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**STAFF MEMORANDUM**

Meeting Date: **Wednesday, June 14, 2023**  
DATE: June 12, 2023  
TO: Urban Design Commission  
FROM: Shubee Sikka, Urban Designer  
SUBJECT: **Additional Review Information**

The purpose of this memorandum is to provide the members of the Urban Design Commission (UDC) and the public with technical information and planning analysis which may be useful in the review and decision-making process of the UDC. The Department of Planning and Development’s intention is to provide a balanced view of the issues with the information it has at the time of the application’s review. Additional information may be presented at the meeting that the UDC can take into consideration when discussing Sign Permit, Fence Appeal applications or Design Reviews.

Dear UDC Members,

The following is a brief discussion of the sign permit applications that you should have received in your meeting packet and staff’s recommendations for these items.

**I. Roll Call**

**II. Regular Agenda**

**Sign Permits**

**1. 270-276 Centre Street – Mass General Brigham**

PROJECT DESCRIPTION: The property located at 270-276 Centre Street is within a Business 1 zoning district. The applicant is proposing to replace and install the following signs:

1. One perpendicular principal sign, internally illuminated, with approximately 36 sq. ft. of sign area on the western building façade perpendicular to Centre Street.
2. One wall mounted secondary sign, internally illuminated, with approximately 48 sq. ft. of sign area on the northern building façade facing the side parking lot.

**TECHNICAL REVIEW:**

- The proposed perpendicular principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 75 feet, the maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding. As per §5.2.3 of the Zoning Ordinance, *“A perpendicular wall sign shall be attached at a right angle to the wall of a building; it shall have no more than 2 faces; and it shall not project in any linear dimension more than 6 feet, subject to the provisions of Revised Ordinances Chapter 26, Sections 26-1 to 26-6. When a projecting sign is closer than 12 feet to the corner of a building, its projection shall be no more than a distance equal to 1/2 the horizontal distance from the sign to that building corner.”* Staff has requested the applicant to provide the distance of the sign from the building corner.
- The proposed secondary sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, two secondary signs are allowed, which the applicant is not exceeding, and on this façade of 75 feet, the maximum size of the sign allowed is 50 sq. ft., which the applicant is also not exceeding.

**STAFF RECOMMENDATION:** Based on the information submitted in the sign permit application and staff’s technical review, staff recommends approval of the proposed secondary sign. Staff will provide a recommendation about the proposed perpendicular principal sign after hearing back from the applicant regarding the distance of the sign from the building corner.

**2. 749 Beacon Street - Bakey**

**PROJECT DESCRIPTION:** The property located at 749 Beacon Street is within a Business 1 zoning district. The applicant is proposing to install the following sign:

1. One wall mounted principal sign, internally illuminated, with approximately 32 sq. ft. of sign area on the southern building façade facing Beacon Street.

**TECHNICAL REVIEW:**

- The proposed wall mounted principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 15 feet, the maximum size of the sign allowed is 45 sq. ft., which the applicant is also not exceeding.

**STAFF RECOMMENDATION:** Based on the information submitted in the sign permit application and staff’s technical review, staff recommends approval of the principal sign as proposed.

### **3. 1255 Centre Street – Oak n’ Barrel**

PROJECT DESCRIPTION: The property located at 1255 Centre Street is within a Business 1 zoning district. The applicant is proposing to install the following signs:

1. One wall mounted principal sign, externally illuminated, with approximately 50 sq. ft. of sign area on the eastern building façade facing Centre Street.
2. One wall mounted secondary sign, non-illuminated, with approximately 19 sq. ft. of sign area on the southern building façade facing Beacon Pl. This sign is not listed on the application but there are drawings showing a second sign. Staff has reached out to the applicant to provide specifications of the secondary sign but hasn’t heard back yet.

#### TECHNICAL REVIEW:

- The proposed principal sign appears to be consistent with the dimensional controls specified in §5.2.8. Per the Zoning Ordinance, one principal sign is allowed, which the applicant is not exceeding, and on this façade of 60 feet, the maximum size of the sign allowed is 100 sq. ft., which the applicant is also not exceeding.
- Staff will provide a recommendation about the secondary sign after hearing back from the applicant.

STAFF RECOMMENDATION: Staff recommends approval of the principal sign as proposed. Staff will provide a recommendation about the secondary sign either before or at the meeting.

## **Fence Appeal**

### **1. 5 Longmeadow Road Fence Appeal**

PROJECT DESCRIPTION: The property located at 5 Longmeadow Road is within a Single Residence 1 district. The applicant has added the following fence:

- a) Front Lot Line along Dedham Street — The applicant has added a fence, set at the front property line along Dedham Street, a 6 feet tall solid wooden fence, natural color, 98 feet in length.

#### TECHNICAL REVIEW:

The existing fence along the front property line appears to be not consistent with the fence criteria outlined in §5-30(d)(1) and §5-30(f)(7) of the Newton Code of Ordinances.

*According to §5-30(d)(1), “Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and*

*further, that any section of a perimeter fences greater than four (4) ft. in height must be open if it is parallel to a front lot line."*

*According to §5-30(f)(7), "Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer."*

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City's Fence Ordinance. The proposed fence, however, must be found to comply with the *"requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise."* The UDC must also determine whether the *"desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good."*

The applicant is seeking an exception to allow 6 feet tall solid wood fence at the front property line for a length of 98 feet, where the ordinance would permit such a fence to be 4 feet tall. There is a hand drawing that shows that the distance of the fence is 25 feet from the corner, but the Violation Notice says that there is a violation due to Illegal fence visibility on corner lot. Planning department and ISD request a survey to show the exact distance of the fence from the corner. A survey of the fence will determine if a relief is required regarding visibility on the corner lot.

The applicant's stated reasons for seeking this exception are *"About 3.5 years ago, we replaced the fence around our property due to completely rotten and unsafe conditions of the previous one. Our fence contractor assured us that a permit was not required as we were simply replacing the original with exactly the same type/size/color/material. We were recently notified that the City received a complaint about our fence. After investigation, the City determined that the portion along Dedham St. was in violation of a height vs set back regulation. Specifically, that portion, was supposed to be no taller than 4 ft, or be moved back by to 2 ft for a 6-ft fence. We were notified by the City that a remedy for this situation is to get a "Permit after the fact." Hence, we are appealing the violation assessment to the Urban Design Commission.*

*As mentioned earlier, the current fence is an exact copy of the original one--which was in place for 30-40 years. The rationale for the previous (and current) fence positioning was due to the presence of multiple, mature maple trees and bushes within 1-2 ft of the sidewalk, thus making it impossible to move the fence further back. The fences' height provides noise reduction and a safety barrier for our children, as this portion faces Dedham St. At the time when the new fence was constructed, our daughter was still in elementary school, and felt unnerved by the multiple objects (cans, glass bottles, other trash) thrown over our fence by people walking along Dedham St. Having the 6ft fence prevented at least some of the littering and frightening experiences for our children. Finally, the current fence's position protects the existing vegetation within a couple of feet of the property line."*

**STAFF RECOMMENDATION:** Based on the information submitted in the fence appeal application and staff's technical review, planning department recommends a survey.

## **2. 3-5 Potter Street (previously 274-276 Adams Street) Fence Appeal**

**PROJECT DESCRIPTION:** The property located at 3-5 Potter Street is within a multi-Residence 1 district. The applicant has added the following fence:

- a) **Front Lot Line along Adams Street** – The applicant has added a fence, set at the front property line with a new fence, solid vinyl taller than 4 feet. The relief needed is for a fence within 25 feet of an intersection which is more than four feet in height as measured from the street.

### **TECHNICAL REVIEW:**

UDC reviewed a fence appeal application for this property at its October 2022 meeting and approved a part of the fence appeal (attachment A – UDC decision). The applicant applied for a fence permit and then built the fence. Inspectional Services Department failed the fence at the final inspection. The failed inspection report says the following: *"Not sure how fence is anchored for the 8-foot sections per building code wind loads? Space fence along Adam Street does not appear to meet fence ordinance not part of UDC relief needs 25 feet from the intersection of Potter Street or less than 4 feet from the gutter of the street elevation to the top of fence?"*

Then a stop work order was issued. Stop work order says the following: *"Correct the fence height along Potter Street to match Newton City Ordinance 5-30 (f) 7 or appeal this decision to UDC."*

The existing fence along the front property line appears to be not consistent with the fence criteria outlined in §5-30(f)(7) of the Newton Code of Ordinances.

According to §5-30(f)(7), *"Visibility on Corner Lots. No fence shall be erected or maintained on any corner lot as defined in Section 30-1 of the Revised Ordinances, as*

*amended, in such a manner as to create a traffic hazard. No fence on a corner lot shall be erected or maintained more than four (4) feet above the established street grades within a triangular area determined by each of the property lines abutting each corner and an imaginary diagonal line drawn between two points each of which is located twenty-five (25) feet along the aforesaid property lines of said lot abutting each of the intersecting streets as illustrated in the diagram below. The owner of property on which a fence that violates the provisions of this section is located shall remove such fence within ten (10) days after receipt of notice from the Commissioner of Inspectional Services that the fence violates the provisions of this section and creates a traffic hazard in the judgment of the City Traffic Engineer.”* There is a hand drawing that shows that the distance of the fence is 25 feet from the corner, but the Violation Notice says that there is a violation due to illegal fence visibility on corner lot.

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City’s Fence Ordinance. The proposed fence, however, must be found to comply with the *“requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise.”* The UDC must also determine whether the *“desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.”*

The applicant is seeking an exception to allow a fence within 25’ of an intersection which is more than four feet in height as measured from the street elevation.

The applicant’s stated reasons for seeking these exceptions are *“Applicant originally applied for a 6’ fence along Adams St but committee asked for a 4’ fence which committee members said was allowed at front which applicant agreed to do although Al Gifford says the 4’ is measured from the street gutter not grade at fence and Al Gifford said the fence at the intersection of Potter St and Adams St needed to be removed for 25’ along Adams St at intersection of Potter St & Adams St or I height dropped to under 4’ as measured from gutter not sidewalk/property grade. POTTER ST IS A PRIVATE NON-PUBLIC STREET!!”*.

Planning Department recommends a survey of the installed fence to determine what is the height and length of the fence within 25 feet of the intersection.

Planning department also recommends a survey along Potter Street. The stop work order states to correct the height of the fence along Potter Street but the application does not show a fence along Potter Street.

**STAFF RECOMMENDATION:** Based on the information submitted in the fence appeal application and staff’s technical review, planning department recommends a survey.

### **III. Old/New Business**

#### ***1. Approval of Minutes***

Staff will provide meeting minutes before the meeting.

### **Attachments**

- Attachment A: 274-276 Adams Street Fence Appeal Decision, October 2022

DEPARTMENT OF PLANNING AND DEVELOPMENT

CITY OF NEWTON  
Massachusetts

INTER-OFFICE CORRESPONDENCE – FENCE APPEAL

DATE: October 26, 2022  
TO: Inspectional Services Department  
FROM: Shubee Sikka, Urban Designer  
SUBJECT: Fence Exception Request at 274-276 Adams Street  
CC: Urban Design Commission  
Petitioner

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At its October 19, 2022, meeting, the Urban Design Commission (UDC) **approved a request** for an exception to the fence ordinance for a proposed fence, set at the side lot line, at a height of 8 feet and **denied a request** for an exception to the fence ordinance for a proposed fence, set at the front property line, at a height of 6 feet.

The property located at 274-276 Adams Street is within a Multi Residence 1 district. The applicant is proposing to install the following fence:

- a) Front Lot Line along Adams Street – The applicant is proposing to add a fence, set at the front property line with a new fence, 5 feet solid vinyl and 1 foot lattice, 87 feet in length and at both corners, the height is 2 feet solid vinyl and 1 foot lattice, total 12 feet in length.
- b) Side Lot Line, perpendicular to Potter Street – The applicant is proposing to replace and add a fence, set at the side property line with a new fence, 7 feet solid vinyl and 1 foot lattice for a total height of 8 feet, approximately 82 feet in length.
- c) Side Lot Line, perpendicular to Adams Street – The applicant is proposing to add a fence, set at the side property line with a new fence, a 2 feet solid vinyl and 1 foot lattice, 12 feet in length at the front corner and 5 feet solid vinyl and 1 foot lattice, 87 feet in length. This proposed fence is consistent with the fence ordinance.

The fence was denied by the Commissioner of Inspectional Services as noncompliant with the fence ordinance, and the petitioner appealed the decision to the UDC, which is authorized to approve limited fence exceptions.

*According to §5-30(d)(1), “Fences bordering a front lot line: No fence or portion of a fence bordering or parallel to a front lot line shall exceed four (4) feet in height unless such fence is set back from the front lot line one (1) foot for each foot or part thereof such fence exceeds four (4) feet in height, up to a maximum of six (6) feet in height, and further, that any section of a perimeter fences greater than four (4) feet in height must be open if it is parallel to a front lot line.”*

*According to §5-30(d)(2), “Fences bordering side lot lines: No fence or portion of a fence bordering or parallel to a side lot line shall exceed six (6) feet in height except as provided in subsection (6) below, and further, that any portion of a fence bordering a side lot line which is*



*within two (2) feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.”*

As specified under §5-30(c) and (h), the UDC may grant an exception to the provisions of the City’s Fence Ordinance. The proposed fence, however, must be found to comply with the *“requirements of this ordinance, or if owing to conditions especially affecting a particular lot, but not affecting the area generally, compliance with the provisions of this ordinance would involve substantial hardship, financial or otherwise.”* The UDC must also determine whether the *“desired relief may be granted without substantially nullifying or substantially derogating from the intent and purposes of this ordinance or the public good.”*

The applicant’s stated reasons for seeking this exception are *“The current wood fence that is in poor condition is 8' but your ordinance does not allow me to replace more than 50% of the fence. I want to replace the entire 8' fence not 50%.”*

Homeowner/Applicant: Dino Rossi

Presentation and Discussion:

At the meeting, the UDC reviewed materials submitted by the petitioner and heard the petitioner’s argument. The applicant commented that he has five letters from immediate abutters that all approved and ask that this be approved as submitted. The applicant requested the Commission to grant the appeal as submitted. The fence has existed for over 20 years and is in disrepair, so the applicant is just looking to replace it. The applicant requested the Commission to see the pictures that were submitted showing the stuff at the neighbor’s property. The UDC asked if the neighboring property has a legal operation and maybe ISD should look at it. The UDC also asked the applicant if they would be willing to keep the 8-foot fence, but it tapers down right at the street. The applicant responded that they prefer to keep it 8 foot tall, so they don’t have to look at the neighbor’s stuff.

Mr. Doolin commented that the only unusual aspect about this property is the notion of front and side in this particular lot and it appears that Potter Street is not even a throughfare and is a dead-end street. Mr. Doolin commented that he considers this side lot line as a rear lot line because Potter Street is a street in name only and is used as a driveway. The nature of the lot is kind of unique with the challenges it has with respect to front, back and side. Mr. Doolin also commented that he is suggesting that the Commission considers the side lot line to be the rear lot line and it’s not a typical corner condition so its unique.

Mr. Kaufman asked if the applicant had more pictures of the abutting property because that is the only other property on Potter Street and to see the extent of materials stored on that property. From the pictures, it looks like it is just a small portion of the property that has stuff. The applicant responded that it has stuff on the entire property, there are fire engines, retired heavy equipment, and all kinds of other stuff. Mr. Kaufman commented that the abutting property does not seem to be a residential use. This is a unique situation.

Staff commented that the proposed fence on the side lot line, perpendicular to Adams Street is consistent with the fence ordinance.

Mr. Kaufman asked about the reason for a 6-foot fence along Adams Street. The applicant responded that Adams Street is a busy street, and they would like to screen things that are going on Adams Street. Mr. Doolin asked if the fence is on the lot line or is it setback from the

property line? The applicant responded that it is on the property line. Mr. Doolin commented that a 6-foot fence is allowed if it is 2 feet back from the property line. Staff clarified that a 6-foot fence is allowed if it is setback 2 feet but only 4 feet can be solid, the top 2 feet will need to be lattice. Mr. Doolin commented that he does not support a 6-foot fence at the property line, even if it tapers to 3 feet at the corner. Mr. Kaufman agreed. The applicant asked what is allowed at the front lot line. Mr. Downie responded that the fence can be 4 feet tall at the front lot line and it doesn't need to taper. The applicant responded they will do a 4-foot fence at the front lot line along Adams Street.

Mr. Kaufman commented that since the applicant has agreed to do a 4-foot fence at the front, it complies with the ordinance now, so UDC doesn't need to take an action on that one. The Commission allowed the 8-foot fence at the side lot line, perpendicular to Potter Street because the property next door is not a residential property, the applicant has every reason to get an exception. Mr. Kaufman asked the applicant if they would like an 8-foot solid fence or 7-foot solid with an open 1-foot topper. The applicant responded it will be good if it is left open so they can choose to do a solid 8-foot fence.

Mr. Kaufman commented that in terms of the applicant looking for an exception to the fence ordinance, UDC should accept the fence that is perpendicular to Potter Street as an 8-foot fence and the applicant can decide if he would like to do the topper or not and it doesn't need to taper down because of the abutting property's non-residential use. The Commission does not accept the exception of 6-foot fence on the front property line, the owner agreed to do a 4-foot fence on the front property line along Adams Street.

**Mr. Kaufman moved the motion to grant exception for the 8-foot-tall fence perpendicular to Potter Street and with a note that the fence along Adams Street will be 4-foot tall and both can be solid. Mr. Winkler seconded the motion. All the members present voted, with a 4-0 vote, Michael Kaufman, Jim Doolin, John Downie, and William Winkler in favor and none opposed. The motion was granted.**