaping. The petitioner is also planning to remove concrete decks and structures encroach on to the adjacent Massachusetts Department of Conservation and Recreation (DCR) lands along the Charles River directly to the north of the subject property under the terms of an Order of Conditions issued by the Conservation Commission.

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 the following relief:

- Special permit per §7.3.3 to extend the existing nonconforming use (§3.4.1; §7.8.2.C.2)
- Special permit per §7.3.3 for relief from the requirements for parking facilities (§5.1; §7.8.2.C.2).

B. Engineering Review

No engineering review is required at this time. The Engineering Division of Public Works will review this project for conformance with the City of Newton Engineering Standards prior to the issuance of a building permit and certificate of occupancy in the event the requested special permit is granted.

C. Fire Department

Planning staff recommends that in the event the present petition is granted, the petitioner is required to obtain all relevant approvals from the Fire Department before any building permit and/or certificate of occupancy is issued, and that this obviously be a condition of any related order.

D. Newton Historical Commission

It is not believed that the modifications to the rear structure that transformed it from a one-story garage-type building to the current two-story structure were reviewed by the NHC.

E. Conservation Commission

Conservation Commission staff has stated that the proposed project has been permitted by the Conservation Commission inclusive of the proposed work on the subject property and adjacent DCR land would represent a “tremendous benefit to the area in terms of public land recovery and ecological restoration” as it would return the “state land to the public domain and restoring that land to a stable, re-naturalized slope with native vegetation” and the work on the subject property will entail the removal of “large areas that are currently paved and installing landscaping and green stormwater infrastructure.”

V. PETITIONER’S RESPONSIBILITIES

The petitioner should be prepared to address the various issues related to this application discussed above.

ATTACHMENTS:

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

Land Use



46 Farwell St.

*City of Newton,
Massachusetts*

Legend

Land Use

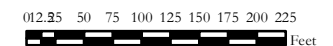
Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Commercial
-  Industrial
-  Mixed Use
-  Open Space
-  Nonprofit Organizations
-  Vacant Land

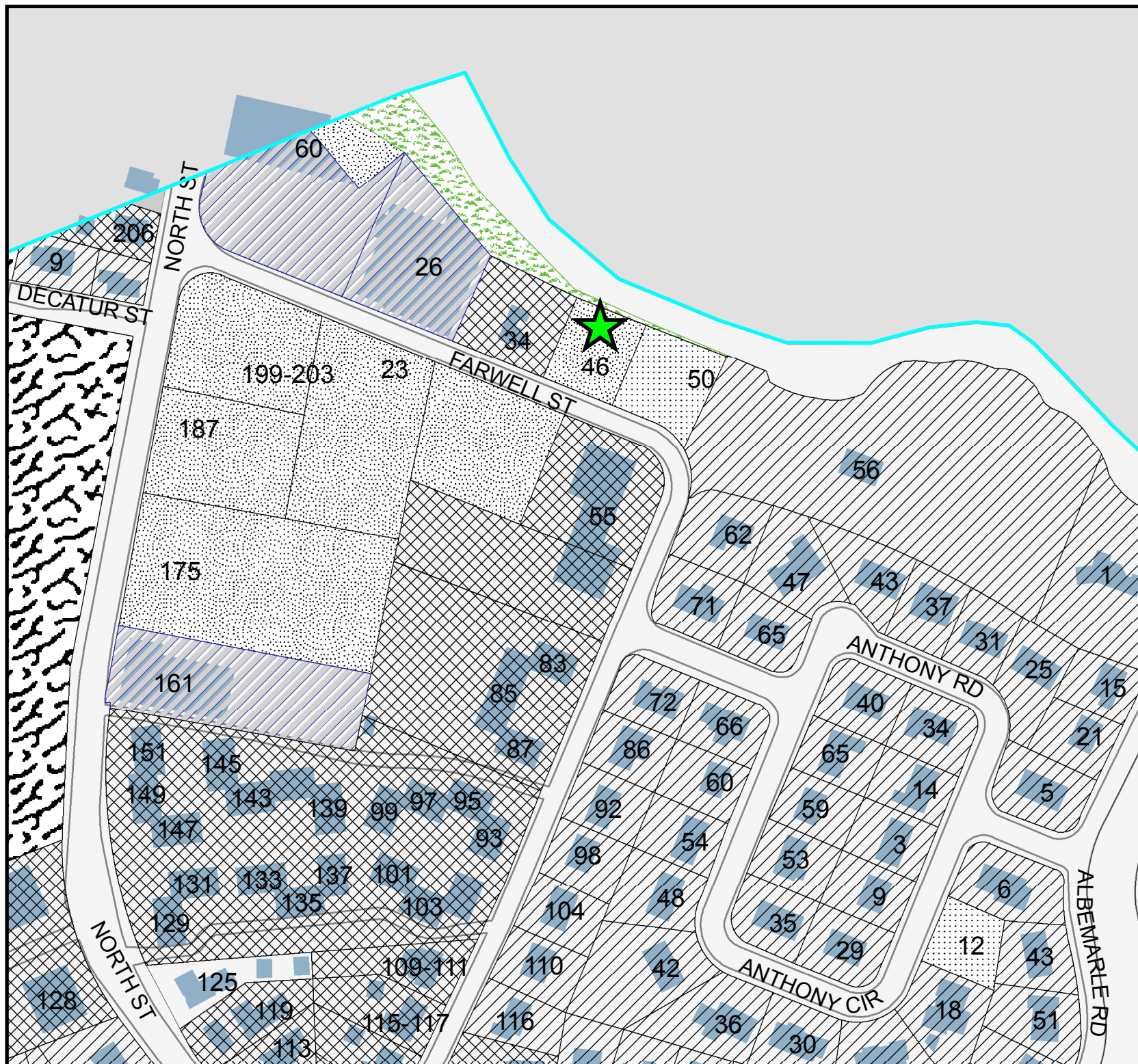


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

CITY OF NEWTON, MASSACHUSETTS
Mayor - Setti D. Warren
GIS Administrator - Douglas Greenfield



Map Date: May 01, 2017



ATTACHMENT C



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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: April 10, 2017

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Laurence Lee, attorney
Brian McDonald, Trustee, Continuous Improvement Realty Trust
Barney S. Heath, Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to extend an existing nonconforming use and relief from the requirements for parking facilities as needed

Applicant: Continuous Improvement Realty Trust	
Site: 46 Farwell Street	SBL: 21001 0014
Zoning: MR2	Lot Area: 8,529 square feet
Current use: Office	Proposed use: Office and residential

BACKGROUND:

The property at 46 Farwell Street consists of a 8,529 square foot lot in the MR2 zoning district. Until recently, the property had a legally nonconforming commercial use consisting of an office in the front (formerly a dwelling) and a detached truck storage structure and yard. Records in ISD indicate that there has been a commercial use on the property since at least 1934, when the detached rear structure was used to clean vegetables, and then later for equipment and truck storage. A 1960 court decision found the trucking company to be a legal nonconforming use. The applicant is requesting a special permit to convert the detached truck storage structure into a dwelling unit, and to continue to use the front structure for an office. Although the proposed residential use is otherwise permitted as of right in the MR2 zoning district, the co-existence with the existing nonconforming office use of the primary building constitutes two primary uses on the site, requiring a special permit from the City Council.

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

- Zoning Review Application, prepared by Laurence Lee, attorney, dated 2/16/2017
- Existing conditions plan, prepared by D. O'Brien Land Surveying, dated 10/17/2016, revised 12/19/2016
- Determination Letter, signed by John Lojek, Commissioner of Inspectional Services and Jane Santosuosso, Chief Zoning Code Official, dated 9/10/2015
- Certified Plot Plan, signed and stamped by Joseph R. Porter, dated 12/9/2015
- Order of Conditions, City of Newton, dated 1/20/2017
- Site Plans, prepared by Pate Landscape Architecture, dated 12/23/2016

ADMINISTRATIVE DETERMINATIONS:

1. The office use of the existing 1910 primary structure is a legal nonconforming commercial use in the Multi Residence 2 zoning district per Section 3.4.1 and the 1960 decision. The applicants propose to convert the rear detached accessory building into a dwelling unit. While a residential use is allowed in the MR2 district, the addition of the dwelling unit would result in two primary uses on one site, expanding the existing nonconforming use and requiring a special permit.
2. The existing parking is nonconforming in several regards. The applicant does not intend to modify the parking facility, nor will the proposed use increase the parking requirement. To the extent that the City Council determines that a waiver from any of the parking facility requirements of Section 5.1 is necessary, the applicant requests such relief so as to legitimize the existing nonconforming parking.

MR2 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	8,529 square feet	No change
Frontage	70 feet	94 feet	No change
Setbacks - Primary			
• Front	25 feet	18 feet	No change
• Side	7.5 feet	21.6 feet	No change
• Rear	15 feet	25.9 feet	No change
Setbacks – Accessory			
• Front	25 feet	62 feet	No change
• Side	5 feet	4.7 feet	No change
• Rear	5 feet	1.8 feet	No change
Max Lot Coverage	30%	31.5%	No change
Min. Open Space	50%	18.8%	45.2%

See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
§3.4.1 §7.8.2.C.2	Request to extend the existing nonconforming use	S.P. per §7.3.3
§5.1 §7.8.2.C.2	Request for relief from the requirements for parking facilities	S.P. per §7.3.3