



Land Use Committee Report

City of Newton In City Council

Tuesday, July 25, 2023

Present: Councilors Lipof (Chair), Kelley, Bowman, Laredo, Downs, and Lucas; Absent: Councilors Markiewicz and Greenberg

Also Present: Councilor Wright

City Staff Present: Chief Planner Katie Whewell, Assistant City Solicitor Jonah Temple, and Commissioner of Public Buildings Josh Morse

All Special Permit Plans, Designs, Plan Memoranda and Application Materials, both past and present, can be found at the following link: [NewGov - City of Newton Land Use Committee Special Permit Search](#).

The full video of the July 25, 2023, Land Use Meeting can be found at the following link: [Land Use Committee - July 25, 2023 \(newtv.org\)](#)

#204-23 **Request to allow a drive-in business and associated parking waivers, to allow a free-standing sign and to allow oversized directional signs at 940 Boylston Street**
MILDRED MCMULLIN, TRUSTEE-MIL MAC TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to remove a portion of the building and reconfigure the existing parking area to allow for construction of a drive through window with associated waivers for parking, lighting and signs at 940 Boylston Street, Ward 5, Newton Highlands, on land known as Section 51 Block 26 Lot 03, containing approximately 12,060 sq. ft. of land in a district zoned BUSINESS 2. Ref: 7.3.3, 4.4.1, 6.4.11, 5.1.9.A, 5.1.13, 5.10.A, 5.2.3, 5.2.13.A, 5.2.8, 5.2.13 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

[940 Boylston Street- Petition Documents](#)

Land Use Approved 3-2-1 (Councilors Lipof and Kelley Opposed and Councilor Bowman Abstaining), Public Hearing Closed 6-0 on 6/13/23

City Council Referred back to Land Use 13-8 (Councilors Baker, Grossman, Humphrey, Kalis, Kelley, Lipof, Noel, and Ryan Opposed and Councilors Bowman, Gentile, and Laredo Absent) on 6/20/23

Action: **Land Use Approved Withdrawal without Prejudice 6-0**

Note: A Councilor noted that the committee received a letter to withdraw this petition without prejudice.

Councilor Downs motioned to approve the withdrawal without prejudice which passed unanimously.

#197-23 **Request to amend conditions within Special Permit #395-22 at 136-144 Hancock Street**
TERRENCE P. MORRIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL amends Special Permit #395-22 relative to conditions around the vibration control condition and units which were designated to conform to MAAB requirements at 136-144 Hancock Street, Ward 4, Auburndale on land known as Section 43 Block 31 Lots 01 and 16, containing approximately 58,492 square feet of land in a district approved to be zoned MULTI RESIDENCE 2. Ref: 7.3.3 of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Land Use Held 7-0; Public Hearing Opened on 6/6/23

Action: **Land Use Approved 6-0; Public Hearing Closed 6-0**

#198-23 **Request to amend Special Permit #447-22 at 106 River Street**
NORTON POINT STREET LLC and 106 RIVER STREET LLC T/C DAVID OLIVERI petition for SPECIAL PERMIT/SITE PLAN APPROVAL amend the vibration control condition within Special Permit #447-22 at 106 River Street, Ward 3, West Newton, on land known as Section 33 Block 24 Lot 11A, containing approximately 15,802 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Land Use Held 7-0; Public Hearing Opened on 6/6/23

Action: **Land Use Approved 6-0; Public Hearing Closed 6-0**

#199-23 **Request to amend Special Permit #504-22 at 71 Commonwealth Avenue**
71 COMMONWEALTH LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend the vibration control condition within Special Permit #504-22 at 71 Commonwealth Ave, Ward 7, Newton, on land known as Section 63 Block 01 Lots 13 and 13A, containing approximately 32,980.50 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3of Chapter 30 of the City of Newton Rev Zoning Ord, 2017.

Land Use Held 7-0; Public Hearing Opened on 6/6/23

Action: **Land Use Approved 6-0; Public Hearing Closed 6-0**

Note: A councilor stated that these petitions would be taken up together because they all are requesting a change to the vibration control, and noted that an ordinance has been drafted to address vibration control.

Chief Planner Katie Whewell presented the attached request for a special permit at 136-144 Hancock Street, 106 River Street, and 71 Commonwealth Avenue. The request is to amend the conditions of the prior special permits around vibration control conditions. The presentation is attached, and additional back-up can be found at the following link: [136-144 Hancock Street- Petition Documents](#), [106 River Street- Petition Documents](#), [71 Commonwealth Avenue- Petition Documents](#). Ms. Whewell noted that since 2021 there has been an increase in attention to vibratory impacts from construction, and at the end of 2021 a vibration mitigation condition was incorporated into the special permit process at the direction of the Land Use Committee of the City Council. She explained that as the condition, which was bases off of state blasting regulations was applied to projects challenges were discovered. During the February 2, 2023 Land Use Committee meeting, the committee endorsed splitting the condition so that projects with 1 to 25 units do not have to pay \$100,000 in a mitigation fund but projects with over 25 units would have to. She noted the Public Buildings Department, Commissioner of Public Buildings Josh Morse, Engineering, Inspectional Services, Law and Planning consulted to come up with an ordinance that would apply to both

special permit projects and by right projects. The Planning Department noted that planning will be docketing an item in August for a discussion in September for a vibration control ordinance. Even though both the Hancock Street and River Street projects are below 25 units they still have to pay \$100,000 in the vibration mitigation fund because they were approved before February 2, 2023. Ms. Whewell noted for vibration controls it was learned that a one size fits all approach does not work. The ordinance would mean a licensed and insured geotechnical professional would be required to evaluate the methods of construction and site conditions to inform a Vibration Control Plan. City Council can incorporate additional provisions for vibration control for special permit projects if they wish. There is a provision built into the conditions for these three projects that allow the future approved ordinance to supersede this language if the change occurs prior to the project filing for their building permit.

Councilors noted appreciation for this ordinance and that it applies for all new construction.

A councilor noted appreciation for the information gathered to form this ordinance, and the flexibility it will allow during the special permit process to impose additional conditions. Asked what will happen if a situation changes, and a project at first does not think they will be doing blasting but then does?

Assistant City Solicitor Jonah Temple noted that blasting is not covered by this ordinance as that is covered by state regulation. If there is any violation concerning blasting that is enforced by the State. In terms of the local ordinance it would be a \$300 fine which is the maximum allowed for violation of local ordinances.

A councilor noted that the projects heard tonight would have this language attached. The ordinance if altered in anyway when it is heard by Zoning and Planning or different committee will then apply to these three projects as well.

The public hearing remained open from the previous meeting.

Amy Sangiolo, 389 Central Street supports the new ordinance, but questioned what the recourse would be for residents if the licensed engineer is wrong. Feels private litigation can be difficult in cases where there is damage to abutters homes and the ordinance is not followed properly.

A councilor noted if issues came up with the licensed engineer, it would ball back on that engineer and their license could be revoked.

Mr. Temple noted the recourse would be private litigation, as it is under the current condition being used.

Commissioner of Public Buildings Josh Morse noted that an owner or developer who felt a project did not require a vibration monitoring control plan, would then have to get a stamped letter from a geotechnical consultant noting that a plan is not needed. This would be turned into Inspectional Services at the time they are seeking the building permit. Reinforced the geotechnical professional would be putting their license on the line, and beyond that it would be taken up in litigation between the private parties if there is damage to abutters' homes.

Tom Gagen, 32 French Street, noted support of the Walker Center project, and wants it to go forward.

Terrance Morris, on behalf of the petitioners, believes the response to their request for amendments has been timely, and thanked everybody involved in the work put in on the amendment.

The public hearing was closed on #197-23.

Councilor Downs motioned to approve #197-23 which passed unanimously.

The public hearing was closed on #198-23.

Councilor Lucas motioned to approve #198-23 which passed unanimously.

The public hearing was closed on #199-23.

Councilor Lucas motioned to approve #199-23 which passed unanimously.

The Committee adjourned at 7:25 pm.

Respectfully Submitted,

Richard Lipof, Chair

City of Newton Planning and Development

Petition #s : 197-23, 198-23, 199-23

Special Permit/Site Plan Approval

To amend the conditions of the prior special permits around vibration control and MAAB (197-23)

July 25, 2023



136-144 Hancock Street
Petition #197-23



River Street Elevation



Elm Street Elevation

106 River Street
Petition #198-23



71 Commonwealth Avenue
Petition #199-23

Overview

Petition	Address	Units	Approved
197-23	136-144 Hancock Street	16 units	December 2022
198-23	106 River Street	9 units	January 2023
199-23	71 Commonwealth Avenue	6 units	April 2023

Timeline

~June 2021

Discussions around a standard condition for vibration control begin

February 2023

Standard conditions discussion
Vibration Control condition split.
Result: \$100,000 mitigation fund applies to projects 25+ units

June 9, 2023

City Staff in Engineering, Planning, Public Buildings, Law, and Inspectional Services met to discuss Committee feedback and possible solutions

August/September 2023

Planning anticipates docketing an item to discuss with goal of adopting proposed Vibration Control Ordinance

December 2021 - March 2022

Implementation of condition; 1114 Beacon St (34 units) December 2021 and 383 Boylston Street (12 units) March 2022

June 6, 2023

First public hearing - amendments to alter vibration control condition

July 25, 2023

2nd public hearing to amend the vibration control condition. City Staff have prepared a draft Ordinance.

Analysis

Current Standard Condition

Only applies to special permit projects, does not capture by right projects.

One size fits all approach does not capture conditions unique to the site and construction methods.

Based off state blasting regulations and previously applied \$100k vibration mitigation fund to smaller projects (Hancock and River) where it was later decided to institute a threshold based on units.

Proposed Ordinance

Requires a licensed and insured geotechnical professional to evaluate methods of construction and site conditions to inform vibration control plan.

Will apply to special permit and by right projects.

On special permit projects, City Council may still incorporate previously used measures such as mitigation fund, where appropriate.

There is a provision that allows the Ordinance to apply if the Ordinance changes prior to a project's building permits for the three subject projects.
