



Ruthanne Fuller
Mayor

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

#487-22
Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

Barney S. Heath
Director

PUBLIC HEARING MEMORANDUM

Public Hearing Date: November 15, 2022
Land Use Action Date: January 24, 2022
City Council Action Date: February 6, 2023
90-Day Expiration Date: February 13, 2023

DATE: November 15, 2022

TO: City Council

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

SUBJECT: **Petition #487-22**, petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow a for-profit education use at 49-51 Winchester Street, Ward 5, Newton, on land known as Section 51 Block 28 lot 30, containing approximately 79,500 sq. ft. in a district zoned MIXED USE 1. Ref: 7.3.3, 7.4, 4.4.1, 6.3.14.B.2 of Chapter 30 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.



49-51 Winchester Street

EXECUTIVE SUMMARY

The subject property consists of a 79,500 square foot lot in the Mixed Use 1 (MU-1) zone in Newton Highlands. The property is improved with a two-story 19,000 square foot commercial building, a detached 3,600 square foot metal storage shed, and a second detached 1,378 square foot wooden shed at the front of the property. The petitioner seeks to locate a for-profit music tutoring school. This is considered a for-profit educational use by the Ordinance, which is only allowed by special permit. For this reason, the petitioner requires a special permit to establish the school.

Given the site's location in the MU-1 zone and the mix of uses within the site and within the area, Planning believes the location to be appropriate for the for-profit educational use. The petitioner stated their use operates with four to seven one-on-one tutoring sessions at a time during the week, four one on one classes on Saturday and seven one on one classes on Sunday. The proposed schedule would allow classes on afternoons and evenings during the week, and mornings and afternoons on the weekend. The site has multiple access points from three different streets, ample parking, and the use as proposed complies with the required parking.

I. SIGNIFICANT ISSUES FOR CONSIDERATION:

When reviewing this request, the Council should consider whether:

- The site located in a Mixed Use 1 (MU-1) zoning district is an appropriate location for the proposed for-profit educational use. (§7.3.3.C.1.)
- The proposed for-profit educational use will adversely affect the neighborhood. (§7.3.3.C.2)
- The proposed for-profit educational use 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)

II. CHARACTERISTICS OF THE SITE AND NEIGHBORHOOD

A. Neighborhood and Zoning

The subject property is located on a corner lot at the intersection of Winchester Street and Curtis Street in the MU-1 zone in Newton Highlands near the Route 9/Boylston Street overpass. The site abuts the MBTA Green Line railroad tracks to the west, Curtis Street to the north, and the Evergreen Cemetery to the south.

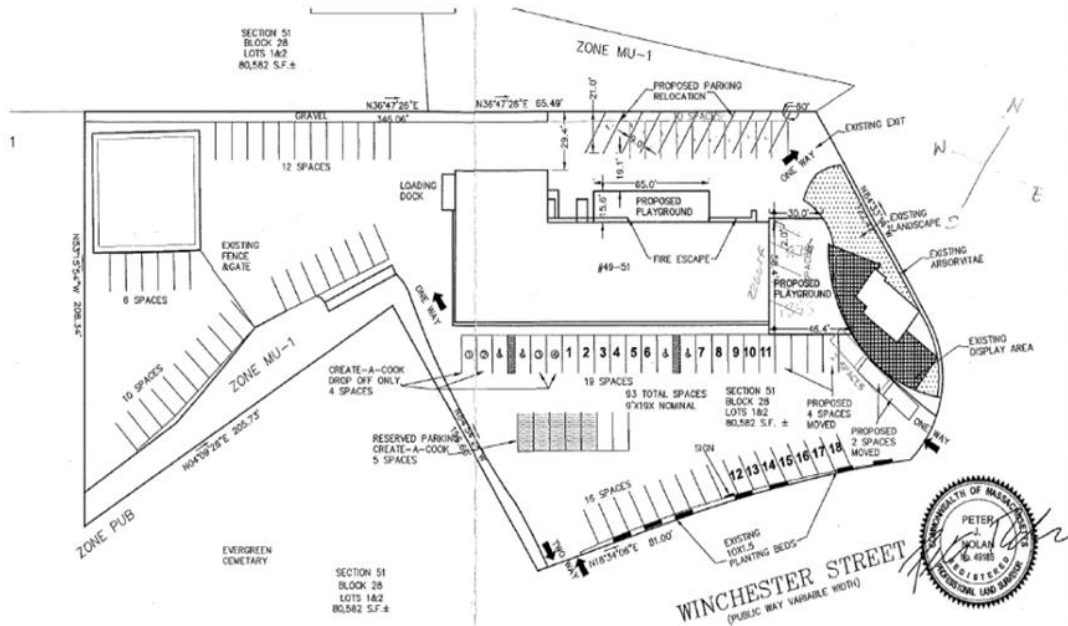
This location lies between the Newton Highlands commercial area and the Needham Street Corridor. Land uses in the surrounding area vary, with much of the land nearby

used for multi-family and commercial uses, and open space located at the abutting cemetery and nearby Newton Highlands Playground. The zoning districts in the surrounding neighborhood are a mix of Mixed Use 1, and Mixed Use 2 Districts, and Multi-Residence 1 to the north and Business 2 to the northeast. (ATTACHMENTS A AND B).

B. Site

The property consists of 79,500 square feet of land, with a portion of the property wrapping around the abutting Evergreen Cemetery to the southwest. The land is improved with a two-story commercial building, a metal storage structure in the southwestern corner of the site, and a small wood framed building and vegetated area along Curtis Street.

Site Plan



Access to the property is provided via three curb cuts, with one located on Winchester Street, one on Curtis Street, and one at the corner of Winchester and Curtis Street. The site also includes a large surface parking lot, with approximately 70 parking stalls. Several dimensional requirements of the parking facility were waived under Special Permit 132-14 due to the existing uses and development patterns on the site.

The commercial building is currently occupied by several tenants with varying uses, including office space, a day care center and a cooking school.

III. PROJECT DESCRIPTION AND ANALYSIS

A. Land Use

The principal use of the site is and will remain mixed use should the petition be approved.

B. Building and Site Design

The petitioner is not proposing any changes to the commercial building or the parking facilities.

C. Proposed Operations

The petitioner is proposing to establish a music school (called the Conservatory at Highlands) that provides one-on-one music tutoring. The classes will be held in a 2,881 square foot tenant space on the second floor that is currently vacant but was previously used as an office.

Per the submitted narrative and sample class schedule, the petitioner is proposing to hold classes on weekday afternoons and evenings, as well as weekend mornings and afternoons (**ATTACHMENT C**). Between four and seven teachers will be on site for one-on-one lessons, and one administrative staff member, bringing the maximum total employees on site up to eight. The petitioner anticipates that their busiest times will be Monday-Friday after 6PM and Saturdays from 12-4 PM.

D. Parking and Circulation

The tenant space the petitioner rents for the music school was previously used as an office, which required 12 parking stalls. The proposed for-profit educational use will have up to eight employees working at a time, resulting in a requirement of eight parking stalls. No waiver is required, as the credit from the previous use satisfies the parking requirement for this petition.

IV. TECHNICAL REVIEW

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

The Zoning Review Memorandum provides an analysis of the proposal regarding zoning (**ATTACHMENT D**). Based on the completed Zoning Review Memorandum, the petitioner is seeking the following relief:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§4.4.1 §6.3.14.B.2	Request to allow a for-profit educational use	S.P. per §7.3.3

B. Historic Preservation Review

The project does not require historic preservation review.

C. Engineering Review

Engineering Review is not required.

V. PETITIONER'S RESPONSIBILITIES

The petitioner should respond to the issues raised in this memorandum and other questions raised at the public hearing as necessary. Written responses to all significant issues should be provided for analysis by the Planning Department prior to being scheduled for additional public hearings. The Planning Department will prepare an updated memo prior to any future public hearings.

ATTACHMENTS:

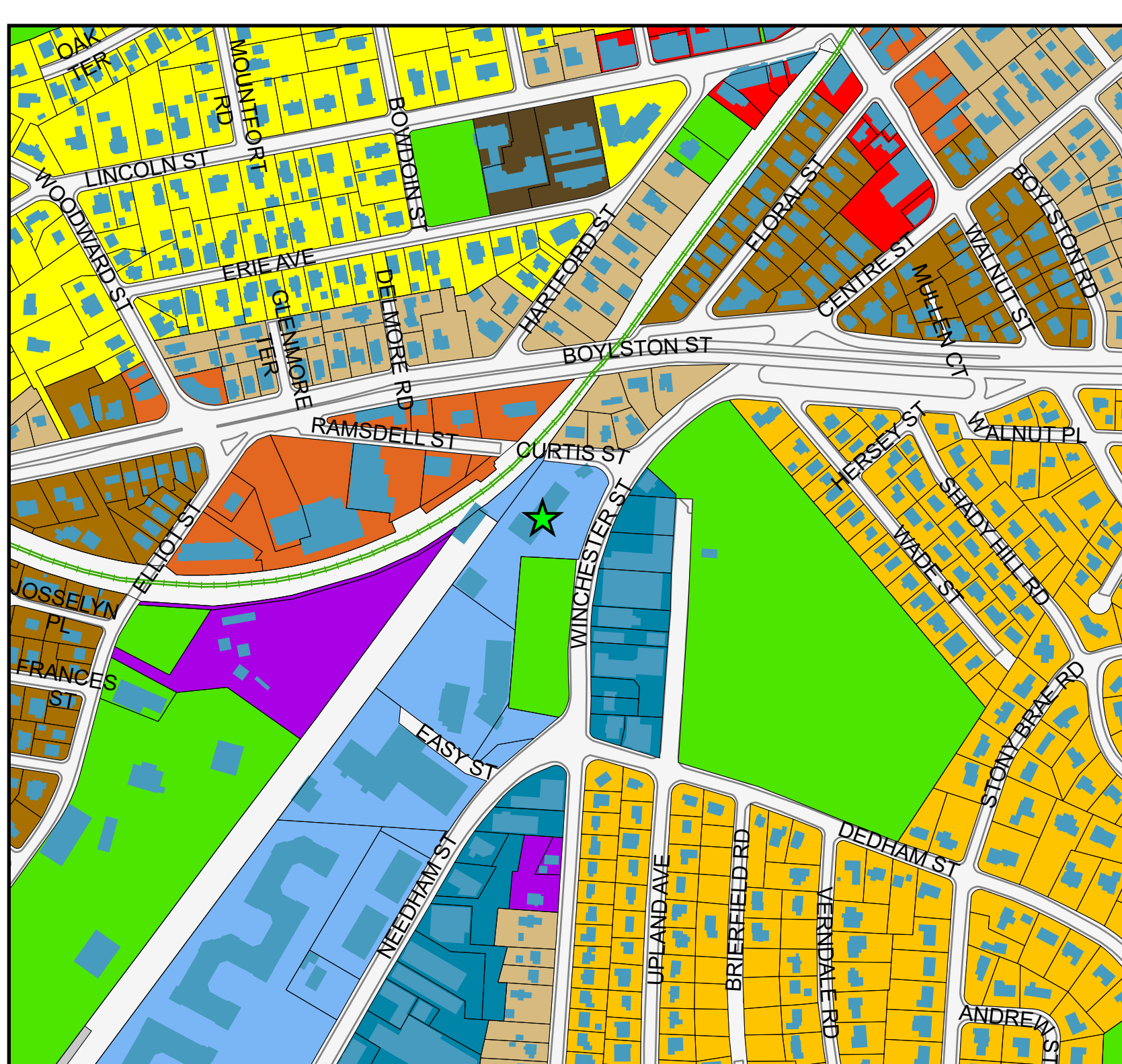
- ATTACHMENT A:** Zoning Map
- ATTACHMENT B:** Land Use Map
- ATTACHMENT C:** Project Narrative
- ATTACHMENT D:** Zoning Review Memorandum
- ATTACHMENT E:** Draft Council Order

ATTACHMENT A


Zoning

49-51 Winchester Street

*City of Newton,
Massachusetts*




Zoning

- | | | | |
|---|--------------------|---|---------------|
|  | Single Residence 2 |  | Business 2 |
|  | Single Residence 3 |  | Manufacturing |
|  | Multi-Residence 1 |  | Mixed Use 1 |
|  | Multi-Residence 2 |  | Mixed Use 2 |
|  | Multi-Residence 3 |  | Public Use |
|  | Business 1 | | |



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

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Map Date: October 20, 2022

ATTACHMENT B

Land Use

49-51 Winchester Street

*City of Newton,
Massachusetts*

Land Use

Land Use

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

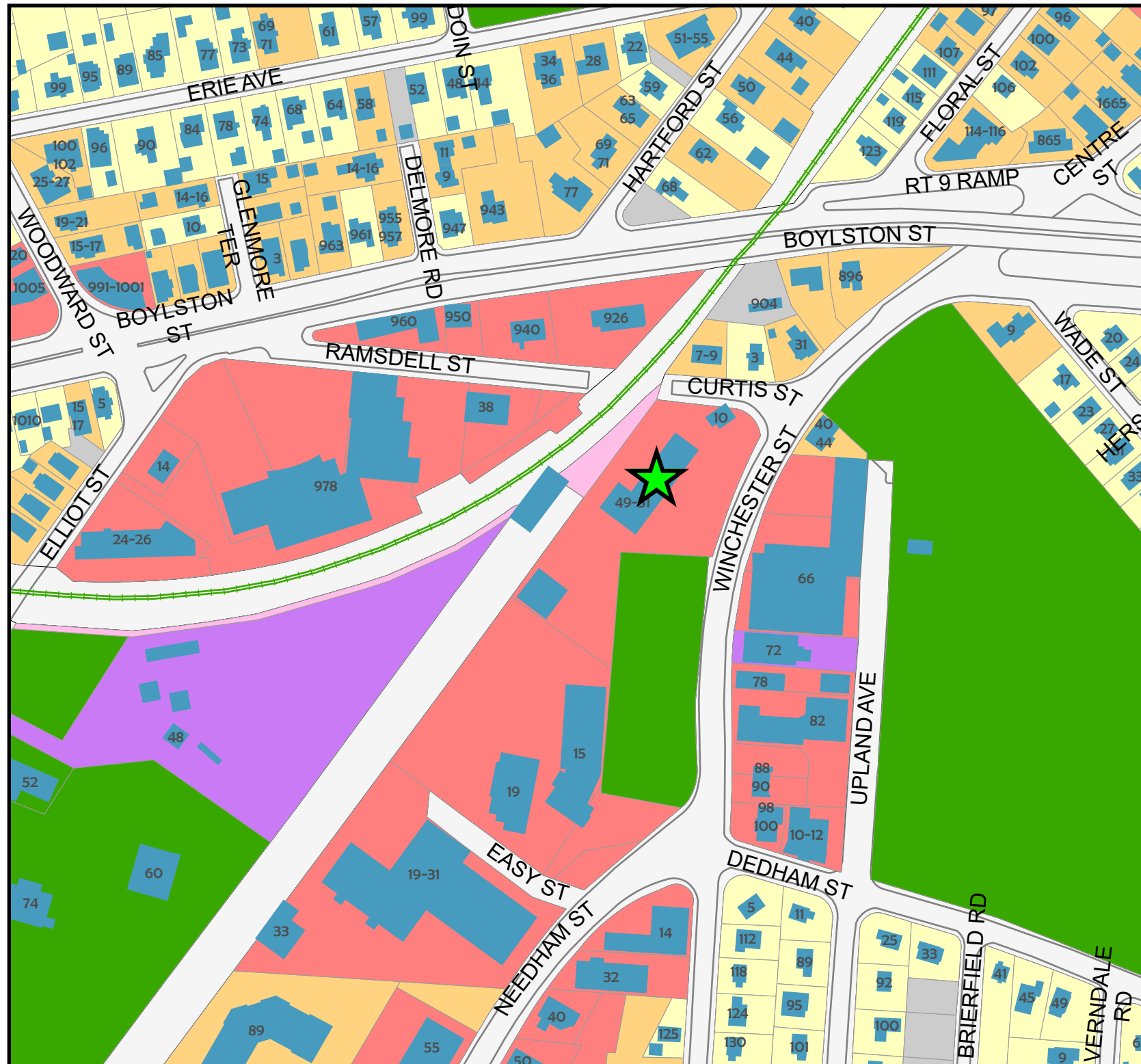


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CITY OF NEWTON, MASSACHUSETTS
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Map Date: October 20, 2022





The Conservatory - Schedule Description and Overview

The Conservatory provides one-on-one private lessons at the following days/times:

Monday-Friday 3:00-6PM - 4 teachers for 1 on 1 lessons

Monday-Friday from 6PM-9PM - 7 teachers for 1 on 1 lessons

Saturday 8AM-5PM - 7 teachers for 1 on 1 lessons

Sunday 1PM-5PM - 4 teachers for 1 on 1 lessons

There will be 1 secretary from 12PM-5PM M-F and Sat from 8AM-5PM.

At our busiest times (Monday-Fridays after 6PM and Saturdays from 12-4) we will have 7 Teachers and 1 Secretary.



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Attachment D
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Barney S. Heath
Director

ZONING REVIEW MEMORANDUM

Date: May 11, 2022

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official

Cc: Winchester Street Realty Trust
Dave Carroll, The Conservatory at Highlands
Barney S. Heath, Director of Planning and Development
Jonah Temple, Associate City Solicitor

RE: **Request to allow a for-profit educational use**

Applicant: Dave Carroll	
Site: 49-51 Winchester Street	SBL: 51028 0030
Zoning: MU1	Lot Area: 79,500 square feet
Current use: Mixed use	Proposed use: Mixed use

BACKGROUND:

The property at 49-51 Winchester Street consists of a 79,500 square foot lot in a Mixed Use 1 zone. The site is at the corner of Winchester and Curtis Streets and is improved with a 19,000 square foot commercial building, a detached 3,600 square foot metal shed used for storage in the rear of the property and a detached 1,378 square foot wooden shed at the front of the property used by a landscape materials company. The shed is located in an approximately 4,800 square foot landscaped area used as a display showcase for the landscape materials. Additionally, the site is improved with a large surface parking facility.

The commercial building is currently occupied by several tenants with varying uses, including office space, a day care center and a cooking school. The petitioner seeks to locate a for-profit music school on site, requiring a special permit.

ADMINISTRATIVE DETERMINATIONS:

1. The petitioner proposes to introduce a for-profit educational use (The Conservatory at Highlands) to a vacant 2,881 square foot tenant space formerly used as an office. Per sections 4.4.1 and 6.3.14.B.2, a special permit is required to allow a for-profit educational use in the MU1 zoning district.
2. The 2,881 square foot tenant space was previously used as an office. The previous office use required 12 parking stalls per section 5.1.4.A. The proposed for-profit educational use will have up the eight employees working at a time, resulting in a requirement of eight parking stalls. No waiver is required, as the credit from the previous use satisfies the proposed parking requirement.

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§4.4.1 §6.3.14.B.2	Request to allow a for-profit educational use	S.P. per §7.3.3

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 allow a for-profit educational use in the Mixed Use 1 zoning district, as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site in a Mixed Use 1 zone is an appropriate location for the proposed for-profit educational use due to its location in Newton Highlands and the surrounding area contains a mix of uses (§7.3.3.C.1)
2. The proposed for profit educational use as developed and operated, will not adversely affect the neighborhood because the use is replacing a former office tenant and the use complies with the parking requirement due to having fewer staff members than the prior use (§7.3.3.C.2)
3. The proposed for profit educational use will not create a nuisance or serious hazard to vehicles or pedestrians because the use operates with four to seven one on one classes depending on the day and is not anticipated to result in increased traffic to the site based on their operations (§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)

PETITION NUMBER: #487-22

PETITIONER: Dave Carroll

LOCATION: 49-51 Winchester Street, Newton, Section 51 Block 28 lot 30, containing approximately 79,500 sq. ft.

OWNER: The Winchester St. Trust and Cline Realty Limited Partnership

ADDRESS OF OWNER: 49 Winchester Street
Newton, MA 02461

TO BE USED FOR: For Profit Educational Use

CONSTRUCTION: Use change only

EXPLANATORY NOTES: To allow a for profit educational use (§4.4.1, §6.3.14.B.2)

ZONING: Mixed Use 1

The prior special permits for this property are as follows: Council Order #134-14, which allowed a retail use, associated outdoor use and dimensional waivers for parking facilities, Council Order #134-14 (2) which allowed a second free-standing sign, Council Order #132-14(2) which waived the screening requirement for an outdoor play area and Council Order 456-22 which allowed a for profit educational use. The conditions set forth in Council Orders #134-14, #134-14 (2), #132-14 (2), and #456-22 remain in full force and effect.

Approved subject to the following conditions:

1. The petitioner shall operate the for-profit educational use in accordance with the project narrative submitted with the special permit petition and on file with the City Clerk and the Department of Planning and Development.
2. There shall be no more than eight employees on site at any one time.
3. No building permit shall be issued pursuant to this Special Permit/Site Plan Approval until the petitioners have:
 - a. Recorded a certified copy of this council 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 board order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Planning Department that confirms the building permit plans are consistent with plans approved in Condition #1.
4. No Final Inspection/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 statements by a registered architect which shall include certification of the size of the tenant space.