



# Land Use Committee Report

## City of Newton

### In City Council

**Tuesday, March 22, 2022**

**Present:** Councilors Lipof (Chair), Kelley, Bowman, Downs, Greenberg, Laredo and Lucas

**Also Present:** Councilor Albright

**Absent:** Councilor Markiewicz

**City Staff Present:** Senior Planner Michael Gleba, Senior Planner Katie Whewell, Assistant City Solicitor Jonah Temple

All Special Permit Plans, Plan Memoranda and Application Materials can be found at the following link <https://www.newtonma.gov/government/city-clerk/city-council/special-permits/-folder-1058>. Presentations for each project can be found at the end of this report.

Committee Housekeeping Items:

- *The following discussion was held regarding delivery of hard copy plans to Committee members:*

The Chair polled Committee members to determine how many members wished to receive hard copies of special permit plans going forward. The Clerk noted that the Planning Department will request 5 hard copies of plans from petitioners going forward. The Clerk's office will forward hard copies received to those members indicating a preference for same.

- *At the conclusion of the meeting, the following discussion was held regarding petitioner presentations at future hybrid meetings for the Land Use Committee, which will be held both virtually and in person:*

The Chair recommended notifying petitioners and petitioner representatives attending in person to use laptop devices in the event they would like to share their presentations. The Clerk confirmed that this notice will be provided to petitioners planning to attend in person.

- *At the conclusion of the meeting, the following discussion was held regarding ensuring minimum in-person quorums prior to meetings:*

Committee members agreed to the assumption that members will attend meetings in person unless members notify the Chair, the Vice-Chair, and the Clerk in advance. This will ensure a headcount in advance of the meeting.

The Chair Opened the Meeting.

***The Committee reviewed the request for a consistency ruling relative to the Special Permit Board Order #244-20 for 280 Newtonville Avenue (Cabot Park Village). The petitioner is seeking a consistency ruling to allow a change to the front orientation of the building to improve natural light and spacing on the site.***

**Note:** Atty. Alan Schlesinger, with law offices at 1200 Walnut Street, presented the request for a consistency ruling relative to Special Permit #244-20 for 280 Newtonville Avenue. Mr. Schlesinger noted that after being approved in 2020, the project was transferred to new architects. Upon reviewing the project, the architects suggested modifications as shown in the attached presentation.

The most significant modification would be to open the angle of the addition of the building to 90 degrees and remove a 5<sup>th</sup> floor, potentially allowing for possible roof deck or garden use.

Councilors were supportive of the modifications. It was noted that changing the angle of the addition allows better access to light during the day, and the possibility of adding recreation space on the roof is appealing. The Committee took a straw poll unanimously in favor of granting the consistency ruling.

***The Committee reviewed the request for a consistency ruling relative to the Special Permit Board Order #176-19 for 1188 Chestnut Street. The petitioner is seeking a consistency ruling to allow proposed changes to the front and back of the proposed building to create a more interesting façade, and additions of 46' walls to adjust grade changes around the dwelling.***

**Note:** Carlos Ferreira, 1188 Chestnut Street, presented the request for a consistency ruling relative to Special Permit #176-19 for 1188 Chestnut Street as shown in the attached presentation. Mr. Ferreira noted the special permit for the property was obtained by the previous owner. The proposed modifications include adding front and rear 12" bump-outs to the dwelling to create a more interesting façade. There would also be additions of 46" walls to adjust for grade changes around the dwelling. Mr. Ferreira is proposing to substitute some of the prior materials and reducing the number of windows on the sides. The garage would be brick veneer. All other materials would be HardiePlank and Azek trim.

The Committee expressed no concerns relative to the request. The Committee took a straw poll unanimously in favor of granting the consistency ruling.

**#177-22      **Petition to allow an oversized internal accessory apartment and extend a nonconforming two-family use at 350 Cabot Street****

PETER LEIS and JENNIFER STORO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to create an oversized internal accessory apartment within one of two dwelling units and further extend the nonconforming two-family dwelling use at 350 Cabot Street, Ward 2, Newton, on land known as Section 22 Block 19 Lot 05, containing approximately 12,594 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec. 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 6.7.1.D.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      **Land Use Approved 7-0; Public Hearing Closed 3/22/22**

**Note:** Atty. Terry Morris, with law offices at 57 Elm Road, presented the request to allow an oversized internal accessory apartment and extend the nonconforming two-family use at 350 Cabot

Street. The petitioner proposes to create an oversized internal accessory apartment within one of the two principal dwelling units of the building. The proposed accessory unit would consist of the principal unit's current first floor. There will be no change to the footprint of the dwelling. The length of the driveway off Cabot Street will be shortened to create outdoor patio space.

The petitioner, Peter Leis, noted canvassing efforts made with 19 abutters and neighbors, indicating that none were opposed to the proposed project. The petitioner noted that he currently lives in the unit that would contain the proposed accessory carve-out.

The Public Hearing was Opened. No member of the public wished to speak.

Committee members expressed support for the petition. Appreciation was expressed for the portion of the driveway being put to better use.

Seeing no member of the public who wished to speak, Councilor Lucas motioned to close the public hearing which carried 7-0. Councilor Lucas motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation and voted 7-0 in favor of approval.

**#178-22      Petition to alter and extend a nonconforming residential use and extend a nonconforming side setback at 2-4 Auburndale Avenue**

BERNARDO and LISA MARZILLI petition for SPECIAL PERMIT/SITE PLAN APPROVAL to alter and extend a nonconforming residential use and construct a rear addition to the existing dwelling, to allow a 2.5 story building, to allow a building with 36' in height, and to further extend a nonconforming side setback at 2-4 Auburndale Avenue, Ward 3, on land known as Section 33 Block 23 Lot 13, containing approximately 11,702 sq. ft. of land in a district zoned BUSINESS USE 1. Ref: Sec. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2, 4.1.2.B.3, 4.1.3 of the City of Newton Rev Zoning Ord, 2017.

**Action:**      Land Use Approved 5-0-2 (Councilors Laredo and Lipof Abstaining); Public Hearing Closed 3/22/22

**Note:**          Architect Tim Lund represented the petitioners Bernardo and Lisa Marzilli. Mr. Lund presented the request to alter and extend a nonconforming residential use and extend a nonconforming side setback at 2-4 Auburndale Avenue. The petitioners propose constructing a rear addition to the existing two-family dwelling, which will contain a one-car garage.

Senior Planner Katie Whewell presented the requested relief, criteria for consideration, land use, zoning and proposed plans as shown in the attached presentation. Ms. Whewell noted the Planning department recommends adding a condition requiring the petitioner to submit a site plan illustrating parking stalls prior to the issuance of a building permit. Planning also recommends landscaping where possible with a focus on screening that side of the addition that would be 3.5 feet off the property line from the side abutter.

The existing two units are tenant occupied. The petitioners noted the proposed addition is intended to be used by their daughter's family.

The current driveway accommodates 5 cars; it will be extended to meet the proposed one-car garage and will allow for an additional parking stall.

The Public Hearing was Opened.

Christopher Snyder, 7 Elm Street, asked for clarification on how close to the property line the addition would be located.

The proposed unit would be 35 feet from the rear property line.

Councilor Questions and Comments:

Committee members discussed the massing and size of the proposed addition relative to both the BU1 zoning district in which the property is located, and the MR1 and MR2 zones in the nearby/surrounding area.

Per the Planning Department memo, while this project is located in a BU1 zoning district, it would comply with the rules for lot coverage and lot area in the multi-resident zones in the surrounding area.

Ms. Whewell confirmed, noting that, if located in a multi-family zone, the only relief required would be FAR relief, for which they could apply for a special permit. Ms. Whewell noted that the proposed project is above the limit for FAR in a multi-zone.

The proposed addition would be approximately 3400 sq. feet, and would bring the gross living area to about 7200 sq. feet, on a lot size of 11,700 sq. feet. The petitioners are working under different size restrictions in the BU1 zone.

There are many multi-family properties in the area. This lot conforms with other properties in the neighborhood.

Other MR2 properties in the neighborhood are two-unit dwellings on lots are half the size of this lot. This lot, which is twice as big, does conform with other parcels in the neighborhood.

Clarification was sought for the lot area and coverage requirements for multi-family zones. Ms. Whewell noted that most of the requirements are the same for MR1 and MR2 zones. The maximum allowed FAR is .48. The proposed plan survey did not include FAR for the petition, however using the first-floor footprint of the property, Ms. Whewell noted that FAR would be .25.

A Committee member expressed concern that there was no reaching to any of the neighbors aside from the commercial property across the street, and the abutting property that the petitioners own.

Was thought given to moving the curb cut further away from the intersection? The property is located near a difficult intersection.

The petitioners own the abutting property at 10 Auburndale Avenue, allowing for tenants to maneuver fairly easily using both curb cuts between properties and exit facing forward. Moving the curb cut would force tenants in and out of the same curb cut.

It was noted that the proposed plan could benefit from some planting and landscaping.

Councilor Kelley moved to close the public hearing which carried 7-0. Councilor Kelley motioned to approve the petition. Committee members reviewed the draft findings and conditions as shown in the attached presentation. Committee members discussed and agreed to revise Proposed Finding #5 to refer to “three or more units” vs. “more than three units”.

The Committee voted in favor of approval 5-0-2 (Councilors Lipof and Laredo abstaining).

With that, the Committee adjourned at 8:25p.m.

**Respectfully Submitted,**

**Richard Lipof, Chair**

# Department of Planning and Development



**PETITION #177-22**

**350 CABOT STREET**

SPECIAL PERMIT/SITE PLAN  
APPROVAL TO CREATE AN  
OVERSIZED INTERNAL ACCESSORY  
APARTMENT WITHIN ONE OF TWO  
DWELLING UNITS AND FURTHER  
EXTEND THE NONCONFORMING  
TWO-FAMILY DWELLING USE

*MARCH 22, 2022*



# Requested Relief



Special permit per §7.3.3 to-

- further expand a nonconforming two-family dwelling use in a SR2 district (§3.4.1; §7.8.2.C.2)
- allow an oversized internal accessory apartment (§6.7.1.D.2) (1,000 SF/2,5903 SF; 39%)(855 SF; 33% allowed)

# Criteria to Consider

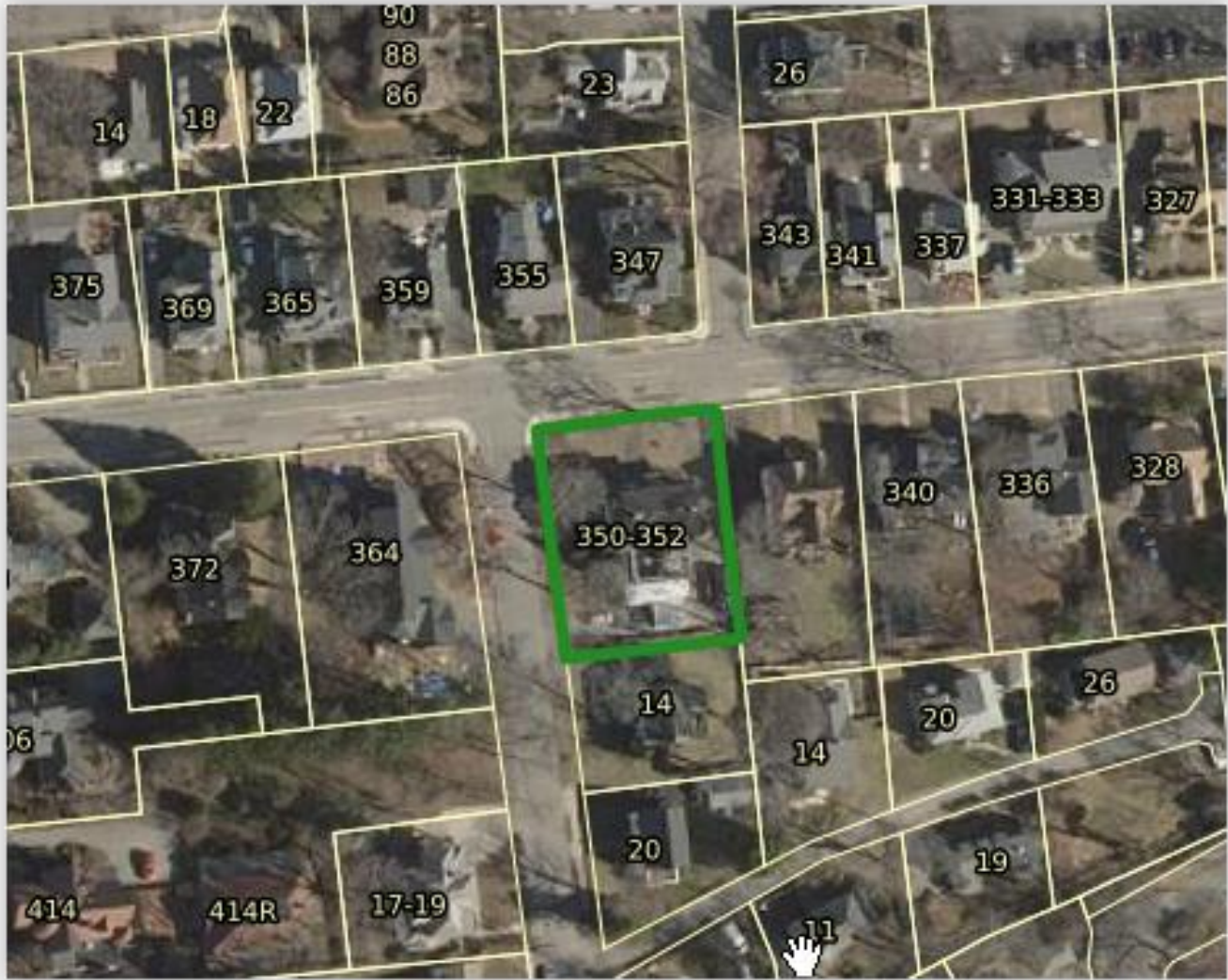


When reviewing the requested special permits the Council should consider whether:

- The specific site is an appropriate location for the proposed oversized, internal accessory apartment as designed (§7.3.3.C.1)
- The proposed oversized, internal accessory apartment as developed and operated will not adversely affect the neighborhood (§7.3.3.C.2)
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)
- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- Whether the proposed modification of an existing nonconforming two-family use in the Single Residence 2 (SR2) zoning district to create an oversized accessory apartment one of the two principal dwellings would not be substantially more detrimental than the existing nonconforming use to the neighborhood. (§7.8.2.C.2)



# AERIAL/GIS MAP



# Zoning




## ATTACHMENT B

### Zoning

**350-352 Cabot Rd.**

*City of Newton,  
Massachusetts*

-  Single Residence 2
-  Multi-Residence 1
-  Multi-Residence 3
-  Public Use



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

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



Map Date: March 04, 2022



# Land Use



## ATTACHMENT A





### Land Use

350-352 Cabot Rd.

*City of Newton,  
Massachusetts*

### Land Use

#### Land Use

-  Single Family Residential
-  Multi-Family Residential
-  Open Space
-  Vacant Land



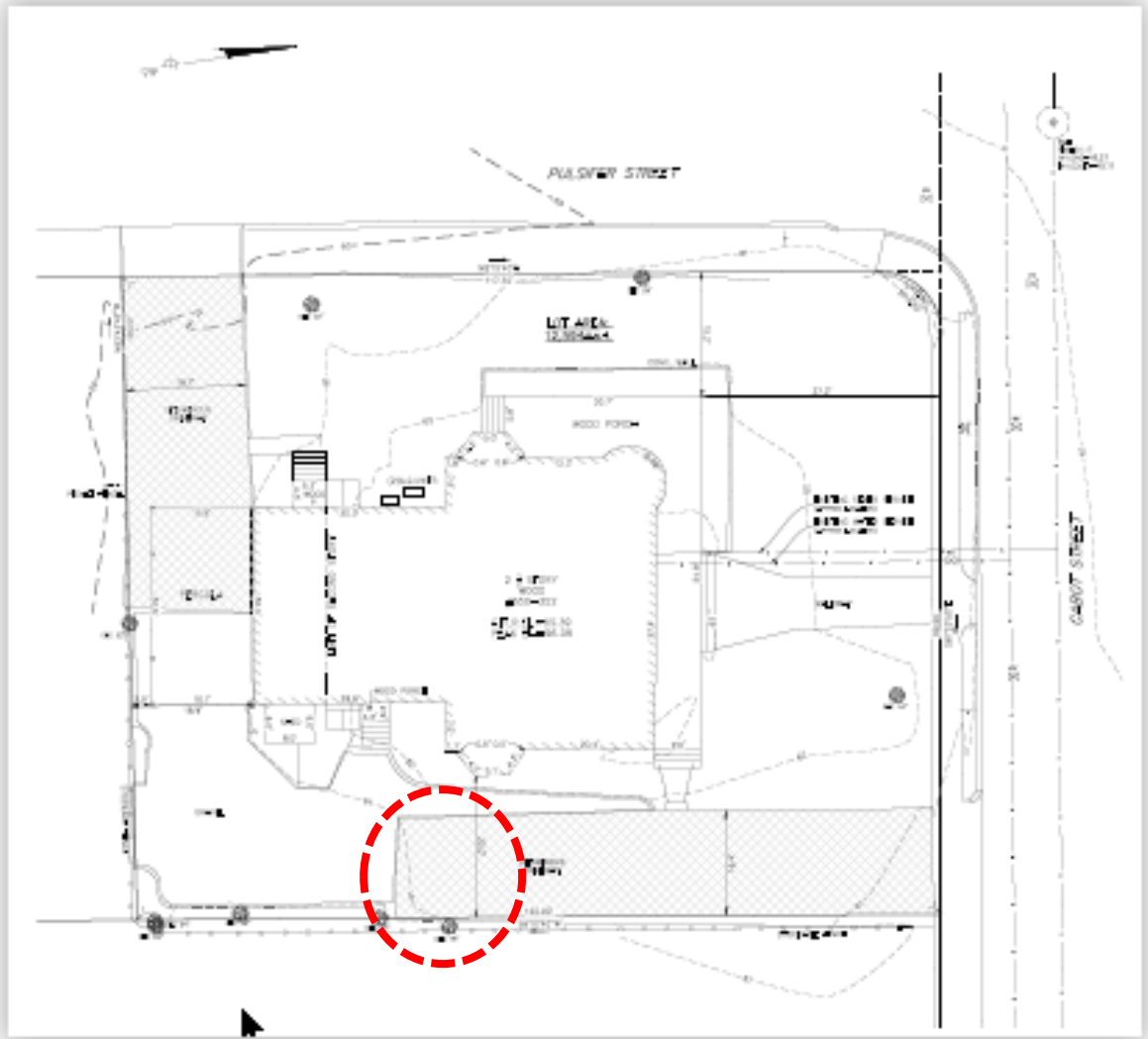
The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: March 04, 2022

# Site Plan- existing/proposed



# Photos





# Photos





# Photos



# Proposed Findings



1. The specific site is an appropriate location for the proposed oversized internal accessory apartment because the proposed accessory apartment is within the footprint of the existing structure (§7.3.3.C.1)
2. The proposed oversized accessory apartment as developed and operated will not adversely affect the neighborhood because the proposed accessory apartment is within the footprint of the existing structure (§7.3.3.C.2)
3. There will be no nuisance or serious hazard to vehicles or pedestrians because the existing driveway locations are being maintained on Cabot and Pulsifer Streets (§7.3.3.C.3)
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
5. The proposed modification of the existing nonconforming two-family use in the Single Residence 2 zoning district would not be substantially more detrimental than the existing nonconforming use to the neighborhood because the proposed oversized accessory apartment is within the existing footprint of the structure and no significant changes to the site plan are proposed (§3.4.1 and 7.8.2.C.2)



# Proposed Conditions



- Plan Referencing Condition

*A copy of the Condominium Master Deed shall be submitted to the Department of Planning and Development and the Law Department for review to determine consistency with this Special Permit prior to recording.*

- Accessory Apartment Conditions

- ✦ principal dwelling unit and accessory apartment may not be held in separate ownership
- ✦ owner of the principal dwelling unit shall occupy either it or the accessory apartment and shall file an annual affidavit attesting to this fact
- ✦ shall notify ISD in the event ownership changes (determination of compliance with this decision and all applicable codes)

- Standard Building Permit Condition.

- Standard Final Inspection/Certificate of Occupancy Condition.

# Department of Planning and Development



**PETITION #178-22**  
**2-4 AUBURNDALE AVENUE**

SPECIAL PERMIT/SITE PLAN  
APPROVAL TO ALTER A  
NONCONFORMING TWO-FAMILY  
RESIDENTIAL USE IN THE BU-1  
ZONE TO A THREE UNIT USE AND  
TO ALTER A NONCONFORMING  
SIDE SETBACK

MARCH 22, 2022



# Requested Relief



Special Permits per §7.3.3, 7.8.2.C.2 of the Newton Zoning Ordinance to:

- To alter and extend a nonconforming residential use in the BU-1 zone (§4.4.1, §7.8.2.C.2)
- To alter and extend a nonconforming side setback (§4.1.3, §7.8.2.C.2)
- To allow a structure with 36 feet in height and 2.5 stories (§4.1.2.B.3, §4.1.3 §7.3.3)

# Criteria to Consider



When reviewing this request, the Council should consider whether:

1. The site is an appropriate location for the proposed three-unit structure as designed (§7.3.3.C.1, §4.4.1, §4.1.3, 4.1.2.B.3).
2. The proposed three-unit structure as designed will adversely affect the neighborhood (§7.3.3.C.2, §4.4.1, §4.1.3, 4.1.2.B.3)
3. There will be a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3, §4.4.1, §4.1.3, 4.1.2.B.3).
4. Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §4.1.3).
5. The proposed nonconforming residential use will be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§4.1.3, §4.4.1, §7.8.2.C.2).
6. The proposed alteration of a nonconforming side setback will be substantially more detrimental than the existing nonconforming residential use is to the neighborhood (§4.1.3, §4.4.1, §7.8.2.C.2).



# ATTACHMENT A

## Zoning

### 2-4 Auburndale Avenue

City of Newton,  
Massachusetts

#### Legend

-  Single Residence 3
-  Multi-Residence 1
-  Multi-Residence 2
-  Business 1
-  Public Use

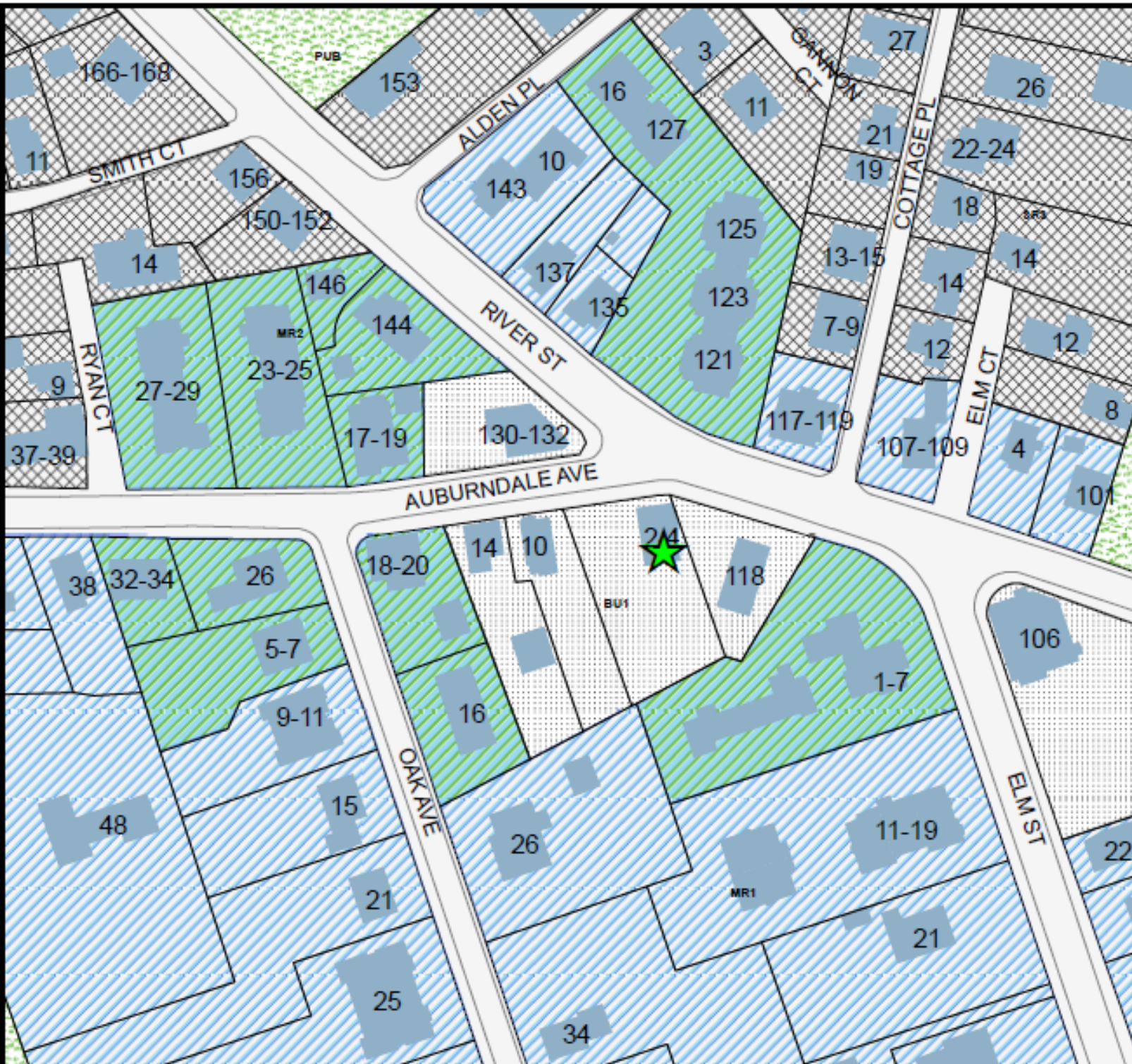


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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

0 12.5 25 50 75 100 125  
Feet

Map Date: March 17, 2022





# ATTACHMENT B

## Land Use

### 2-4 Auburndale Avenue

City of Newton,  
Massachusetts

#### Legend

##### Land Use

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

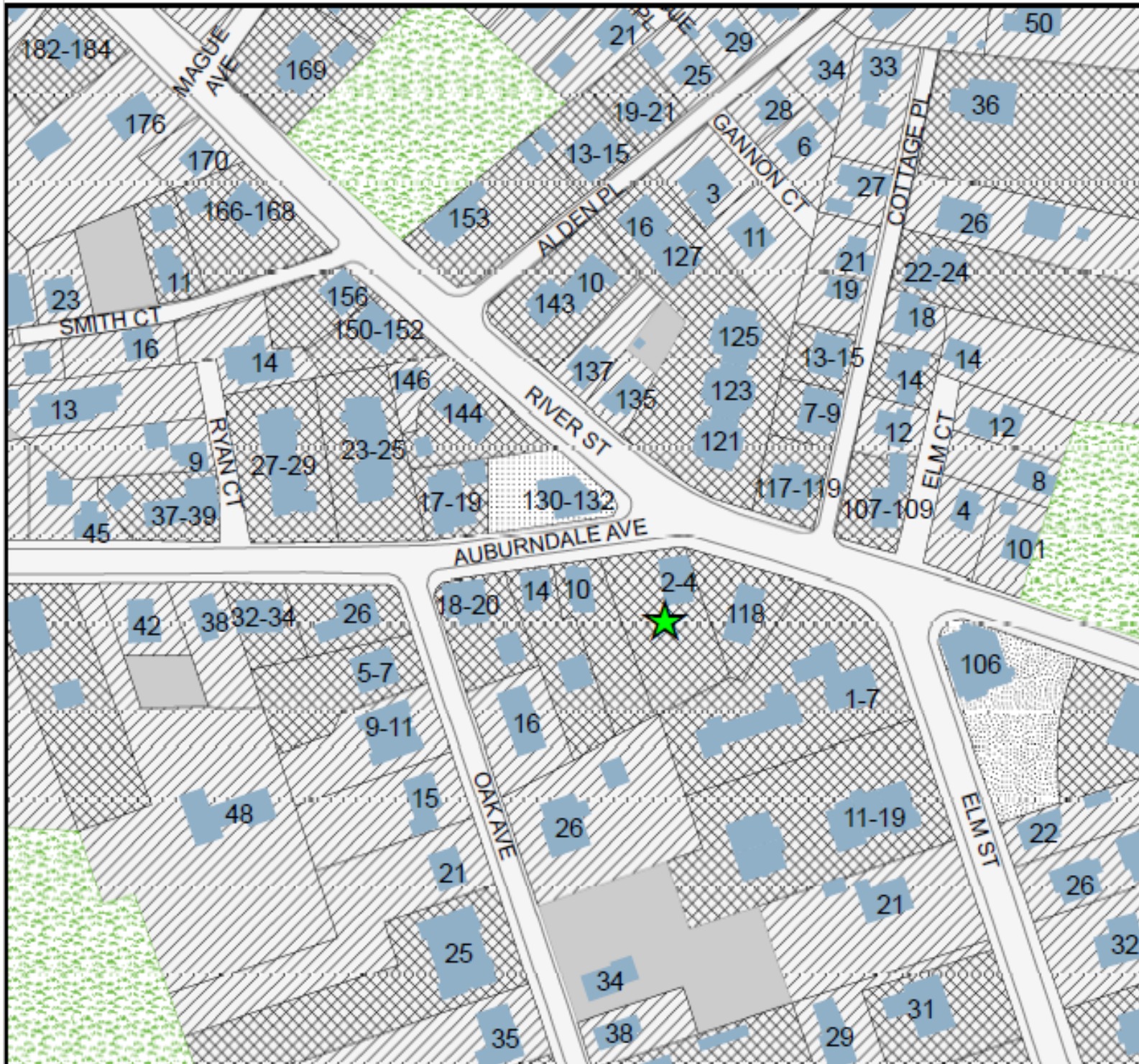


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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

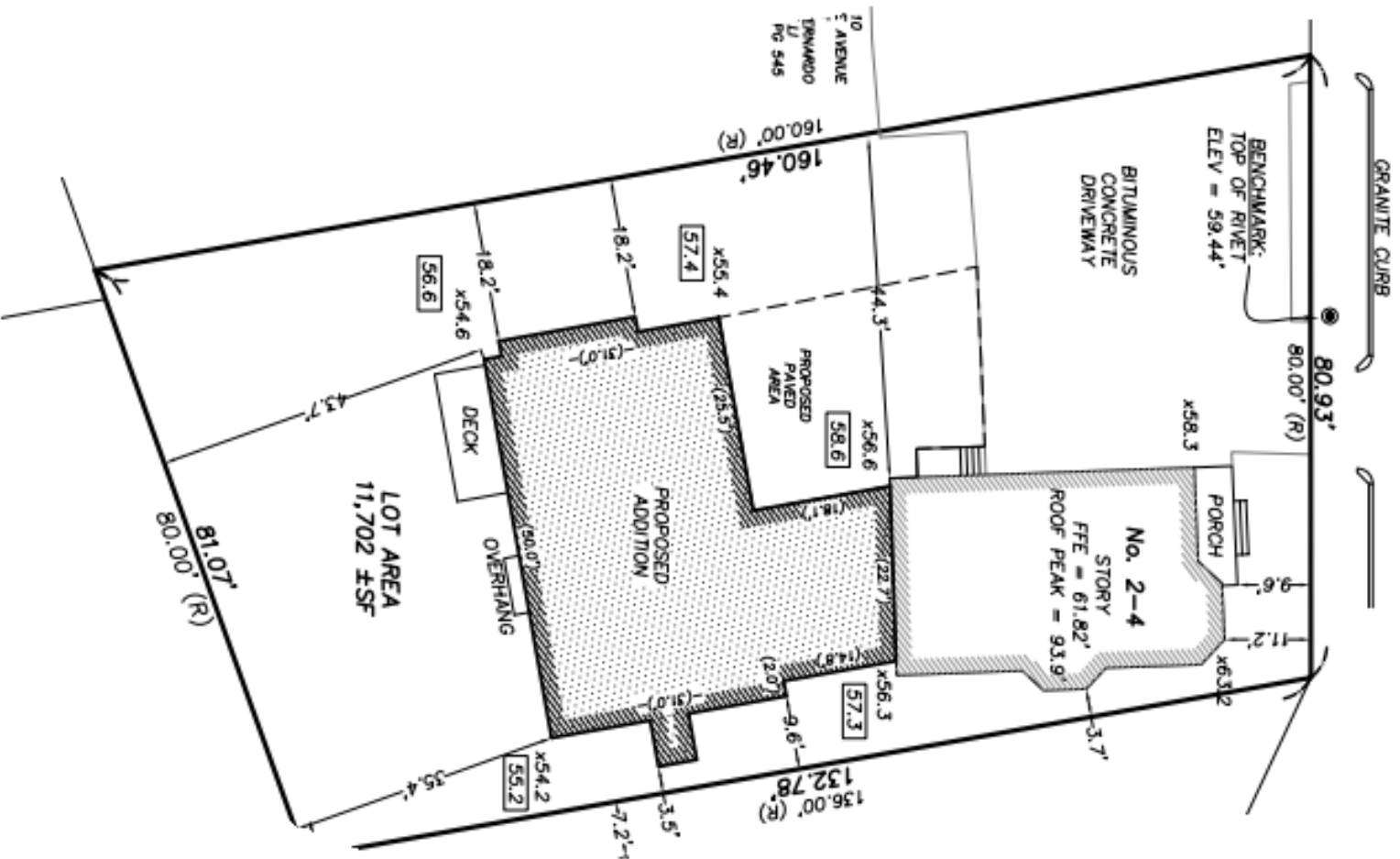
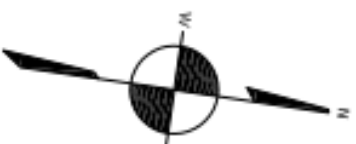


Map Date: March 17, 2022



# Proposed Site Plan

Auburndale Avenue



# Proposed Front Elevation



PROPOSED FRONT ELEVATION



# Proposed East Elevation



# Proposed Findings



1. The site is an appropriate location for the proposed three-unit structure as designed because the structure is increasing by less than a foot in height and maintaining the number of stories (§7.3.3.C.1, §4.4.1, §4.1.3, 4.1.2.B.3).
2. The proposed three-unit structure as designed will not adversely affect the neighborhood because there are other multifamily uses with more than three units in the neighborhood. (§7.3.3.C.2, §4.4.1, §4.1.3, 4.1.2.B.3)
3. There will not be a nuisance or serious hazard to vehicles or pedestrians because the petitioner is maintaining the driveway location (§7.3.3.C.3, §4.4.1, §4.1.3, 4.1.2.B.3).
4. Access to the sites over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4, §4.1.3).
5. The proposed nonconforming residential use will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood because the neighborhood is comprised of multifamily uses with more than three units and commercial uses (§4.1.3, §4.4.1, §7.8.2.C.2).
6. The proposed alteration of a nonconforming side setback will not be substantially more detrimental than the existing nonconforming residential use is to the neighborhood because it is only decreasing by two and half inches (§4.1.3, §4.4.1, §7.8.2.C.2).

# Proposed Conditions



1. Plan Referencing Condition.
2. Standard Building Permit Condition.
3. Prior to the issuance of any Building Permit, the petitioner shall provide a final Site Plan demonstrating compliance with the parking requirements in Section 5.1 for review and approval by the Department of Planning and Development.
4. Standard Pest/Rodent Control Condition.
5. Standard Construction Management Plan Condition.
6. O&M Condition
7. Standard Occupancy Permit