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December 22, 2021

Mr. John Lojek
Commissioner of Inspectional Services
City of Newton
1000 Commonwealth Avenue
Newton MA 02459-1449

Re: Cabot Park Village – 280 Newtonville Ave
City Council Docket #244-20
Request for Consistency Ruling

Dear Commissioner Lojek:

The letter is to request your finding that certain changes to plans for an approved addition to Cabot Park Village at 280 Newtonville Ave are “consistent” with the plans approved on July 13, 2020 in City Council Docket # 244-20.

Background

On July 13, 2020 the City Council approved (22-0-2 absent)) Council Order #244-20 (the “Council Order”) a copy of which is attached as Exhibit A. The Council Order allowed an addition of 18 congregate housing units to the existing 100 unit Cabot Park Village project. As is customary the language of the special permit requires that the building be constructed “consistent with” the listed plans.

In the course of design development the project architect David Udelsman died, and the architecture has been transferred to Bechtel Frank and Erickson Architects who performed a full review of the planning. Upon such review the Architects have suggested, and the Owner has agreed, that the project could be improved by minor modifications to the plans which we hope you find to be consistent with the original plans.

Modifications

The modifications are shown schematically in 4 drawings attached as Exhibits B-1 through B-4. A summary of the changes is:

SCHLESINGER AND BUCHBINDER, LLP

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- The angle of attachment of the addition to the building has been opened to 90°. At the time of the approval Councilors noted that the more shallow angle created some view and daylight issues for the existing units, and the revision will address that.
- The approved plan showed the new addition extending over the driveway as a porte-cochere. The revision brings the building to grade with more desirable programming space at the ground level while still providing a covered entry.
- The fifth floor addition has been reduced from 4 units to 2 removing approximately 1000 s.f. most of which has been added as common space on the ground floor. This could allow for a possible future roof deck or roof garden and reduces the massing of the addition.
- Gross square footage of the addition is slightly reduced from 19,950 gsf to 19,809 gsf.
- The setback from Norwood Avenue has been reduced from 23' to 21'.
- The ground floor has been reconfigured by re-allocating the floor area of the building from the fifth floor to the ground level and providing additional common space.
- Certain floor plans have been reconfigured within the interior spaces

Major elements of the project remain unchanged including:

- The project remains 18 units and 5 stories except for removal of a portion of the 5th floor
- The project retains an excess of parking
- The covered entry from the drop off has been relocated but remains as a single story
- All utilities and site engineering are the same except as necessitated for the relocated foundation

For your convenience of review I attach to this letter comparison floor plans of the first floor and bird's eye views of the permitted and proposed massing.

Also attached separately are the proposed revised plans in which comparison plans are shown on the last four pages of the plan set, after Sheet A-1.

On the First Floor Plan immediately after Sheet A-1 the floor plan cited in Council Order 244-20 is shown on the right and the proposed revision is on the left. You can see that rather than using the ground area for a drive-under of the addition that space is utilized for common tenant spaces. The square footage is in effect moved from the front of the 5th floor to grade. A new covered walkway is added to facilitate entry into the building.

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On the following sheet the comparison shows that within the envelope units now exist on the second floor and have been removed from the front of the fifth floor.

The last two sheets show two "bird's eye" views of the addition, the original at an acute angle off the building and the proposed at a 90° angle.

Dining Room Addition

As a separate matter we would ask that you review a proposed expansion of the dining room which is shown on the plans. This 795 s.f. addition at the rear of the building is essentially an infill of an existing "notch" in building adjacent to the swimming pool. A photo of the "notch" is attached as Exhibit B. This infill was not shown on the plans submitted to the City Council, but we believe it could be permitted as a "de minimis" expansion.

I understand that you had a preliminary discussion with Gerry Frank some time ago about the dining room addition, and I expect we could have sought the City Council approval for the addition at the same time as the additional units, but the permitting pre-dated Gerry's current involvement and wasn't considered at that time. We hope you will find that within the scope of the project in its entirety that the dining room addition is consistent with the issued Council Order or otherwise allowed as a minor adjustment.

Please let me know if we can provide you any further information or clarification for this request.

Very truly yours,



Alan J. Schlesinger

AJS:sjk

cc: Mr. Barney Heath
Jonah Temple, Esquire
Mr. Neil Cronin

Middlesex South Registry of Deeds
Electronically Recorded Document

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Receipt Number	: 2508084
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com

#244-20
280 Newtonville Ave.

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CITY CLERK
NEWTON, MA 02459

CITY OF NEWTON

IN CITY COUNCIL

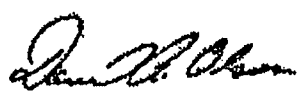
July 13, 2020

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of a SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Board Order #105-95 to construct a five-story addition with 18 new units and common accessory use space, extending the non-conforming structure to the extent necessary and to determine density and dimensional controls

as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Richard Lipof:

- 1) The Multi Residence 3 (MR3) zoned site is an appropriate location for the proposed expanded congregate care facility given the neighborhood's mix of residential, commercial, educational and recreational land uses and structures of varying scales and heights. (§7.3.3.C.1; §3.1.2.A.3)
- 2) The proposed expanded congregate care facility as designed will not adversely affect the neighborhood. (§7.3.3.C.2; §3.1.2.A.3)
- 3) The proposed expanded congregate care facility as designed will not create a nuisance or serious hazard to vehicles or pedestrians. (§7.3.3.C.3; §3.1.2.A.3)
- 4) Access to the site over streets is appropriate for the types and numbers of vehicles involved. (§7.3.3.C.4, §3.1.2.A.3)
- 5) The proposed expanded congregate care facility as designed will not be substantially more detrimental than the existing nonconforming structure is to the neighborhood because the addition will have limited visibility from adjacent public ways, meet setback requirements and be screened by fencing and landscaping.
- 6) In accordance with City Ordinance Chapter 29, §§ 167-174, the Council finds that there is good cause, based in part on other mitigation and community benefits offered by the

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petitioner, to waive 75% of the required infiltration/inflow mitigation for the Project. Therefore, the fee shall be reduced to \$40,009.00.

PETITION NUMBER: #244-20

PETITIONER: KRF-BSL Husky Cabot Park LLC

ADDRESS OF PETITIONER: 9 West 5th Street
Suite 4200
New York, NY

LOCATION: 280 Newtonville Avenue, on land known as Section 22, Block 7, Lot 48, containing approximately 146,435 square feet of land

OWNER: KRF-BSL Husky Cabot Park LLC

ADDRESS OF OWNER: 9 West 5th Street
Suite 4200
New York, NY

TO BE USED FOR: Congregate Living Facility

EXPLANATORY NOTES: Special permits per §7.3.3:

- to amend Special Permit #105-95
- to determine the density and dimensional controls (§3.2.2.A.3)
- Extension of non-conforming structure

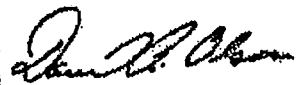
ZONING: Multi Residence 3 (MR3)

The conditions set forth in the prior special permit for this property, Board Order #105-95 for special permit/site plan approval for 100 units of housing for the elderly in a congregate living facility, remain in full force and effect except as modified herein.

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this Special Permit/Site Plan Approval shall be located and constructed consistent with
 - a. Engineering plans entitled "Proposed Site Plan Documents for Benchmark Senior Living, Proposed Development, Map #22, Block #7, Lot #48, 280 Newtonville Avenue, City of Newton, Middlesex County, Massachusetts," prepared by Bohler Engineering, signed

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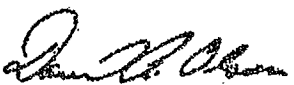
and stamped by J.M. Johnson, Registered Professional Engineer, consisting of the following sheets dated April 13, 2020, as revised through June 19, 2020:

- i. Cover Sheet (C-101)
 - ii. General Notes Sheet (C-102)
 - iii. Demolition Plan & Erosion Control (C-201)
 - iv. Site Layout Plan (C-301)
 - v. Grading and Drainage Plan (C-401)
 - vi. Landscape Plan (C-601) (note: signed and stamped by Matthew Mirva, Registered Landscape Architect)
 - vii. Landscape Notes and Details (C-602)
 - viii. Detail Sheet (C-701)
- b. A site plan entitled "Partial Boundary & Topographic Survey, Benchmark Senior Living, Proposed Development, Map 22, Block 7, Lot 48, 280 Newtonville Avenue, City of Newton, South Middlesex County, Commonwealth of Massachusetts," prepared by Control Point Associates, Inc., signed and stamped by Gerry L. Holbright, Professional land Surveyor, dated March 31, 2020
- c. Architectural plans entitled "Benchmark Senior Living Cabot Park Village," prepared by Udelsman Associates, consisting of the following sheets dated April 10, 2020:
- i. Schematic Floor Plans (A1);
 - ii. Proposed Addition Elevations (A2)
2. In accordance with the City's Inclusionary Zoning Ordinance, §5.11.4, three (3) of the residential units in the new multi-family structure shall be made available to households earning at or below 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size for the Boston-Cambridge-Quincy, MA-NH HMFA (the "Inclusionary Units"). The AMI used for establishing rent and income limits for the Inclusionary Units must average no more than 65% AMI.
3. The Petitioner, the Project, and the Inclusionary Units shall comply with all applicable provisions of the City's Inclusionary Zoning Ordinance, §5.11, in effect as of the date of this Special Permit/Site Plan Approval, regardless of whether such requirements are set forth herein.
4. The bedroom mix of the Inclusionary Units shall be equal to the bedroom mix of the market-rate units in the Project. The proposed mix of the Inclusionary Units is:

	1BR	2BR	Total
Inclusionary Units	1	2	3
Total Units	8	10	18

The final bedroom mix shall be reviewed and approved by the Director of Planning and

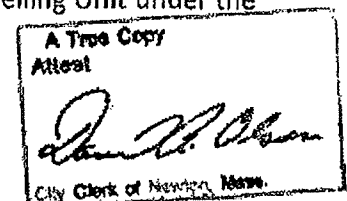
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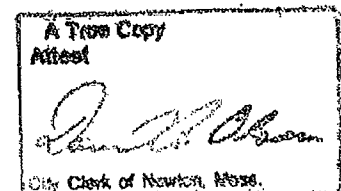
Development prior to the issuance of a building permit for the Project.

5. Monthly housing costs (inclusive of rent, utility costs for heat, water, hot water and electricity, 1 parking space and access to all amenities offered to tenants in the building), must not exceed 30% of the applicable household income limit for that Inclusionary Unit and shall be consistent with Inclusionary Zoning Ordinance, § 5.11.4.D.1.
6. For the initial lottery, 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
7. Prior to the issuance of any building permits for the vertical construction of the Project, the Petitioner shall provide an updated Inclusionary Housing Plan and Affirmative Fair Marketing and Resident Selection Plan (AFHMP) for review and approval by the Director of Planning and Development in accordance with §5.11.8 of the Inclusionary Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Fair Housing Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.8. of the Inclusionary Zoning Ordinance. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.
8. Prior to the issuance of any temporary or final occupancy certificates for the Project, the Petitioner, the City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the City of Newton Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
9. To the extent permitted by applicable regulations of DHCD, the Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program.
10. The Inclusionary Units shall be designed and constructed subject to the provisions of the Inclusionary Zoning Ordinance, §5.11.7.
11. Inclusionary Units, and their associated parking spaces, shall be proportionally distributed throughout the Project and be sited in no less desirable locations than the market-rate units, and the locations of such units and parking spaces shall be reviewed and approved by the Director of Planning and Development prior to the issuance of a building permit for the Project.
12. No residential unit or building shall be constructed to contain or be marketed and/or sold as containing more bedrooms than the number of bedrooms indicated for said unit in the plans referenced in Condition #1.
13. Any room that meets the minimum dimensional and egress requirements to be considered a bedroom under the state building code and Title 5 regulations shall be counted as a bedroom for purposes of determining the required bedroom mix of the Inclusionary Units in accordance with the Inclusionary Zoning Ordinance.
14. Any guest suites or temporary housing that meet the definition of a Dwelling Unit under the

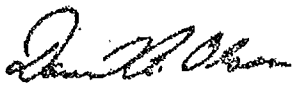


Zoning Ordinance shall be counted as a bedroom for purposes of calculating the Project's inclusionary zoning requirement.

15. Regarding the existing affordable units: a Regulatory Agreement/Deed Restriction (the "City Regulatory Agreement"), in a form approved by the City Law Department, shall be entered into by the Petitioner and the City, and shall be executed and recorded prior to expiration of the deed restriction for the existing 20 affordable units in 2036. The City Regulatory Agreement shall remain effective for so long as the Project exists. The Petitioner shall enter into the City Regulatory Agreement to continue such restrictions and the terms of the City Regulatory Agreement shall be consistent with the terms of this Special Permit /Site Plan Approval and with the customary terms of the City's Regulatory Agreements. At a minimum, the City Regulatory Agreement shall require that the existing 20 affordable units: (i) remain affordable in perpetuity for the life of the Project; (ii) be affordable and rented to low and moderate income households with annual gross incomes at or below 50% AMI; and (iii) annual monitoring and reporting to ensure compliance. The City Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the City. Compliance with this condition is only required if this Special Permit /Site Plan Approval is exercised.
16. The petitioner shall comply with the City's Tree Preservation Ordinance.
17. The Petitioner shall make a payment in the amount of \$40,009 to the City for infrastructure improvements for inflow and infiltration (I&I). Payments shall be made prior to the issuance of a building permit (other than a demolition permit) for the Project.
18. The Petitioner shall pay the sum of \$120,027 for improvements to Cabot Park prior to issuance of any certificate of occupancy (temporary or final) for the first dwelling unit in the Project.
19. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a final Operations and Maintenance Plan (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by the petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M shall be filed with the Engineering Division of Public Works, the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
20. Prior to the issuance of any building permit for the Project, the petitioner shall provide a Final Site Plan (which shall indicate the location of adequate snow storage area(s) or identify a suitable alternative for snow removal) for review and approval by the Department of Planning.
21. The petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
22. No building permit for the construction of the Project shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has:

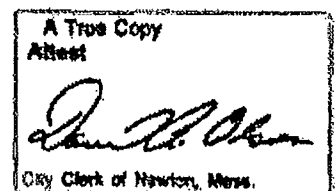


- a. Recorded a certified copy of this Council order with the Middlesex South Registry of Deeds.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.9. of the Zoning Ordinance.
 - e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approvals shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
 - f. Submitted a final plan of land, to the Engineering Division of Public Works.
 - g. Submitted a final Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, the City Engineer, and the Director of Transportation. At a minimum, it must address the following: staging site for construction materials and equipment, parking for construction workers vehicles, phasing of the project with anticipated completion dates and milestones, safety precautions, emergency contact personnel of the general contractor. It shall also address anticipated dewatering during construction, site safety & stability, siltation & dust control and noise impact to abutters.
 - h. Submitted the payment to the city required under Condition #17.
23. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
24. The Inclusionary Units shall be constructed and made available for occupancy concurrently with the market rate units; further, for every three market rate unit(s) that may receive a Certificate of Occupancy there shall be at least one Inclusionary Unit having received Certificates of Occupancy.

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25. No final occupancy permit for the use covered by this Special Permit/Site Plan Approval shall be issued until the Petitioner has:
- Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer certifying compliance with Condition #1.
 - Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering details for the project site have been constructed to standards of the City of Newton Public Works Department.
 - Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number, and type of plant materials, final landscape features and fencing consistent with the plans referenced in Condition 1.
 - Made the payment to the City required under Condition #18.
 - Submitted to the Law Department copies of fully executed Regulatory Agreements and Affordable Housing Restriction for all Inclusionary Units, in accordance with Condition #8.
 - Provided evidence satisfactory to the Law Department that the Regulatory Agreements for all Inclusionary Units have been recorded at the Southern Middlesex District Registry of Deeds, as appropriate.
27. Notwithstanding the provisions of Condition #26 above, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to installation of required on-site landscaping/exterior hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.
28. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased and/or dies shall be replaced on an annual basis with similar material.

Under Suspension of Rules
Readings Waived and Approved
22 Yeas 0 Nays 2 Absent (Councilors Ciccone and Kalis)



The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on July 15, 2020. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

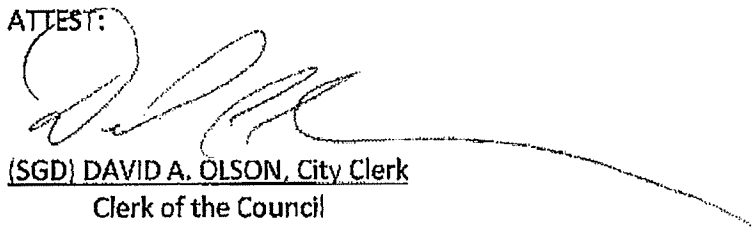
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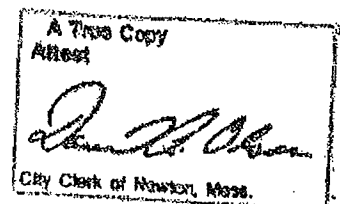
(SGD) DAVID A. OLSON, City Clerk
Clerk of the City Council

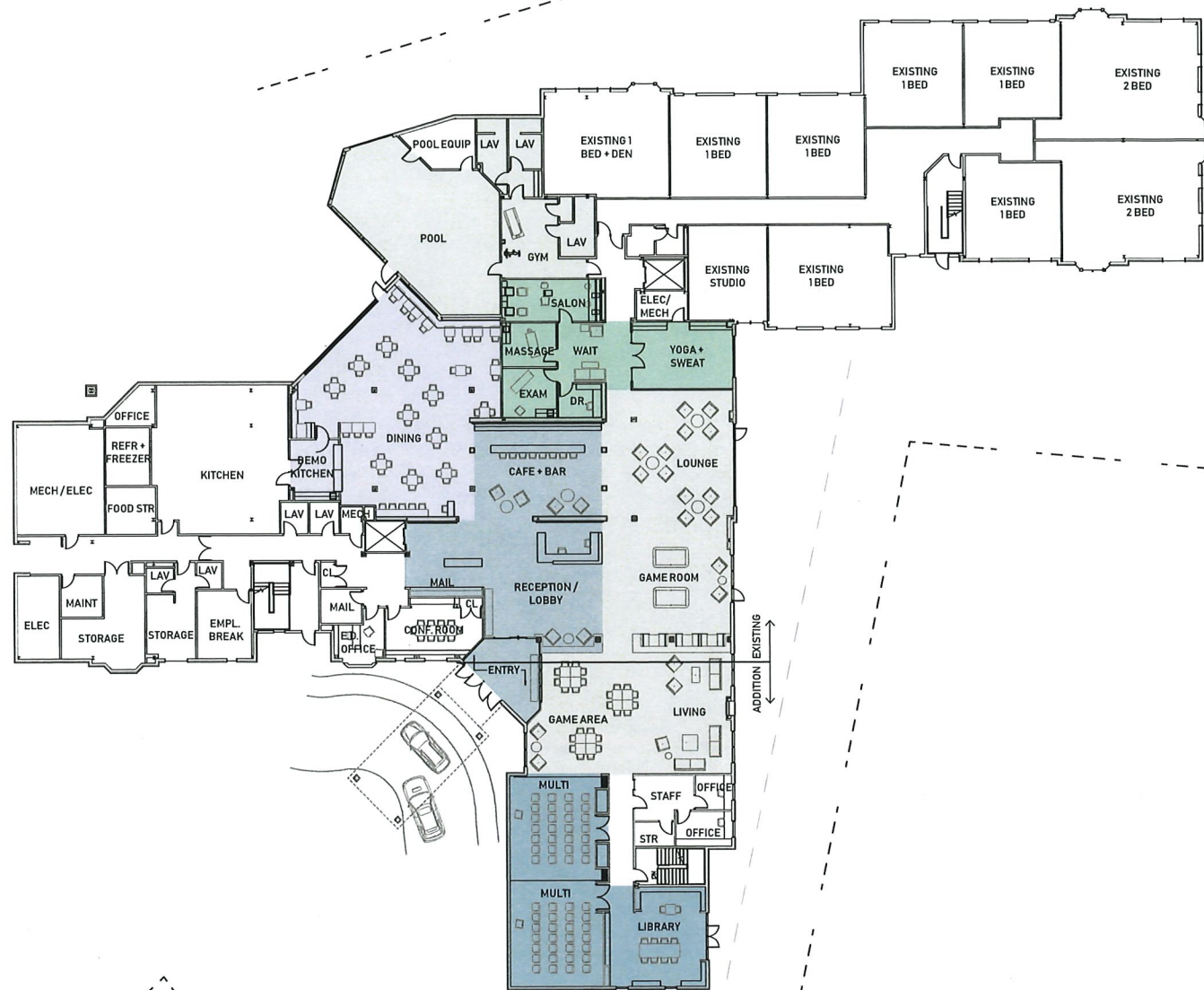
I, David A. Olson, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on July 15, 2020 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:

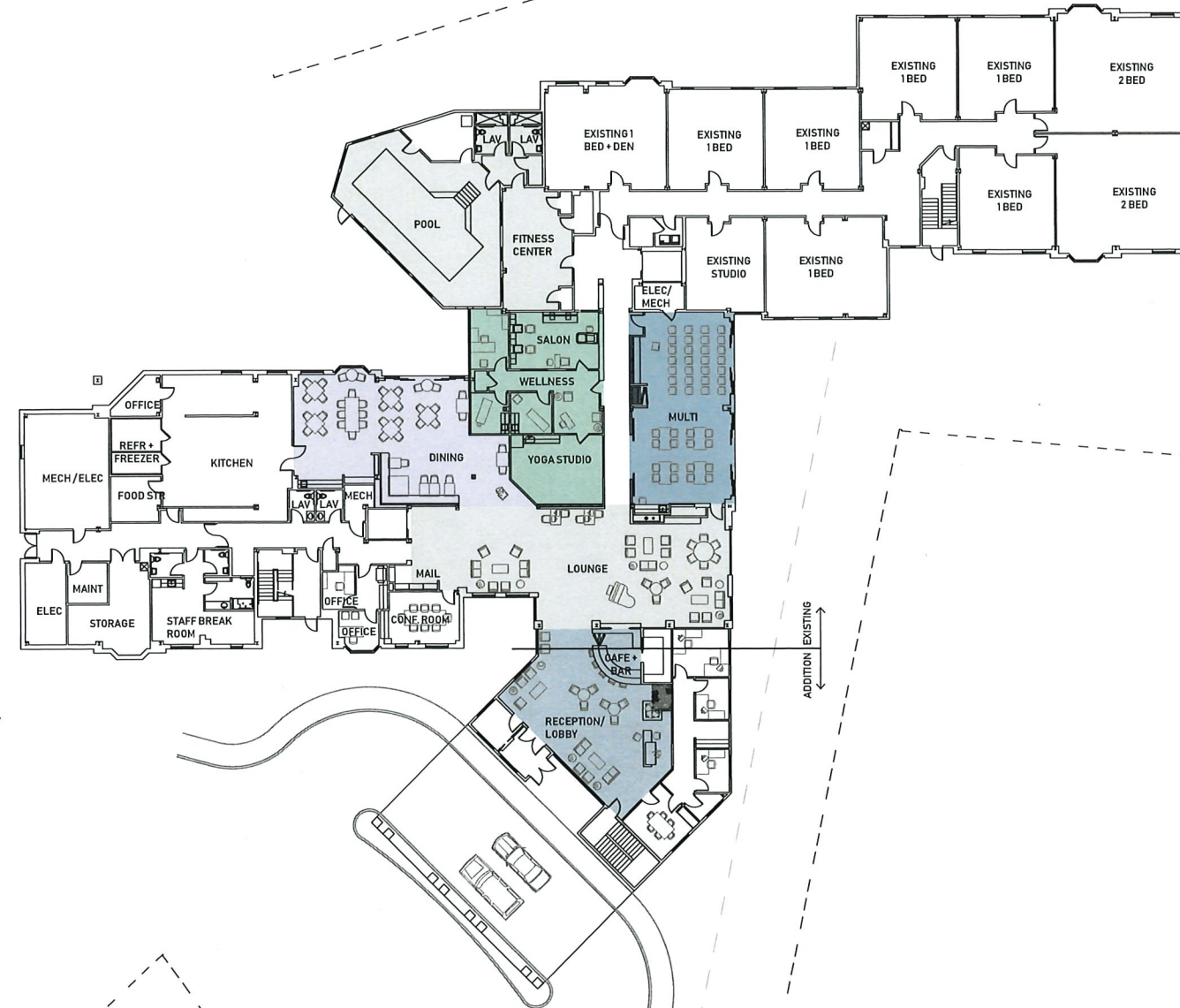


(SGD) DAVID A. OLSON, City Clerk
Clerk of the Council





PROPOSED
FIRST FLOOR PLAN



PERMITTED
FIRST FLOOR PLAN



Proposed Conditions



Permitted Conditions



Proposed Conditions



Permitted Conditions

