



Ruthanne Fuller
Mayor

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

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. The Health and Safety of the Residents of the Proposed Housing and the Current 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. Proximity of the site to industrial activities which might affect the health of the proposed residents

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.

1. 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. 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

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

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 A







Land Use

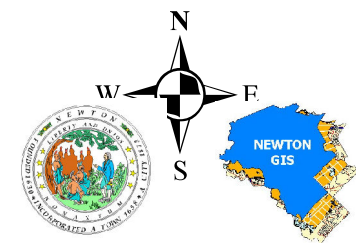
"Dunstan East"

City of Newton,
Massachusetts

Land Use

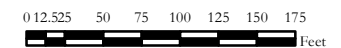
Land Use

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

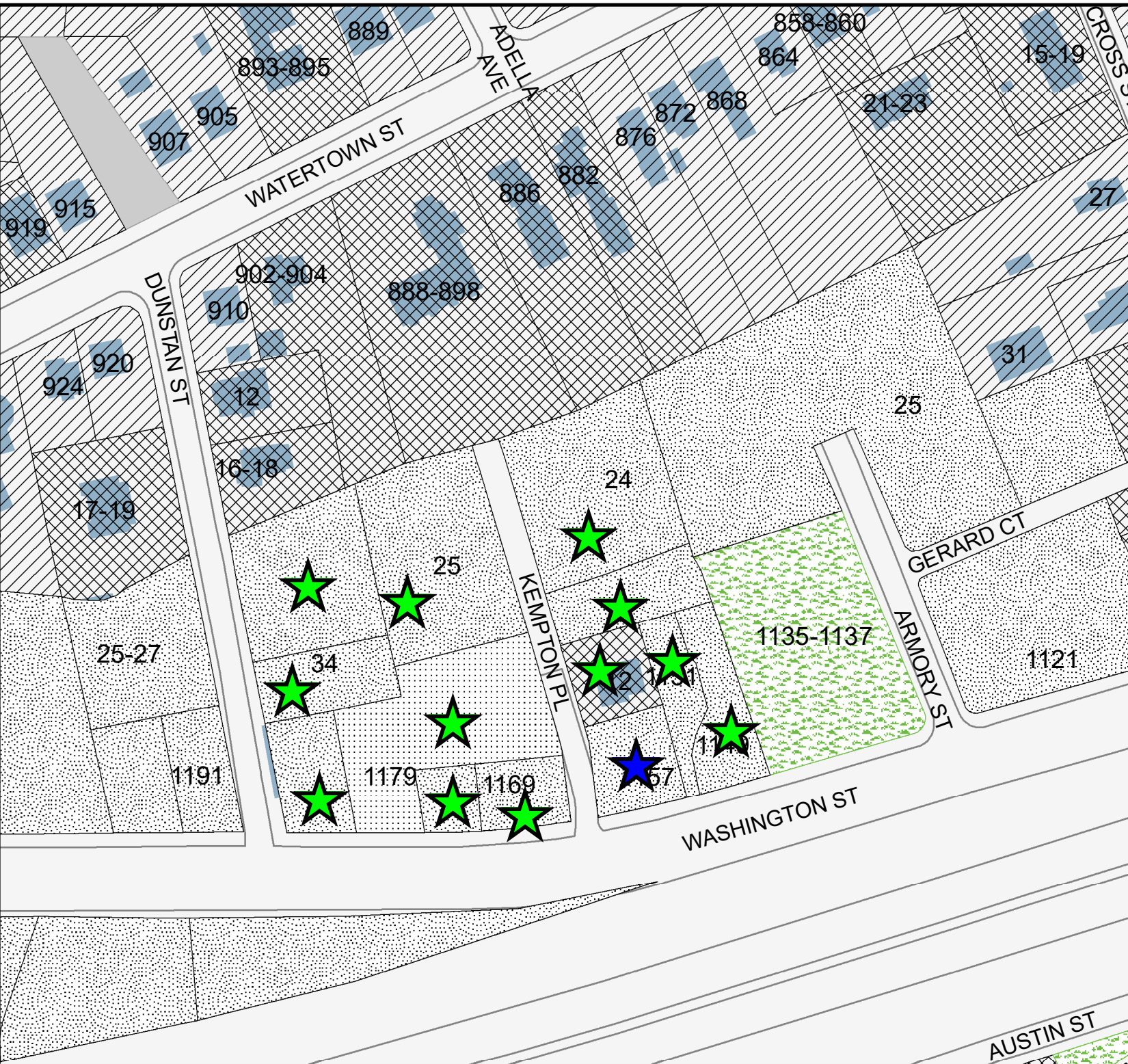


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
GIS Administrator - Douglas Greenfield



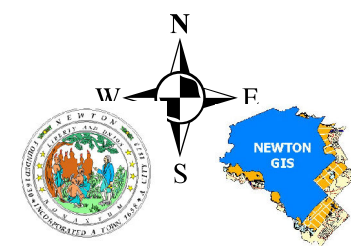
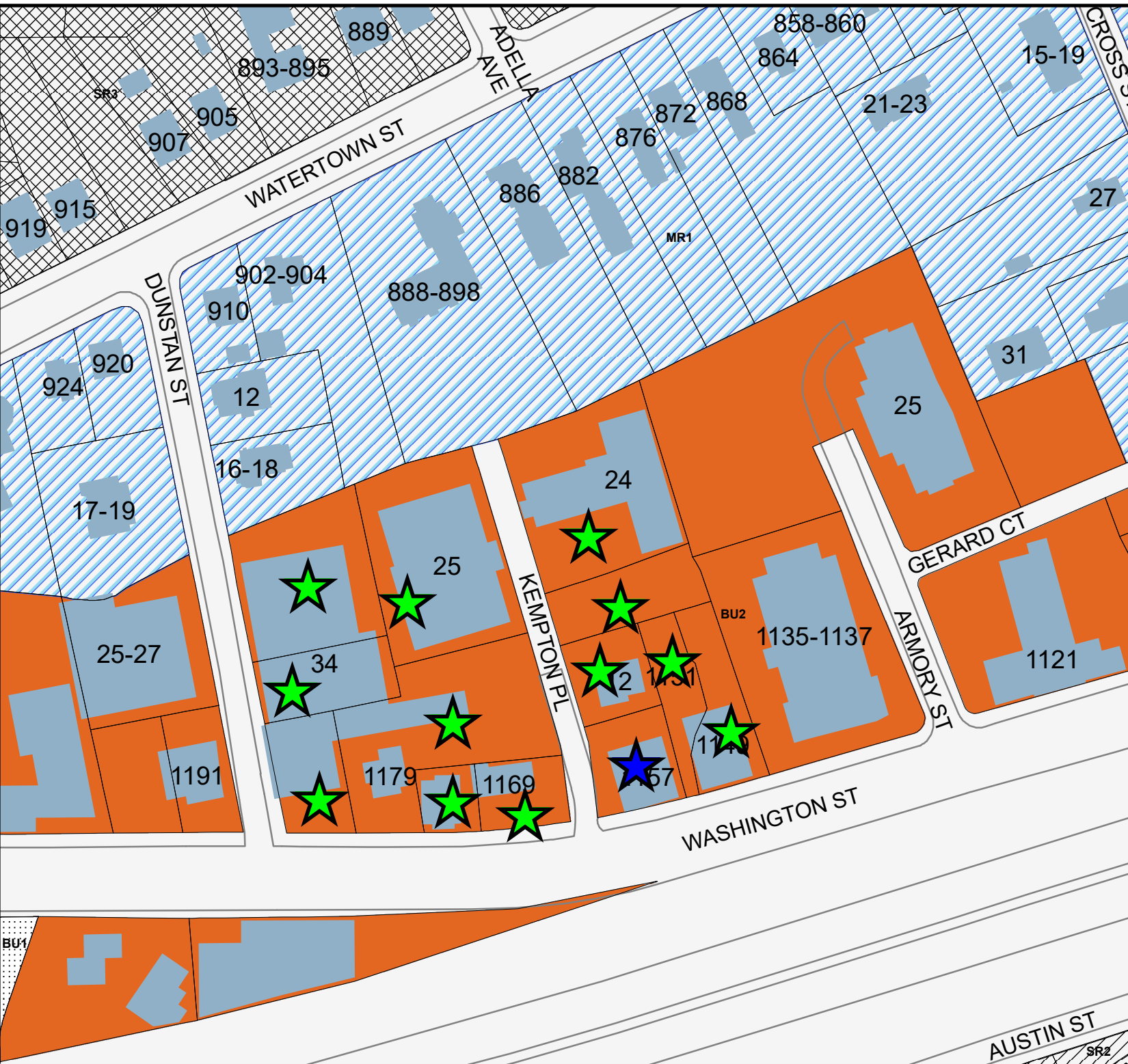
Map Date: April 21, 2021



Zoning

"Dunstan East"

*City of Newton,
Massachusetts*



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CITY OF NEWTON, MASSACHUSETTS
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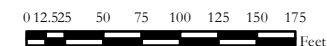


EXHIBIT 1

DUNSTAN EAST/LIST OF WAIVERS REQUESTED
(REVISED AS OF APRIL 8, 2021)

ZONING ORDINANCE

- A. Use: 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, multi-level.
 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. Density and Dimensional Controls: 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>	<u>Required/Allowed</u>	<u>Provided</u>
Lot Area	10,000 sf minimum	138,142 sf 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 ¹	2.4 0.2 ft
Side Setback:	40.5 ft minimum ²	5.0 ft
Rear Setback:	40.5 ft minimum ²	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. Parking/Loading Requirements⁴:

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 ~~164 stalls to 49~~ 113 to 36 parking stalls for the proposed ~~retail, personal service, restaurant, health club, office,~~ restaurant, health club, office, and similar commercial uses.
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.

¹ Based on Average Setback as described in Section 1.5.3 and Section 4.1.3 of the Newton Zoning Ordinance.

² One-half of building height.

³ 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.

⁴ 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. Infiltration and Inflow Mitigation (Chapter 29)
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)