### CITY OF NEWTON, MASSACHUSETTS



City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449 Telephone: (617) 796-1065 TDD/TTY: (617) 796-1089 Fax: (617) 796-1086

www.ci.newton.ma.us

### **ZONING BOARD OF APPEALS**

**To**: Zoning Board of Appeals Members

From: Adrianna Henriquez, Clerk

**Date:** April 22, 2021

Subject: Materials for April 28, 2021 Public Hearing

Hello,

Please see the following supplemental materials for the upcoming hearing on April 28, 2021 Public Hearing. The following board members are scheduled to sit: Brooke Lipsitt (Chair), William McLaughlin, Treff LaFleche, Michael Rossi, Stuart Snyder and Elizabeth Sweet (Alternate).

- 1. April 28, 2021 Revised Agenda
- 2. 55 Hagen Road Deed
- 3. 55 Hagen Road Revised Zoning Memorandum dated April 21, 2021
- 4. Letter dated April 17, 2021 from Paula Rohrlick of 73 Davis Avenue
- 5. Memorandum from Planning and Development dated April 21, 2021
- 6. Memorandum from the Urban Design Commission dated April 21, 2021
- 7. Letter from City of Newton's Sustainability Team received April 21, 2021

Thank you,

Adrianna Henriquez

ahenriquez@newtonma.gov | (617) 796 1133

# Ruthanne Fuller

Mayor

### CITY OF NEWTON, MASSACHUSETTS

City Hall 1000 Commonwealth Avenue, Newton, MA 02459-1449 Telephone: (617) 796-1060 Fax: (617) 796-1086

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### **ZONING BOARD OF APPEALS**

Adrianna Henriquez, Board Clerk

The Zoning Board of Appeals will hold this meeting as a virtual meeting on Wednesday, April 28, 2021 at 7:00 pm. No in-person meeting will take place at City Hall.

To view and participate in this virtual meeting on your phone, download the "Zoom Cloud Meetings" app in any app store or at <a href="www.zoom.us">www.zoom.us</a>. At the above date and time, click on "Join a Meeting" and enter the following meeting ID: 842 0705 1653.

To view and participate in this virtual meeting on your computer, at the above date and time, go to <a href="https://www.zoom.us">www.zoom.us</a>, click "Join a Meeting" and enter the following Meeting ID: 842 0705 1653. Alternatively, the direct Zoom link to the meeting is https://us02web.zoom.us/j/84207051653

To dial into the meeting via telephone, call in by dialing 1-646-558-8656 and use the Meeting ID: 842 0705 1653#

### AGENDA Revised April 20, 2021

A public hearing of the Newton Zoning Board of Appeals will be held virtually via Zoom on Wednesday, April 28, 2021 at 7:00 p.m. on the following petitions:

- 1. #01-21 Benjamin S. & Anna H. Moll of 11 Isabella Street, Boston, Massachusetts, requesting a variance from Section 3.1.3 & Section 7.6 of the Newton Zoning Ordinance to amend a previously granted variance and to exceed the maximum lot coverage. The subject property consists of a 11,879 square foot lot located at 266 Highland Avenue, Newton, Massachusetts and is located in a Single-Residence 1 (SR-1) District.
- **2.** #02-21Steve and Ani Days of 55 Hagen Road, Newton, Massachusetts requesting a variance from Section 3.1.3 & Section 7.6 of the Newton Zoning Ordinance to allow a 23.2 foot front setback. The subject property consists of a 14,101 square foot lot located at 55 Hagen Road, Newton, Massachusetts and is located in a Single-Residence 3 (SR-3) District.
- 3. #09-19(2) Dunstan East, LLC, applying to the Zoning Board of Appeals, pursuant to Massachusetts General Laws Chapter 40B, to amend and make substantial changes to the Comprehensive Permit previously granted to the applicant on July 8, 2020 for a project located in the Business 2 Zoning District at 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts containing approximately 3.58 acres. The applicant proposes to incorporate the 6,983 square foot parcel located at 1157 Washington Street into the development parcel, demolish the building located at 1149 Washington Street, and increase the height of Building 3. The revised project will contain a 302-unit residential development,

which includes 64 new units in Building 3, and 76 of the total number of units will be affordable. The revised project will contain approximately 5,821 square feet of retail space, and 338 parking stalls (42 of which are new).

**4.** Review and approval of minutes for February 24, 2021 meeting.

The location of this meeting/event is wheelchair accessible and Reasonable Accommodations will be provided to persons with disabilities who require assistance. If you need a Reasonable Accommodation, please contact the city of Newton's ADA/Section 504 Coordinator, Jini Fairley, at least two business days in advance (2 weeks for ASL or CART) of the meeting/event: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

55 Hagen Rd, Justen



Bk: 62395 Pg: 438 Doc: DEED Page: 1 of 2 08/05/2013 03:15 PM

MASSACHUSETTS EXCISE TAX Southern Middlesex District ROD # 001 Date: 08/05/2013 03:15 PM Ctf # 191103 00078 Doc# 00171002 Fee: \$4,012.80 Cons: \$880,000.00

axa Magaret H. Liebeil

Margaret Heap Lieber Trustee of the MML Family Nominee Trust, under Declaration of Trust dated June 30, 1999, recorded in Middlesex South District Registry of deeds, in Book 30386, Page 562. For consideration of Eight Hundred Eighty Thousand and 00/100 Dollars (\$880,000.00), grants to Weireng Dai and Ani Days, Husband and Wife, as Tenants by the Entirety, of 4 Berwyn Lane, West Hartford, Connecticut.

With quitclaim covenants:

The land with the buildings thereon situated in that part of Newton known as Newton Centre and being designated and shown as Lot A2 on a "Plan of Land in Newton Centre, Massachusetts dated December 17, 1940, Everett M. Brooks, C.E.", recorded with Middlesex South District Registry of Deeds in Book 6463, Page 484.

Said Lot A2 is bounded according to said plan as follows:

**NORTHWESTERLY** 

by Hagen Road by a curved line measuring eighty-five and

92/100 (85.92) feet;

NORTHERLY

by said Hagen Road, sixty-nine (69) feet;

**EASTERLY** 

by Lot A1 on said plan, one hundred nineteen and 04/100

(119.04) feet;

SOUTHERLY

by land now or formerly of Hurley, as shown on said plan fifty-

five and 90/100 (55.90) feet;

SOUTHEASTERLY

by said land now or formerly of Hurley, eleven (11) feet; and

SOUTHWESTERLY

by Lot 73, indicated on said plan, one hundred twenty-nine and

81/100 (129.81) feet.

Containing 14,101 square feet of land, according to said plan.

Grantor hereby waives any and all rights of Homestead in and to the premises conveyed hereby and warrants and represents that there are no other persons entitled to any rights of Homestead under G.L. c.188 in the premises conveyed by this Quitclaim Deed.

> Scott D. Kriss LLC 15 Crawford St. Needham, MA 02494

For Grantor's title, see deed from Margaret H. Lieber to the Grantor dated June 30, 1999 and recorded with said Deeds in Book 30386 Page 567.

Margaret H. Lieber, as Trustee as
Aforesaid and not individually

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On this 3 of day of Tively 2013, before me, the undersigned notary public personally appeared Margaret Heap Lieber, as Trustee as aforesaid, proved to me through satisfactory evidence of identification, which were ( insert type of ID personally known to me presented ), to be the person whose name is signed on the preceding or attached document and acknowledge to me that she signed it voluntarily for its state purpose.

Notary Public

My Commission Expires:

DAVID E. GROSSMAN
Notary Public
COMMONWEATH OF MASSACHUSETTS
My Commission Expires
September 28, 2018



### City of Newton, Massachusetts

Department of Planning and Development 1000 Commonwealth Avenue Newton, Massachusetts 02459 Telephone (617) 796-1120 Telefax (617) 796-1142 TDD/TTY (617) 796-1089 www.newtonma.gov

Barney S. Heath Director

### **ZONING REVIEW MEMORANDUM**

Date: April 21, 2021

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Neil Cronin, Chief Planner for Current Planning

Cc: Steve Days, Applicant

Barney S. Heath, Director of Planning and Development

Jonah Temple, Associate City Solicitor

RE: Request for a variance to allow a 23.2-foot front setback

Applicant: Steve Days			
Site: 55 Hagen Road	<b>SBL:</b> 81042 0005		
Zoning: SR3	Lot Area: 14,101 square feet		
Current use: Single-family dwelling	Proposed use: No change		

### **BACKGROUND:**

The property at 55 Hagen Road consists of a 14,101 square foot lot improved with a single-family residence constructed in 1910. The petitioner constructed a cantilevered covered entrance with a byright building permit meeting the required front setback. The petitioner proposes to extend the roofline of the covered entrance two feet toward the street, requiring a variance from the front setback requirement

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

- Zoning Review Application, prepared by Steve Days, applicant, dated 2/4/2020
- Proposed Site Plan, prepared by Peter Nolan, surveyor, dated 2/3/2021
- Architectural Plans and Elevations, signed and stamped by Richard Volkin, engineer, dated 11/12/2020

### **ADMINISTRATIVE DETERMINATIONS:**

1. The petitioners made extensive by-right renovations to the dwelling in 2017, including the addition of a cantilevered covered entrance. The petitioner now seeks to extend the covered entry by two feet and add decorative columns, encroaching into the front setback. The proposed front setback is 23.2 feet where 25 feet is required per section 3.1.3. A variance per section 7.6 is required.

SR3 Zone	Required	Existing	Proposed
Lot Size	7,000 square feet	14,101 square feet	No change
Frontage	70 feet	154.92 feet	No change
Setbacks			
• Front	25 feet	25.3 feet	23.2 feet
• Side	7.5 feet	18.7 feet	No change
• Rear	15 feet	55.6 feet	No change
Max Number of Stories	2.5	2.5	No change
Max Height	36 feet	32.85	No change
Max Lot Coverage	30%	14.6%	No change
Min. Open Space	50%	71.2%	No change

1. See "Zoning Relief Summary" below:

Zoning Relief Required			
Ordinance		Action Required	
§3.1.3, §7.6	Request for a variance to allow a front setback of 23.2 feet	Variance per §7.6	

### 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 copes 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

### Parking and traffic issues with Dunstan East

### Paula Rohrlick <prohrlick@gmail.com>

Sat 4/17/2021 11:52 AM

To: Dunstan East <dunstaneast@newtonma.gov>

[DO NOT OPEN links/attachments unless you are sure the content is safe. ]

As a near neighbor to the proposed Dunstan East development, I'm concerned that the development is way out of scale for the neighborhood, with its six-story buildings, and that adding even more units will adversely affect the neighborhood.

Specifically, the amount of onsite parking planned (basically 1 car maximum per unit) is insufficient. The small neighborhood side streets (some very narrow, with no sidewalks in places) will inevitably get the parking spillover along with much more traffic. Encouraging everyone to use public transportation is a worthy goal but not realistic given the recent cutbacks to commuter rail and bus lines.

I hope you'll consider the project's impact on the neighborhood and parking and traffic issues, particularly now that even more units are planned.

Paula Rohrlick 73 Davis Ave, West Newton, MA 02465



### City of Newton, Massachusetts

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Telephone (617) 796-1120

Department of Planning and Development 1000 Commonwealth Avenue Newton, Massachusetts 02459

Barney S. Heath Director

Ruthanne Fuller Mayor

### PUBLIC HEARING MEMORANDUM

DATE: April 21, 2021 **MEETING DATES:** April 28, 2021

TO: **Zoning Board of Appeals** 

FROM: Barney Heath, Director of Planning and Development

Jennifer Caira, Deputy Director of Planning and Development

Michael Gleba, Senior Planner

COPIED: Mayor Ruthanne Fuller

City Council

SUBJECT: **Application #09-19(2)** Dunstan East, LLC, applying to the Zoning Board of Appeals,

> pursuant to Massachusetts General Laws Chapter 40B, to amend and make substantial changes to the Comprehensive Permit previously granted to the applicant on July 8, 2020 for a project located in the Business 2 Zoning District at 1149, 1151, 1169, 1171-1173, 1179, and 1185 Washington Street, 12, 18, 24, and 25 Kempton Place, and 32 and 34 Dunstan Street in Newton, Massachusetts containing approximately 3.58 acres. The applicant proposes to incorporate the 6,983 square foot parcel located at 1157 Washington Street into the development parcel, demolish the building located at 1149 Washington Street, and increase the height of Building 3. The revised project will contain a 302-unit residential development, which includes 64 new units in Building 3, and 76 of the total number of units will be affordable. The revised project will contain approximately 5,821 square feet of retail space, and 338

parking stalls (42 of which are new).

The purpose of this memorandum is to provide the Zoning Board of Appeals and the public with technical information and planning analysis which may be useful in the comprehensive permit decision-making process. 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 Zoning Board of Appeals will want to consider in its discussion at a subsequent Public Hearing/Working Session.



"Dunstan East"

### **EXECUTIVE SUMMARY**

On July 8, 2020 the Zoning Board of Appeals (ZBA) granted a comprehensive permit to Dunstan East LLC (the "Permit Holder") authorizing a mixed-use development known as "Dunstan East."

As approved, the development would entail the construction of three buildings containing, in the aggregate, 234 residential units (including 59 Affordable Units) and 8,318 square feet of retail space, and 294 parking stalls. Also included in the approved development plan is an approximately 8,222 square foot existing office building at 1149-1151 Washington Street.

In February of 2021, subsequent to the grant of the comprehensive permit, the Zoning Board of Appeals approved 'insubstantial changes" to the proposed structures known as "Building 1" and "Building 2," both located to the west of Kempton Place, which increased the number of residential units by four, to 238, and the number of parking stalls by two, raising the total to 296. The amount of retail space was reduced by 2,497 square feet to 5,821 square feet.

The Permit Holder is now proposing to expand the project site with the inclusion of 1157 Washington Street which has been acquired by what has been identified as an "affiliate of the Permit Holder." Incorporation of this parcel into the project site would increase the lot area of the project by approximately 6,983 square feet.

The Permit Holder is requesting approval of changes indicated by the submitted application materials, that it has characterized as "substantial" to the development. It now proposes to demolish the existing building on the recently acquired 1157 Washington Street as well as that located on the adjacent 1149-1151 Washington Street. The latter building currently contains office space, and its demolition would eliminate that use from the project.

The Permit Holder now seeks to develop the portion of the to-be expanded site east of Kempton Place with an expanded Building 3.

As proposed, these modifications would increase the residential square footage of the development by 71,485 gross square feet. The proposed new "Building 3" would include a sixth floor toward Washington Street, but its total height would be lower than the 81.10 foot approved by the comprehensive permit. Additional street level residential units would be located along the proposed Brook Drive along the northern portion of the site.

As designed, the number of units in the revised Building 3 would be almost twice that proposed for the currently approved Building 3, with the number increasing by 64, from 68 to 132. The changes would raise the number of residential units in the development to 302.

The number of proposed parking stalls has been increased by 42, which would enable the project to have a 1:1 residential unit-parking stall ratio.

The Applicants have submitted a list of waivers requested for this project that is attached hereto as **Exhibit 1.** 

### I. ZONING BOARD OF APPEALS

The ZBA is required to render a decision, based on a majority vote, within forty (40) days after termination of the public hearing, unless such time period is extended by written agreement of the ZBA and the applicant. The hearing is deemed terminated when all public testimony has been received and all information requested by the ZBA has been submitted.

The ZBA may dispose of the application in one of the following ways:

- approve a comprehensive permit on the terms and conditions set forth in the application;
- deny a comprehensive permit; or
- approve a comprehensive permit with conditions.

### II. REVIEW CRITERIA

Pursuant to Massachusetts General Laws, Chapter 40B, the comprehensive permit process is designed to increase the supply and improve regional distribution of affordable housing by allowing a limited suspension of existing local regulations and expediting the local approval process for the construction of such housing. The general principle governing consideration of a comprehensive permit application is that the ZBA's decision must be "consistent with local needs."

### **Statutory Safe Harbors**

If the City has created its fair share of affordable housing by meeting one of the statutory safe harbors, the ZBA's decision will be unassailable as a matter of law. As a result, the decision to deny a comprehensive permit or to impose conditions will automatically qualify as "consistent with local needs," and must be upheld on appeal, if the City has achieved one of the following criteria as of the date of the project's application: (1) more than 10% of housing units are utilized for affordable housing; (2) 1.5% or more of the land area zoned for residential, commercial or industrial use contains affordable housing; or (3) the proposed project would lead to construction of affordable housing on sites comprising more than .03% of the total land area zoned for residential, commercial or industrial use or ten acres, whichever is larger, in one calendar year.

As of January 7, 2020, the City had not met any of the safe harbor criteria. Planning staff will provide an updated calculation to the ZBA as of the date of filing.

### Standard of Review

If one of the statutory safe harbors described above has not been met, the ZBA must engage in a balancing test that weighs the regional need for affordable housing against local health, safety, open space, and site and building concerns. The denial of a comprehensive permit will be "consistent with local needs" only when a valid local concern outweighs the regional

need for affordable housing. Such local concerns should be verifiable concerns about the health and safety of residents of the proposed housing, surrounding neighborhood or community as a whole, or serious building and site design deficiencies that cannot be rectified with conditions of approval.

In the case of conditional approval of a comprehensive permit, the conditions or requirements imposed should not make the building or operation of the project uneconomic. However, conditions that do make the project uneconomic may still be imposed if they are reasonable and necessary to protect valid health, safety, design, environmental or open space concerns.

### III. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

### A. Neighborhood and Zoning

The subject property has frontages on several streets, Washington Street to the south, Dunstan Street to the west, and Kempton Place which largely bisects the site

The Massachusetts Turnpike is south of (and parallel to) Washington Street, and the West Newton Armory abuts the property to the east, as does an approximately 120 unit assisted living facility. The surrounding neighborhood is a mix of commercial and residential uses, with the former predominating along Washington Street and latter to the north along Dunston and Watertown streets. The residential properties are a mix of one-, two- and multi- family dwellings, including a six-unit dwelling directly to the north of the property across Cheesecake Brook (Attachment A).

The site and surrounding area to the east and west along the north side of Washington Street are within a Business 2 (BU2) district. The area immediately to the north is zoned Multi-Residence 1 (MR1) and a Single Residence 3 (SR3) zoning district is located to the north of Watertown Street (Attachment B).

### B. Site

The property covered by the granted comprehensive permit is comprised of twelve lots totaling 138,142 square feet of land on two blocks separated by Dunstan Place currently improved with a mix of residential and commercial (including office and retail spaces) structures and paved parking areas (one lot is vacant). The Property slopes downward approximately 18 feet from Washington Street to Cheesecake Brook to the north. There are some lawn area and mature trees, generally on the residentially used parcels. Vehicular access to the Property is provided by numerous curb cuts along Washington Street, Dunston Street, and Kempton Place. The Permit Holder now seeks to add to the site an approximately 6,983 square foot commercial property at the northeast corner of Washington Street and Kempton Place, 1157 Washington Place, that is surrounded by parcels currently included in the approved site plan.

### IV. ANALYSIS

### A. <u>The Health and Safety of the Residents of the Proposed Housing and the Current</u> Residents of the City

### 1. Structural soundness of the proposed buildings

The Planning Department has no concerns with the structural soundness of the proposed buildings at this time. Prior to the issuance of any building permits, the applicant will be required to file final construction drawings and details, for review and approval by the Fire Department, Inspectional Services Department, and the Engineering Division of Public Works.

### 2. Adequacy of sewage disposal

This aspect of the proposal will be reviewed by the City's Engineering Division, and the Planning Department recommends that a consultant peer reviewer also be engaged to fully and appropriately assist the ZBA in its review of the proposed project's utilities, including the adequacy of its sewerage disposal system.

### 3. Adequacy of handling water runoff

The approved Comprehensive Permit included numerous stormwater improvements and improvements to Cheesecake Brook. To the extent that changes are being made the revised proposal will be reviewed by the City's Engineering Division, Conservation staff within the Planning Department and the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately assist the ZBA in its review of the proposed project.

### 4. Adequacy of fire protection

This aspect of the proposal will need to be reviewed by the City's Fire Department. Should the Board choose to approve this project, final plans will need to be reviewed and approved by the Fire Department prior to the issuance of any building permits.

### 5. Adequacy of handling traffic generated by the project on adjacent streets

The applicant has submitted a Transportation Impact and Access Study updated to reflect the proposed expansion of the project. Based upon its initial review of this document, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review this aspect of the proposal so as to assist the ZBA in its review of the proposed project. The Project will also be reviewed by City Transportation staff.

## 6. <u>Proximity of the site to industrial activities which might affect the health of the proposed residents</u>

The site is not proximate to any known industrial activities that may affect the health

of future residents to the Planning Department's knowledge at this time.

### B. Site and Building Design

The Permit Holder is requesting approval of changes to the development that it has characterized as "substantial." It is now proposing to expand the project site with the inclusion of the approximately 6,983 square foot property at 1157 Washington Street. The existing structure on that property, currently used for an auto service business, would be demolished, as would that located on the adjacent 1149-1151 Washington Street. The latter building, which is slated to be retained under the approved comprehensive permit, currently contains office space, and its demolition would eliminate that use from the project.

As now proposed Building 3, a residential building located on the portion of the expanded site east of Kempton Place, would be expanded. As presented, no substantial changes are apparently proposed for Building 1 or Building 2.

The proposed new Building 3 would include a sixth floor toward Washington Street, but its total height would be lower than the 81.10 foot approved by the comprehensive permit. Also, additional street level residential units would be located along the proposed Brook Drive along the northern portion of the site.

These modifications would increase the residential square footage of the development by 71,485 gross square feet, and the number of units in the expanded Building 3 would be almost twice that in the currently approved Building 3, with the number increasing by 64, from 68 to 132. The changes would raise the total number of residential units in the development to 302.

As outlined in the "Affordable Housing Matrix' dated April 8, 2021 provided by the applicant 76 of the 302 units (25%) would be "Affordable Units," with eight deed restricted to remain permanently affordable to those earning up to 50% of Area Median Income (AMI), and sixty-eight to households at up to 80% percent of Area Median Income (AMI). The applicant is required to provide 25% of units at 80% AMI and as part of the previously approved Comprehensive Permit agreed to further limit eight of those units to households earning up to 50% AMI. The proposed revised project does not include any changes to the previous commitment for eight units at 50% AMI.

Also, the number of proposed parking stalls has been increased by 42, which would enable the project to have a 1:1 residential unit-parking stall ratio.

The Planning Department notes that the applicant should consider proposing potential Traffic Demand Management (TDM) measures tailored to address traffic impacts that would be expected to result from the proposed expanded development.

The Planning Department also notes the lack of retail space proposed for the new Building 3. It recommends that the applicant explore the feasibility of including such use, or other active public uses along the ground level on Washington Street.

### Height, bulk and placement of the proposed buildings, accessory structures and improvements

As detailed in the attached list of required waivers submitted by the applicant, the Project would considerably exceed several applicable zoning controls and regulations in its BU2 zoning district. Therefore, based upon this and its initial review of the project application, the Planning Department will review the proposal as it relates to the Washington Street Vision Plan.

The Planning Department recommends that the applicant present the proposed development to the Urban Design Commission (UDC) for its review and comment.

Staff for the Newton Historical Commission (NHC) has indicated that, finding no historical significance, the commission signed off on the proposed demolition of 1157 Washington Street.

### 2. Physical characteristics of the surrounding land

As referenced above, Washington Street and the Massachusetts Turnpike is south of the site and Cheesecake Brook is located along the northern boundary of the site and the West Newton Armory abuts the property to the east, as does an approx. 120 unit assisted living facility. The surrounding neighborhood is developed with a mix of commercial and residential uses, with the former predominating along Washington Street and latter to the north along Watertown Street. The residential properties are a mix of one-, two- and multi- family dwellings, including a six-unit dwelling directly to the north of the property across Cheesecake Brook.

### 3. Adequacy of access to the site and adequacy of parking arrangements

Vehicular access to the Project would be provided via the existing Washington Street, Dunstan Street and Kempton Place, as well as a new street, identified as "Brook Road", which would be constructed along the project's northern boundary, just south of, and parallel to, Cheesecake Brook, and link Dunstan Street and Kempton Place. Sidewalks would be provided along the streets around and within the project site

The proposed modifications to the previously approved site plan would have several effects on parking. Seventy spaces would be located under the new Building 3 (the previously approved smaller Building 3 was designed to have 32 stalls). Five parking stalls associated with the property at 1149-1151 Washington Street would be eliminated, while 16 "on-street" stalls would be located on Kempton Place. As such, in the aggregate 42 total additional stalls would be located on the site, resulting in a development-wide total of 338 stalls, representing one for each residential unit and

36 spaces for use by residential guests and the commercial uses.

The submitted Transportation Impact and Access Study includes Site Access and Circulation and Site Parking analyses of the project. Based upon its initial review of this document, and given the size and scale of the project and range of zoning relief it requires, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review these aspects of the proposal so as to assist the ZBA in its review of the proposed project. The Project will also be review by City Transportation staff.

### 4. Adequacy of open areas

The applicant has submitted revised landscape plans. Based upon its initial review of these documents, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review the adequacy of the extent and usefulness of the proposed open spaces and related aspects of the proposal so as to assist the ZBA in its review of the proposed project.

### C. Economic Need for Housing Units

### 1. General feasibility of the project

The Massachusetts Housing Finance Agency (MassHousing) provided preliminary determination of project eligibility, dated October 28, 2019, for the proposal for the project as contemplated by the granted comprehensive permit. That preliminary determination was based, in part, on DHCD's analysis at that point in time that the project is eligible under the NEF housing subsidy program. In addition, the preliminary determination indicated that the "Site is suitable for residential use and development and that such use would be compatible with surrounding uses." The applicant submitted a Notification of Project Change to MassHousing describing the changes to the project and MassHousing issued a response on April 1, 2020. MassHousing stated that the changes to the project are a substantial change, but that a new Project Eligibility Letter is not required. MassHousing determined the initial proposal was eligible for a subsidy program and will again review the final proposal for eligibility directly before construction at the Final Approval stage.

2. <u>Limitations imposed by the financing agency with respect to size or character of the development, amount or nature of the subsidy, and permissible rentals and tenant limits</u>

MassHousing's preliminary determination of Project Eligibility/Site Approval did not appear to impose any such limits on the proposed Project.

3. Changes in rents and units' sizes of the development which would be necessary

### to accommodate the requirements and regulations sought to be imposed

MassHousing's preliminary determination of Project Eligibility/Site Approval did not appear to impose any such requirement(s) regarding rents and unit sizes limits on the project. The determination noted at the time that the proposed rents were within, but at the upper end, of the relevant ranges of adjusted comparable market rents, and that it is "unclear" whether the project will "be offering the completed range of amenities/services necessary to attract renters willing to pay at or above the existing range of comparable rents."

### D. Landscaping, Lighting, and Fencing

As referenced above, the applicant has submitted updated landscape plans. Based upon its initial review of these documents, the Planning Department recommends that a consultant peer reviewer be engaged to fully and appropriately review the proposed landscaping, lighting, and fencing and related aspects of the proposal so as to assist the ZBA in its review of the proposed project.

### V. ADDITIONAL INFORMATION AND MATERIALS

The Planning Department notes that the applicant should ensure that it has submitted all required material and documentation, including, as based on an initial review of the submissions:

- a) the "Cover Page for Application for Comprehensive Permit" signed and certified by the applicant and/or the owner(s) of the subject property;
- b) a revised shadow study for the project;
- c) a revised three-dimensional (3D) model of the project;
- d) a revised sign plan for the project if any changes are proposed;
- e) Indication of the location of proposed on-site loading facilities for Building 3.

The Planning Department notes that based on its initial assessment of the project and the supporting submission materials, it is expected that as review of the proposal proceeds additional material and documentation might be required and requested of the applicant to facilitate the ZBA's review.

### VI. CONCLUSION AND NEXT STEPS

The Planning Department is recommending the ZBA authorize peer reviews of the changes to the traffic, parking, and transportation demand management of the project as well as the site design (including changes to landscaping), utilities, and stormwater design. The Planning Department will continue to review the proposal and as, where appropriate and authorized, coordinate reviews of the project by City agencies and consultant peer

Application #09-19(2)

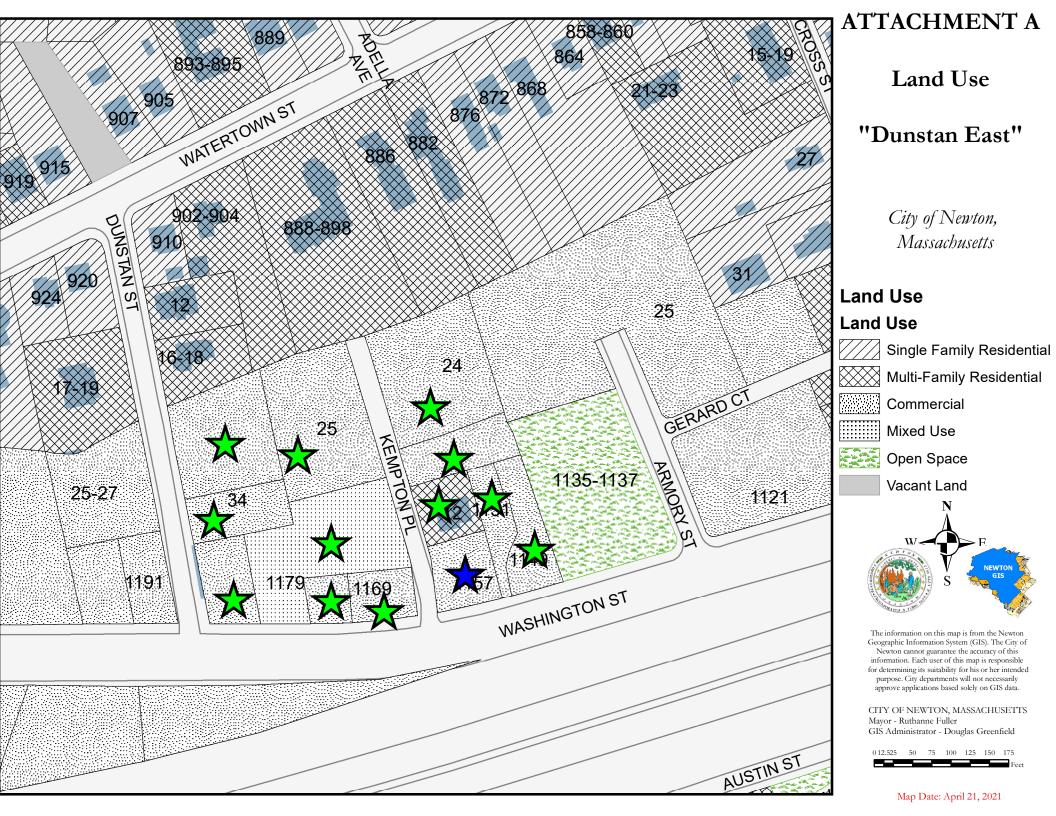
1149, 1151, 1157, 1169, 1171-1173, 1179, and 1185 Washington St.; 32-34 Dunstan St.; & 12, 18, 24, and 25 Kempton Pl Page 10 of 10

reviewers and provide updated and expanded memoranda in advance of future ZBA hearings.

### **ATTACHMENTS**

Attachment A: Land Use Map
Attachment B: Zoning Map

**Attachment C:** Applicant's list of Requested Waivers (as of April 8, 2021)





### ATTACHMENT B

### Zoning

### "Dunstan East"

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 - Ruthanne Fuller GIS Administrator - Douglas Greenfield



Map Date: April 21, 2021

### EXHIBIT 1

### <u>DUNSTAN EAST/LIST OF WAIVERS REQUESTED</u> (REVISED AS OF APRIL 8, 2021)

### **ZONING ORDINANCE**

- A. <u>Use</u>: The Applicant seeks a comprehensive permit in lieu of special permits, variances, licenses, and/or approvals to allow the property to be used for the Project, including without limitation:
  - 1. Special Permit under Section 4.1.2.B to permit a development of over 20,000 square feet.
  - 2. Waiver of the requirements of Section 5.11 to conform the provisions for affordable housing to the terms of the application, if and to the extent necessary.
  - 3. Special Permit under Section 4.4.1 for residential use at ground floor.
  - 4. Special Permit under Section 4.4.1 for parking facility, accessory, multilevel.
  - 5. Special Permit under Section 4.4.1 for ATM, standalone.
  - 6. Special Permit under Section 4.4.1 for a restaurant with over 50 seats.
  - 7. Special Permit under Section 4.4.1 for fast food establishment.
  - 8. Special Permit under Section 4.1.1 for for-profit educational use.
- B. <u>Density and Dimensional Controls</u>: The Applicant seeks a comprehensive permit in lieu of such special permits, variances, licenses, and/or approvals as may be required from or under Sections 4.1.2 and 4.1.3 for construction of the Project in the Business 2 District including without limitation:
  - 1. Variances from the dimensional requirements of Section 4.1.2, 4.1.2.A.2, 4.1.2.B.3, and 4.1.3 as follows (**in bold**):

<u>Dimension</u>	Required/Allowed	<u>Provided</u>
Lot Area	10,000 sf minimum	<del>138,142 sf</del>
		156,218 sf
Lot Area Per Unit:	1,200 sf minimum	590 sf (234 units)
		517 sf (302 units)
Frontage:	N/A	373.3 ft

Front Setback:	5 ft minimum <sup>1</sup>	<del>2.4</del>
		0.2 ft
Side Setback:	40.5 ft minimum <sup>2</sup>	5.0 ft
Rear Setback:	40.5 ft minimum <sup>2</sup>	64.7
		65.3 ft
FAR:	2.0 maximum	2.4
		2.33
Stories:	4 by special permit	6
Building Height:	48 ft	81.103

### C. <u>Parking/Loading Requirements</u><sup>4</sup>:

The Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Section 5.1.13 to permit a parking facility in accordance with the submitted plans and to deviate from, *inter alia*, the following requirements:

- 1. To the extent that Section 5.1.3.E prevents assignment of parking spaces to tenants, a waiver is sought from that provision.
- 2. Number of parking stalls under Section 5.1.4.A from 2 per unit to 1 per unit for multi-family dwelling.
- 3. Number of parking stalls under 5.1.4.A from <del>164 stalls to 49</del> 113 to 36 parking stalls for the proposed <del>retail, personal service, restaurant, health club, office, and similar commercial uses.</del>
- 4. To the extent required, waiver from the obligation to provide an off-street parking or loading plan under Section 5.1.5.
- 5. Under Section 5.1.8.A.1 to locate a parking space within the required side setback or within 5 feet of a street.
- 6. Under Section 5.1.8.A.2 to locate an outdoor parking space within 5 feet of a building or structure containing dwelling units.

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<sup>&</sup>lt;sup>1</sup> Based on Average Setback as described in Section 1.5.3 and Section 4.1.3 of the Newton Zoning Ordinance.

<sup>&</sup>lt;sup>2</sup> One-half of building height.

<sup>&</sup>lt;sup>3</sup> Based on definition of Building Height and Average Grade Plane per Section 1.5.4 of the Newton Zoning Ordinance. Actual Height measured relative to Washington Street is approximately 74 feet.

<sup>&</sup>lt;sup>4</sup> We have treated parking for the entire development as one parking facility under the Zoning Ordinance.

- 7. Under Section 5.1.8.B.1 and B.2 to reduce the width and depth of parking stalls.
- 8. Under Section 5.1.8.B.6 to reduce end aisle maneuvering space.
- 9. Under Section 5.1.8.B.7 to waive the requirement of an off-street parking or loading plan for noncommercial vans, buses, or other vehicles exceeding 7 ½ feet by 18 feet.
- 10. Under Sections 5.1.8.C.1 and C.2 to reduce minimum maneuvering aisle dimensions.
- 11. Under Section 5.1.10.A.1 to reduce the 1-foot candle lighting requirement.
- 12. Under Section 5.1.12.B for waiver of the requirement to submit a plan for off-street loading facilities.
- 13. Under Section 5.1.12.C and the Table thereunder to reduce the number of off-street loading facilities to 0.
- 14. Under Section 5.1.12.D to waive the design requirements for off-street loading facilities.

### NON-PARKING WAIVERS

- D. To the extent applicable, under Section 5.13, a waiver of the sustainable design requirements for the existing office building.
- E. To the extent applicable, the Applicant seeks a comprehensive permit in lieu of a special permit pursuant to Section 5.4.2.B to permit a retaining wall of up to 5 feet within a setback for the existing channel wall on the bank of Cheesecake Brook.

### NON-ZONING ORDINANCES

F. Floodplain, Watershed Protection Ordinance (Chapter 22)

Sections 22-22(c)(1) to waive, to the extent permitted by state law, the provisions stated therein for the construction, reconstruction, or enlargement of buildings in the Floodplain/Watershed Protection District.

G. <u>Infiltration and Inflow Mitigation (Chapter 29)</u>

A waiver of the I and I payment of more than 25% of the I and I calculation.

(dated 7/2/20; revised as of 4/8/21)



### Ruthanne Fuller Mayor

### City of Newton, Massachusetts

Department of Planning and Development Urban Design Commission Telephone (617) 796-1120 Telefax (617) 796-1142 TDD/TTY (617) 796-1089 www.newtonma.gov

Barney Heath Director

**DATE:** April 21, 2021

**TO:** Zoning Board of Appeals

FROM: Urban Design Commission

**RE:** 1149, 1151, 1157, 1169, 1171-1173, 1179, and 1185 Washington Street, 32 and

34 Dunstan Street, 12, 18, 24, and 25 Kempton Place - "Dunstan East"

**CC:** Barney Heath, Director of Planning and Community Development

Jennifer Caira, Deputy Director

Neil Cronin, Chief Planner

Michael Gleba, Senior Planner

Katie Whewell, Senior Planner

Petitioner

Section 22-80 of the Newton City Ordinances authorizes the Urban Design Commission to act in an advisory capacity on matters of urban design and beautification. At their regular meeting on April 14, 2021, the Newton Urban Design Commission reviewed the proposed project at 1149, 1151, 1157, 1169, 1171-1173, 1179, and 1185 Washington Street, 32 and 34 Dunstan Street, 12, 18, 24, and 25 Kempton Place for design. The Urban Design Commission had the following comments and recommendations:

### **Building Massing, Height and Architecture**

- The UDC is concerned about the project, it is very big and bulky.
- The Commission commented that they would like to see a section of Kempton Place with the
  two buildings. Buildings 2 and 3 are two long buildings facing each other all the way down the
  street. The UDC asked about the height of the buildings. The applicant responded that the
  buildings are six stories tall, about 65 feet tall. The UDC raised concerns about the relationship
  of street width and building height.
- The UDC commented that it is important to see the elevation and how it transitions down to the neighborhood, especially to the east. On the east side, there is Armory then Trader Joes building, then residential portion of the neighborhood. The UDC commented that Trader Joes site will probably not be developed as a 6-story building for a long time. It will be important to see how this transitions down towards the residential neighborhood.



- It will be important to see the relation of the proposed building to the Armory. According to the Armory studies, the building will likely stay in place or at least the front façade of the Armory will stay in place. It will be important to relate the new additional building to the scale of the Armory. It will help to bring the scale down of the additional building next to the Armory. Other parts of the project have some four-story portions, it will be helpful to have a 4-story portion next to the Armory. It will help if the top grey portion of the building steps back. The applicant responded that the Armory is not only smaller, but it is also setback from the street which makes it even more diminutive. The UDC recommended the new additional building to relate more to the historical Armory building which will most likely stay in place for the foreseeable future.
- The Commission observed that according to the Washington Street Vision Plan, this site is in the 3-6 story height range. The Commission commented that they would like to see more variety in building height.
- The UDC asked about the challenge of flipping the open space and turning the building the other way. The new open space is a private space and not shared by the public street. It will be helpful to get some breaks in this long building along the street. It will be helpful if the open space privileged the public street rather than face the Armory. The applicant responded that there are two reasons that they are not able to flip the courtyard, first, the courtyard is on top of the garage. If the courtyard is flipped, there will still be a full 1 story retaining wall by the time it got to the parking garage entry. The second and primary reason is if it is flipped then the wall would be 5 feet from the property line and could not have windows on that side.
- Treatment of Cheesecake Brook is terrific and will be a good addition.
- The UDC recommended to articulate building 3 like building 1 is articulated in the front along Washington Street and building 2 in the back, facing Cheesecake Brook. It will help to reduce the scale of the building, buildings 1 and 2 have a break in massing vertically and they are also stepped back. It will help to break the massing, so it looks like series of smaller building rather than 1 big mass.
- The UDC commented that Kempton Place is getting like a canyon. There was concern if the units in the middle will receive any natural light. The applicant commented that it is a north-south road so the units will get sunlight.
- The UDC recommended the applicant work with an acoustical engineer because of proximity of buildings 2 and 3, Turnpike noise, and trains nearby to check the noise bouncing that could happen between both the buildings.
- The UDC commented that a 3D visualization walking down Kempton Place will be helpful. The applicant responded that a video model was done for buildings 1 and 2 and they could update the video for building 3 as well.
- The UDC asked if the applicant explored any strategy to make the extremely long corridor in building 3 not feel so long. The applicant responded that it has a turn in it and there are two elevators on either ends so the residents will probably need to walk a maximum of 100 feet to get to their units.
- The UDC asked if there was any strategy to get natural light in the corridors. The applicant responded that they will explore options to create an indentation or a setback in the Kempton Street wall, it can become a common area on each floor that could allow some natural light into the corridor.

### Retail

- The UDC asked about retail along Washington Street. The applicant responded there is about 6,000 square feet of retail combined in buildings 1 and 2. There is potential for retail in building 3 but it is not proposed currently. The retail market is very difficult currently. There will be opportunity to convert some of the amenity space if there is demand for retail in the future.
- The UDC recommended to have some retail in building 3 so there is some activity in that area as well.
- The UDC recommended to have smaller retail spaces along front of Washington Street (instead of 1 large store that goes all the way back) so it makes it lively.

### Additional materials requested

- Context figure ground plan
- Elevation for building 3 especially Washington Street elevation extending down towards the residential neighborhood and Kempton Place elevation
- Street sections, especially between buildings 2 and 3

### **Public Comment**

The UDC also heard from the following member of the public:

Schuyler Larrabee: Mr. Larrabee commented that this presentation is incomplete without the elevations. The 2 parallel walls, for full length of Dunstan are over-bearing. The height of the buildings is about 1.5 times the width of the street and that is intensely urban. Mr. Larrabee suggested that the applicant consider to either reverse the C-shaped building and put courtyard on the street or straighten out the plan of the vertical lane and create a triangular space that opens up to Washington Street, it will help to make it more pleasant, some landscaping will also help. The acoustics of open windows can create a problem when it is only 50 feet to the building across, the echoes may be a problem. Mr. Larrabee also commented that a common area on each floor will help to build a community for the people who live on that floor.

To the Zoning Board of Appeals,

The City of Newton's Sustainability Team applauds Mark Development for proposing that its Dunstan East project meet and exceed the City's zoning ordinance requirements by reaching LEED certifiability at the Gold level, conducting Passive House feasibility studies, committing to electrify the residential portions of the project, considering the embodied carbon of materials throughout the design and construction process, providing EV charging for 10% of the parking spaces, and making another 10% of the spaces ready for chargers. We encourage Mark Development to act upon the results of the Passive House Feasibility Study to make the project as energy efficient as possible.

We would welcome a discussion of the installation of solar PV, moving beyond making the building "Solar PV Ready." Our team is interested to know whether the development is infeasible for solar by virtue of shading or necessary orientation and, if not, why solar PV at this phase of development is not proposed and what trade-offs are under consideration.

Respectfully,

Ann Berwick, Co-Director of Sustainability
William Ferguson, Co-Director of Sustainability
Liora Silkes, Energy Coach

Jennifer Steel, Chief Environmental Planner