



Ruthanne Fuller
Mayor

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#314-22

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Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: June 14, 2022
Land Use Action Date: August 23, 2022
City Council Action Date: September 5, 2022
90-Day Expiration Date: September 12, 2022

DATE: June 10, 2022

TO: City Council

FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Michael Gleba, Senior Planner

SUBJECT: **Petition # 314-22** for SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permit Council Orders #162-88, #199-99(2) and 422-18; to amend the Restrictive Covenant recorded at Middlesex South Registry of Deeds at Book 30627, page 331; and to seek an additional waiver of parking stalls at **148 California Street**, Ward 1, Newton, on land known as Section 11 Block 12 Lot 11, containing approximately 523,642 (231,486 in Newton) sq. ft. of land in a district zoned MANUFACTURING. Ref: 7.3.3, 7.4, 5.1.4, 5.1.13 of the City of Newton Rev Zoning Ord, 2017.

The purpose of this memorandum is to provide the City Council and the public with technical information and planning analysis conducted by the Planning Department. The Planning Department's intention is to provide a balanced review of the proposed project based on information it has at the time of the public hearing. Additional information about the project may be presented at or after the public hearing for consideration at a subsequent working session by the Land Use Committee of the City Council.



148 California Street

EXECUTIVE SUMMARY

The subject parcel located at 148 California Street is a 231,486 square foot portion of a 523,642-square foot property that straddles the Newton and Watertown border. Approximately 45% of the property is located in Newton and is zoned Manufacturing (MAN); the remainder is located in Watertown at 171 Watertown Street. The site is currently improved with a multi-building, mixed-use development that includes a shopping center with various retail, restaurant and personal service uses as well as office space and surface parking.

The petitioner proposes to eliminate 11 parking stalls to create an outdoor common area for building tenants and visitors, resulting in an on-site supply of 690 stalls.

There are several prior special permits on the property relative to uses and parking. Each special permit was issued independently of the previously issued special permits. As several of these special permits reference site plans, amendments are required to reflect the proposed changes.

These previous special permits include the following.

- #162-88 authorized the expansion of the existing commercial center in 1988;
- #199-99(2) authorized the change of a nonconforming retail use to a nonconforming health club and associated parking waivers to set the overall parking supply at 706 pre-existing nonconforming stalls.
- #175-12 authorized the change of a nonconforming retail use to a 92-seat restaurant.
- #442-18(2) allowed the conversion of a nonconforming restaurant use to a salon use.

Per the "Site Wide Parking Calculations (2022)", the existing uses on site require a total of 743 parking stalls per Section 5.1.4. of the Newton Zoning Ordinance (NZO). The proposed reduction to 690 parking stalls requires a waiver of 53 stalls per Sec. 5.1.13.

Also, a Restrictive Covenant on the property granting the City of Newton certain rights if there is ever proposed development of the site solely in Watertown which would reduce the parking supply. The petitioner seeks a second amendment to the Restrictive Covenant to reduce the site-wide parking to 690 stalls.

I. SIGNIFICANT ISSUES FOR CONSIDERATION

When reviewing this request, the Council should consider whether:

- The site in a Manufacturing (MAN) zoning district is an appropriate location for the proposed outdoor amenity area that would eliminate 11 existing parking stalls (§7.3.3.C.1)
- The proposed outdoor amenity area that would eliminate 11 existing parking stalls will adversely affect the neighborhood (§7.3.3.C.2)
- The proposed outdoor amenity area that would eliminate 11 existing parking stalls will create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3)

- Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4)
- Whether an exception to the requirement per Sec. 5.1.4 that 743 parking stalls be provided onsite, resulting in a waiver of 53 parking stalls, is appropriate because literal compliance with that requirement is impracticable due to the nature of the use, or the location, size, width, depth, shape, or grade of the lot; or that such exception would be in the public interest, or in the interest of safety, or protection of environmental features.

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on the south side California Street just west of the Newton-Watertown boundary line. The surrounding neighborhood consists of a mix of uses, including one-, two- and multi- family dwellings, commercial, manufacturing as well as park and fast food uses (**Attachment A**). A special permit was recently granted for a multi-unit dwelling on the abutting property at the southeast corner of California and Los Angeles streets. The subject property, several abutting properties to the west and those directly across California Street to the north and northwest are zoned Manufacturing (MAN); properties to the west along the south side of California Street are zoned Business 1 (BU1). Those other properties generally to the west and southwest are zoned Multi-Residence 2 (MR2) (**Attachment B**).

B. Site

The lot is an approximately 231,486 square foot portion of a 523,642-square foot property located on and along the Newton-Watertown boundary. The site, which is accessed from both California Street in Newton and Watertown Street in Watertown, slopes down from Watertown Street northward towards the shopping center structure and California Street. It is improved with a mixed-use development built c. 1963 that includes a shopping center with supermarket, gym, retail, restaurant, and service uses, as well as office space and surface parking. Most of the retail is located in a one-story masonry building primarily accessed from Watertown Street. A three-story brick building containing several other uses is primarily accessed from California Street. The majority of the parking is located on the Watertown side of the property.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site will remain a multi-building, mixed-use development.

B. Building Design

No changes to the structures on the site are contemplated by the present petition.

C. Site Design, Landscape, and Lighting

The petitioner proposes to create a landscaped and paved “amenity area” with lawn areas, trees, and other plantings as well as decorative paving areas and lighting in a location on in the northwestern portion of the property approximately 150 feet south of California Street currently occupied by 11 parking stalls.

The proposed amenity area is located about 50 feet from the rear yard of dwellings that front on Los Angeles Street. The Planning Department notes that the petitioner has indicated it will comply with the City’s lighting ordinance. That said, the Department recommends that in the event the present petition is granted the petitioner also ensure that the operation of the amenity space not create unreasonable sound impacts on nearby residential properties.

D. Parking and Circulation

As discussed in the attached zoning review memorandum (**Attachment C**), per the Site Wide Parking Calculations (2022) (“2022 Parking Calculations”) provided by the petitioner, the current uses on site (retail, office, restaurant, personal service), require a total of 743 parking stalls.

The parking waiver granted pursuant to Special Permit #199-99(2) granted in 1999 authorized the change of a nonconforming retail use to a nonconforming health club, allowing the overall site’s overall parking supply to be reduced to 706, 37 stalls fewer than required by the NZO.

That said, according to the site plan entitled “Existing Conditions Plan (Ex-1)” (dated March 25, 2022) cited by the petitioner in its above-referenced parking calculation, the site currently contains 701 parking stalls, five fewer than the number required by the SP #199-99(2) and 42 fewer than required by the NZO.

As such, the petitioner requires an increase in the number of waived required parking stalls from 37 (per SP #199-99(2)) to 53 stalls to allow the elimination of 11 parking spaces, reducing the number of parking stalls onsite to 690 parking stalls, to accommodate the proposed outdoor “amenity area.”



Proposed plan (detail)

To support its requested parking waiver, the petitioner has submitted a consultant-prepared parking study (“Parking Study”)(**Attachment D**). The Parking Study indicates that it is based on observations made earlier this year on a weekday afternoon and a Saturday afternoon which are identified as “typical peak demand periods for shopping centers and office space.”

The Planning Department notes that the Parking Study estimates that there are currently 672 spaces on site, 29 fewer than the amount asserted in the petitioner’s 2022 Parking Calculations. The petitioner should be prepared to address this discrepancy in advance of or at the upcoming public hearing.

The foregoing notwithstanding, the Parking Study indicates that existing parking demand during the two observed expected peak periods, weekday and Saturday afternoons, are well below capacity at 37% and 32% respectively of the 672 spaces it observed.

The Planning Department notes that the observed demand would represent only 36% of the 690 resulting spaces indicated in the zoning review memorandum and the petitioner’s 2022 Parking Calculations on a weekday afternoon and 31% on a Saturday afternoon. In the “worst case scenario” of there being 661 stalls after the proposed elimination of 11 stalls (per the Parking Study), demand would still only be 37% and 33% of the available supply during weekday and Saturday afternoons.

IV. TECHNICAL REVIEW

A. Technical Considerations (Chapter 30, Newton Zoning Ordinance):

The Zoning Review Memorandum provides an analysis of the proposal with regard to zoning (**Attachment C**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

- Amend Special Permits #162-88, 199-99(2), and 422-18

- Special Permit per §7.3.3 to:
 - waive 53 parking stalls (§5.1.4, §5.1.13)
 - amend the existing Restrictive Covenant to reduce site-wide parking

B. Engineering Review

Review of the project by the Engineering Division is not required at this time.

C. Historic Review

Review of the project by the Newton Historic Commission is not required at this time.

V. PETITIONER'S RESPONSIBILITIES

The petition is considered complete at this time.

ATTACHMENTS:

- Attachment A:** Land Use Map
Attachment B: Zoning Map
Attachment C: Zoning Review Memorandum
Attachment D: Petitioner's Parking Study prepared by Stantec Consulting, dated April 25, 2022
Attachment E: **DRAFT** Council Order

ATTACHMENT A

Land Use

148 California St.

*City of Newton,
Massachusetts*

Land Use

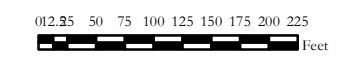
Land Use

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

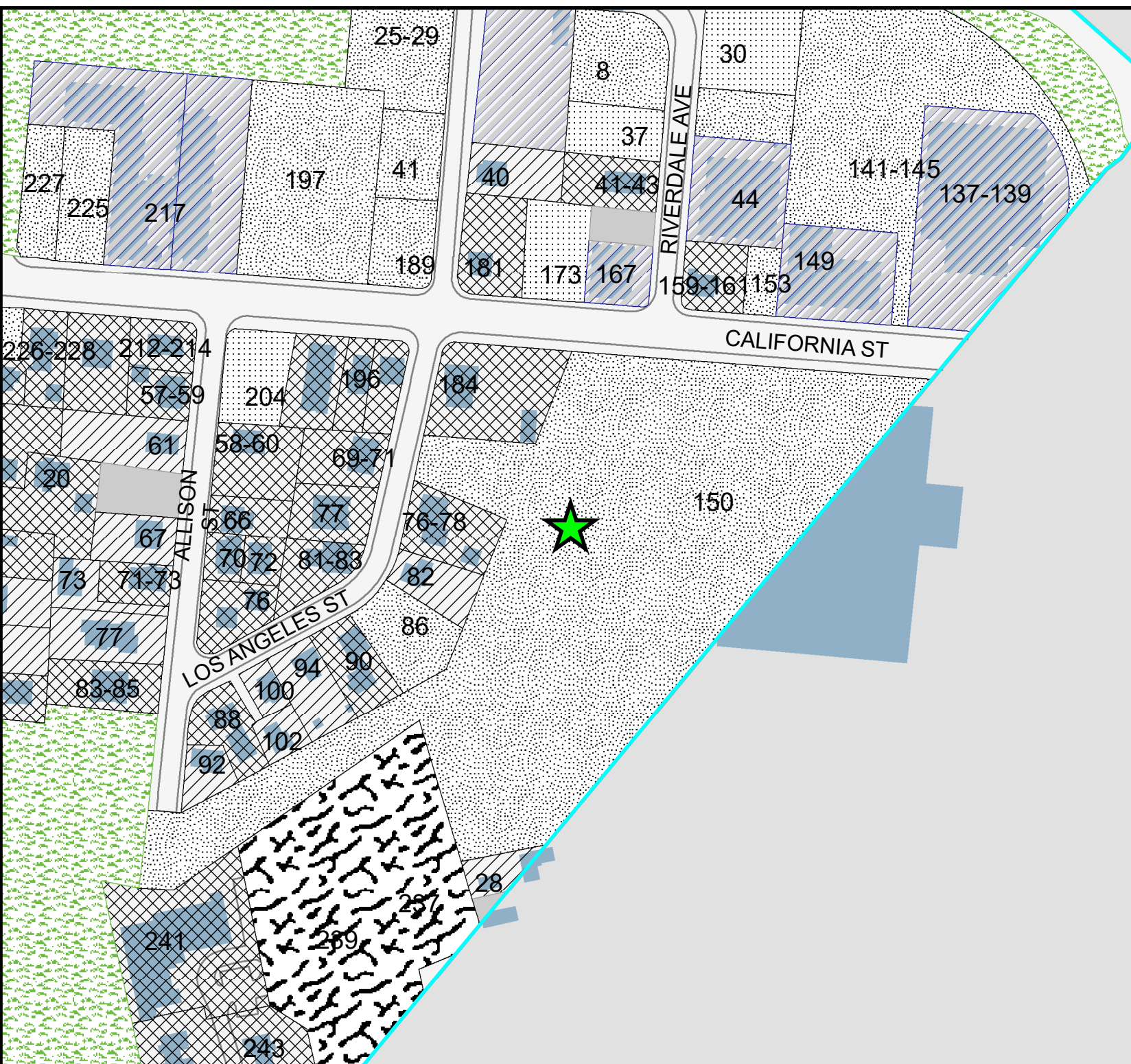


The information on this map is from the Newton Geographic Information System (GIS). The City of Newton cannot guarantee the accuracy of this information. Each user of this map is responsible for determining its suitability for his or her intended purpose. City departments will not necessarily approve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

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



Map Date: May 23, 2022



ATTACHMENT B

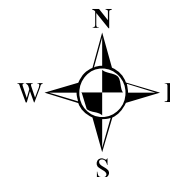
Zoning

148 California St.

*City of Newton,
Massachusetts*

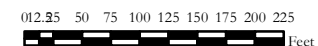
Legend

-  Multi-Residence 2
-  Business 1
-  Manufacturing
-  Public Use

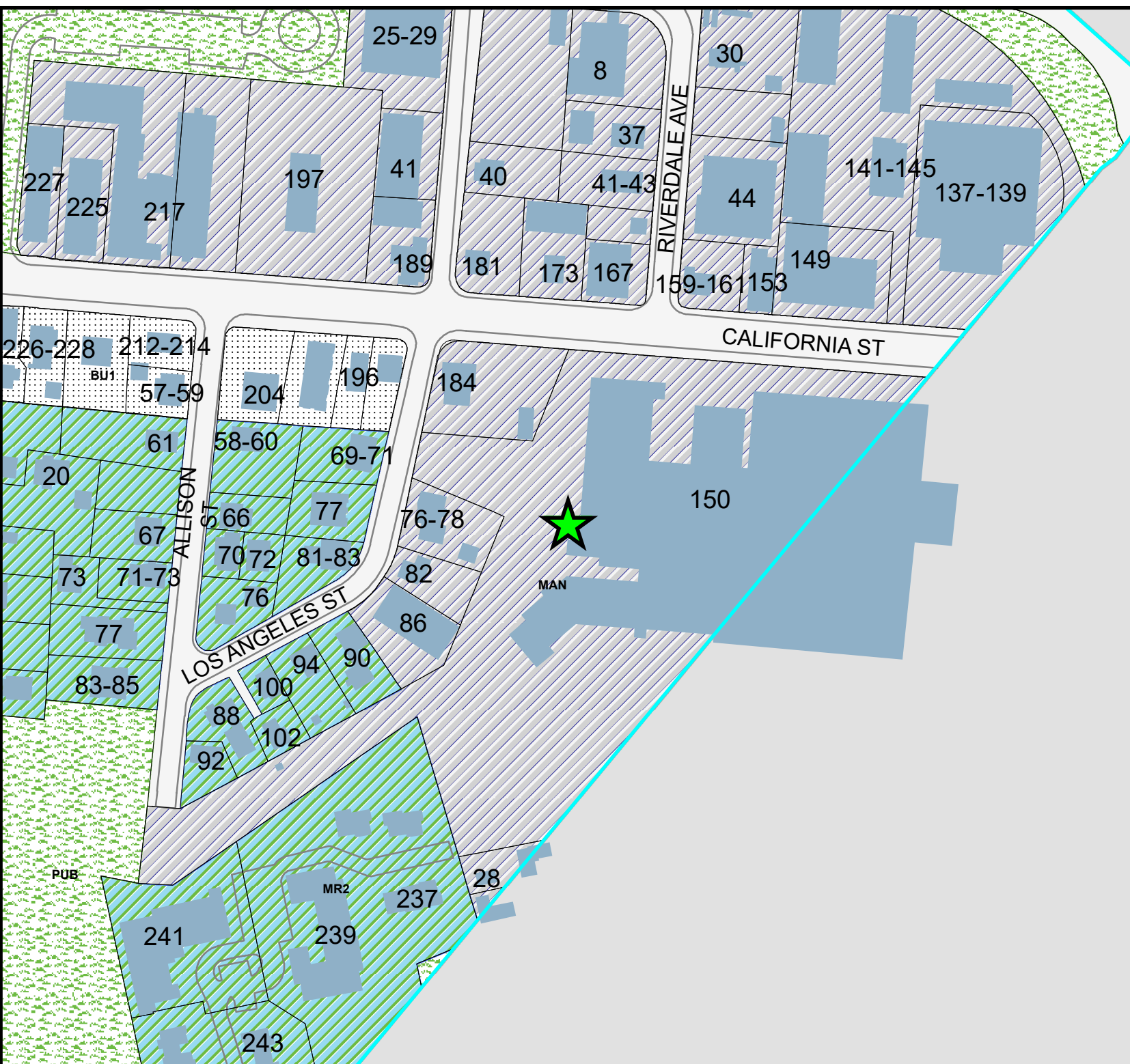


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CITY OF NEWTON, MASSACHUSETTS
Mayor - Ruthanne Fuller
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Map Date: May 23, 2022





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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 18, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: KF Realty Associates, Applicant
Frank Stearns, Attorney
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: Request to amend special permits #162-88, 199-99(2), and 422-18 and to waive required parking stalls

Applicant: KF Realty Associates	
Site: 148 California Street (171 Watertown Street, Watertown, MA)	SBL: 11012 0011
Zoning: MAN	Lot Area: 523,642 square feet (231,486 square feet in Newton)
Current use: Mixed commercial and office	Proposed use: No change

BACKGROUND:

The property located at 148 California Street consists of a 231,486 square foot lot straddling the border between Newton and Watertown. Approximately 45% of the lot is located in Newton and is zoned Manufacturing (MAN); the remainder is located in Watertown at 171 Watertown Street. The site is currently improved with several buildings with various office, retail, restaurant and personal service uses and surface parking. The petitioner proposes to eliminate 11 parking stalls to create an outdoor common area for building tenants and visitors.

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

- Zoning Review Application, prepared by Frank Stearns, attorney, submitted 4/5/2022
- Special Permits #162-88, 199-99(2), 175-12, 422-18(2)

- Schematic Design, signed and stamped by John M. Rufo, architect, dated 3/30/2022
- Restrictive Covenant, dated 9/1/1999
- Sitewide Parking Calculations 2022

ADMINISTRATIVE DETERMINATIONS:

1. There are several prior special permits on the property relative to uses and parking. Special permit #162-88 authorized the expansion of the existing commercial center. A second special permit was issued in 1999, #199-99(2), authorizing the change from a nonconforming retail use to a nonconforming health club and associated parking waivers. Special permit #175-12 authorized the change from a nonconforming retail use to a 92-seat restaurant. Special permits #422-18 and #442-18(2) allowed for a change from one nonconforming use to a salon use. As several of these special permits reference site plans, amendments are required to reflect the proposed changes.
2. The 1999 special permit granted a parking waiver allowing the uses on site to be served by the on-site parking supply of 706 stalls. According to the submitted existing conditions plan, the site contains 701 parking stalls. The petitioner proposes to eliminate 11 parking stalls to create an outdoor common area, resulting in an on-site supply of 690 stalls. Per the “Site Wide Parking Calculations (2022)”, the existing uses on site, including retail, office, restaurant and personal service, require a total of 743 parking stalls per section 5.1.4. With the reduction to 690 parking stalls, the petitioner requires a waiver of 53 stalls per section 5.1.13.
3. There is a Restrictive Covenant that exists on the property, which intended to give the City of Newton rights if there is ever proposed development of the site solely in Watertown which would reduce the parking supply. This agreement is executed in conjunction with Special Permit #162-88. The 1999 special permit sets the overall parking supply at 706 pre-existing nonconforming stalls. The petitioner seeks an amendment to the Restrictive Covenant to reduce the site-wide parking to 690 stalls.

See “Zoning Relief Summary” below:

Zoning Relief Required		
<i>Ordinance</i>		<i>Action Required</i>
	Request to amend Special Permits #162-88, 199-99(2), and 422-18	
§5.1.4 §5.1.13	Request to waive 53 parking stalls	S.P. per §7.3.3
	Request to amend the Restrictive Covenant to reduce site-wide parking	S.P. per §7.3.3



Stantec Consulting
136 West Street, Suite 203
Northampton, MA 01060

April 25, 2022
File: PL_264

Jess Carroll
United Properties Group
1330 Boylston Street, #608
Chestnut Hill, MA 02467

Dear Jess,

Reference: 148 California Street, Watertown, MA

Per your request, Stantec investigated parking supply and demand issues at the above-referenced site. Specifically, Stantec considered the impact of proposed parking lot modifications on the adequacy of the site parking supply and concluded that the proposed changes, which will reduce the parking supply by 11 spaces, will have no significant impact on parking operations.

1.0 PROJECT DESCRIPTION

The project site is a mixed-use property at 148 California Street/171 Watertown Street on the Newton/Watertown line. It's comprised of a Stop & Shop anchored shopping center with a large parking lot facing Watertown Street and an attached mixed-use office building fronting on California Street. The site has approximately 635 parking stalls supporting the shopping center and 37 parking stalls supporting the office space. The proposed project includes parking lot improvements that will result in a loss of approximately 11 spaces. The action will require a special permit including a parking waiver.

2.0 PARKING INVESTIGATIONS

Stantec conducted on-site parking counts to measure existing parking utilization. The counts were done on Thursday, April 14, 2022, at 3:15 PM, and at noon on Saturday, April 16, 2022. Weekday afternoons are typical peak demand periods for shopping centers and office space. Saturday midday periods are also peak demand times for shopping centers. The collected data are shown in Table 1. As shown, the parking supply greatly exceeds the observed parking demand for the shopping center with only 33 to 34 percent of the spaces in use during the survey periods. Likewise, the office parking is not fully utilized. Combined, the peak site parking demand occurs on the weekday afternoon with 246 of the 672 spaces (37 percent) in use.



Reference: 148 California Street, Watertown, MA

Table 1 Parking Data

Day	Lot	Parking Demand	Parking Supply	Utilization
Weekday	Shopping Center	218	635	34%
	Office Building	28	37	76%
	Combined	246	672	37%
Saturday	Shopping Center	208	635	33%
	Office Building	7	37	19%
	Combined	215	672	32%

Surveys conducted Thursday, April 14, 2022, at 3:15 PM and Saturday, April 16, 2022, at 12:00 PM.

3.0 CONCLUSIONS

The parking supply at the subject site will be more than adequate to serve parking demands after the implementation of the proposed site improvements. The site improvements will eliminate 11 parking spaces reducing the parking supply to 661 spaces. The maximum parking demand observed was only 246 vehicles. Consequently, with the proposed site improvements, the parking lots will continue to operate at only 37 percent of capacity.

Thank you for inviting us to assist you with this investigation. Please do not hesitate to contact us should you have any questions.

Regards,

Stantec Consulting

Richard Bryant
Senior Associate
Cell/Work-From-Home: (802) 324-8454
Richard.Bryant@stantec.com

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CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the City 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 the following SPECIAL PERMIT/SITE PLAN APPROVAL to amend Special Permits #162-88, 199-99(2), and 422-18(2); waive 53 parking stalls (§5.1.4, §5.1.13); and amend the Restrictive Covenant (*dated*) to reduce site-wide parking as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The site in a Manufacturing (MAN) zoning district is an appropriate location for the proposed outdoor amenity area that would eliminate 11 existing parking stalls as the site is well contained and the use will not have any impacts on the surrounding neighborhood; (§7.3.3.C.1)
2. The proposed outdoor amenity area that would eliminate 11 existing parking stalls will not adversely affect the neighborhood (§7.3.3.C.2)
3. The proposed outdoor amenity area that would eliminate 11 existing parking stalls will not create a nuisance or serious hazard to vehicles or pedestrians as there is sufficient parking to accommodate the multiple use on the site (§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. Granting an exception to the requirement per Sec. 5.1.4 that 743 parking stalls be provided onsite, resulting in a waiver of 53 parking stalls, is appropriate because such exception would be in the public interest as it would reduce the amount of surplus parking on the site and allow the replacement of eleven parking stalls with a landscaped area that includes lawn, trees, and other vegetation as well as seating areas

PETITION NUMBER: #314-22

PETITIONER: KF Realty Associates, LLC

ADDRESS OF PETITIONER: 1330 Boylston St.
Suite 608
Newton, MA 02467

LOCATION: 148-50 California Street/171 Watertown Street,
Section 11, Block 12, Lot 11 containing approximately
231,486 square feet of land

OWNER: KF Realty Associates

ADDRESS OF OWNER: 1330 Boylston St.
Suite 608
Newton, MA 02467

TO BE USED FOR: Mixed use development (no change)

CONSTRUCTION: Site and landscaping improvement

EXPLANATORY NOTES: Special Permit per §7.3.3 to:

- Amend Special Permits #162-88, #199-99(2), and #422-18
- waive 53 parking stalls (§5.1.4, §5.1.13)

Also, amend the Restrictive Covenant to reduce site-wide parking

ZONING: Manufacturing District

This Special Permit/Site Plan Approval amends Council Orders #162-88, #199-99(2), and #422-18(2) by modifying Condition #1 in each of those Council Orders to be consistent with Condition #1 below. All other conditions of said Council Orders shall remain in full force and effect.

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 the following plans:
 - a) A plan entitled "171 Watertown Street, Watertown / Newton, MA. Existing Conditions Plan (Ex-1)" dated February 11, 2022, as denoted as "Progress Print, March 25, 2022," prepared by RJ O'Connell & Associates, Inc., represented as showing 706 parking stalls, as modified by a plan entitles "Place-making Renovations, 150 Californi (sic) Street, Newton, MA, Schematic Design, Proposed

Site Plan,” dated March 30, 2022, signed and stamped by John M. Rufo, Registered Architect.

- b) A document entitled “148 California Street/171 Watertown Street, Site Wide Parking Calculations (2022).”
2. No building permit shall be issued pursuant to this special permit/site plan approval until the petitioner has:
 - a. recorded a certified copy of this Order for the approved special permit/site plan with the Registry of Deeds for the Southern District of Middlesex County;
 - b. filed a copy of such recorded Order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development
 - c. recorded at the Registry of Deeds for the Southern District of Middlesex County a certified copy of an executed second amendment, as reviewed and approved by the Law Department (“Second Amendment”), to the Restrictive Covenant which was recorded in the Middlesex South District Registry of Deeds Book 19779, Page 191, as previously amended by the Amendment to Restrictive Covenant recorded at Middlesex South District Registry of Deeds at Book 30627, Page 331 (the “Recorded Restrictive Covenant”). Said Second Amendment to the Recorded Restrictive Covenant shall be consistent in form and content with the attached draft amendment (**Exhibit A**).
 - d. filed with the City Clerk, the Department of Inspectional Services, the Law Department, and the Department of Planning and Development a copy of the executed and recorded Second Amendment.
 - e. obtained a statement from the Director of Planning and Development that all plans are consistent with Condition #1.
 3. No occupancy permit for the use covered by this special permit/site plan approval shall be issued until the petitioner has:
 - a. filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement certifying compliance with Condition #1.

Second Amendment to Restrictive Covenant

The undersigned, Jess Carroll, Manager of KF Realty Associates, LLC hereby imposes the following Second Amendment to the Restrictive Covenant, which was recorded in the Middlesex South District Registry of Deeds Book 19779, Page 191, as previously amended by the Amendment to Restrictive Covenant recorded at Middlesex South District Registry of Deeds at Book 30627, Page 331 (the "Recorded Restrictive Covenant").

The restrictions and all other conditions and terms set forth in the Recorded Restrictive Covenant remain in full force and effect, except that the reference to "Special Permit #162-88" in paragraph 2 is deleted by this Amendment and is replaced with "Special Permit #314-22", dated June __, 2022, a copy of which is attached to this Amendment.

IN WITNESS WHEREOF, this Instrument is executed under seal this ____ day of June, 2022.

KF REALTY ASSOCIATES, LLC

By: Jess Carroll
Manager

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

September __, 1988

On this ____ day of June, 2022, before me, the undersigned Notary Public, personally appeared Jess Carroll, proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of KF Realty Associates, LLC.

Notary Public
My Commission Expires: _____