



CITY OF NEWTON, MASSACHUSETTS

Urban Design Commission

MEETING MINUTES

A meeting of the City of Newton Urban Design Commission (UDC) was held virtually on Wednesday, June 14, 2023 at 7:00 p.m. via Zoom

<https://newtonma-gov.zoom.us/j/81513822965>

Ruthanne Fuller,
Mayor

The Chair, Michael Kaufman, called the meeting to order at 7:03 P.M.

I. Roll Call

Barney Heath,
Director
Planning & Development

Those present were Michael Kaufman (Chair), Visda Saeyan, and Bill Winkler. Shubee Sikka, Urban Designer, was also present.

Shubee Sikka,
Urban Designer
Planning & Development

II. Regular Agenda

Sign Permits

1. 270-276 Centre Street – Mass General Brigham

Applicant: Heather Dudley

Proposed Sign:

- 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.

Presentation and Discussion:

- The applicant had also applied for a perpendicular sign but there were conflicting dimensions of the perpendicular sign in the drawings, hence UDC requested the applicant to submit the correct dimensions of the perpendicular and come back to the next meeting.

MOTION: Mr. Kaufman made a motion to approve one proposed sign at 270-276 Centre Street – Mass General Brigham. Mr. Winkler seconded the motion, and none opposed. All the members present voted, with a 3-0 vote, Michael Kaufman, Visda Saeyan, and William Winkler in favor and none opposed.

1000 Commonwealth Ave.
Newton, MA 02459
T 617/796-1120
F 617/796-1142

2. 749 Beacon Street - Bakey

Proposed Sign:

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

MOTION: Mr. Kaufman made a motion to approve one proposed sign at 749 Beacon Street – Bakey. Mr. Winkler seconded the motion, and none opposed. All the members present voted, with a 3-0 vote, Michael Kaufman, Visda Saeyan, and William Winkler in favor and none opposed.

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3. 1255 Centre Street – Oak n’ Barrel

Applicant/Representative: Stuart Pitchel

Proposed Signs:

- One wall mounted split principal sign, externally illuminated, with approximately 50 sq. ft. of sign area on the eastern building façade facing Centre Street.
- One wall mounted split principal sign, externally illuminated, with approximately 3 sq. ft. of sign area on the eastern building façade perpendicular to Centre Street.
- One wall mounted secondary sign, non-illuminated, with approximately 19 sq. ft. of sign area on the southern building façade facing Beacon Pl.

MOTION: Mr. Kaufman made a motion to approve proposed signs at 1255 Centre Street – Oak n’ Barrel with a condition. Mr. Winkler seconded the motion, and none opposed. All the members present voted, with a 3-0 vote, Michael Kaufman, Visda Saeyan, and William Winkler in favor and none opposed. The Commission recommended the secondary sign for approval on the **condition** that the sign is aligned (on the right side) with the window below.

At 7:30 pm, Mr. Kaufman suspended the Urban Design Commission, and enter the Commission in its role as Fence Appeal Board.

Fence Appeal

1. 5 Longmeadow Road – Fence Appeal

Homeowner: Vita & Aleksander Chudnovsky

Fence Appeal:

The property located at 5 Longmeadow Road is within a Single Residence 1 district. The applicant is proposing 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.

A fence violation was issued 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.

Presentation and Discussion:

Mr. Kaufman asked the staff if they are looking for a survey for the fence. Staff commented that that the Zoning Enforcement Officer has mentioned that there is a violation for visibility on the corner lot and the homeowner has provided a hand drawing that says that the distance of the fence is 25 feet from the street, and it is measured by the homeowner (not a surveyor), hence staff recommends a survey to determine the distance of the fence from the corner. Staff also mentioned that they have spoken to the Zoning Enforcement Officer, and he also recommends that a survey be done. Second part of the fence appeal is that there is an existing 6-foot-tall fence set at the front property line, where the fence ordinance allows a 4-foot-tall fence. Mr. Kaufman also mentioned that that there is another issue which has to do with replacing more than 50% of the existing fence, the homeowner has already replaced the entire fence. Mr. Kaufman mentioned that it sounds like that the violation is that they were assured by their fence contractor that they do not need a permit (who was incorrect). UDC is again in a position where homeowners are asking for forgiveness instead of permission. Mr. Kaufman commented that he understands the hardship for this but wondered if there was a way of putting some lattice above the rail of the fence so it doesn’t appear like a six-foot monolithic piece,

which will help to soften the intention. The fence should not have been built without a permit and if the applicant came to UDC before the fence was built then UDC would have suggested that.

The homeowner explained the reason for the appeal. The homeowner mentioned that when they bought the house, they saw a fence all around the property, most of the backyard, which was in dire condition. The fence was in bad condition and the neighbor's golden retriever was in their backyard and their daughter was getting scared. The applicant mentioned that they didn't replace it all at once, they replaced it in three different portions. The homeowner got multiple estimates and was told by the fence contractor that since the fence is being replaced one for one, there is no permit required and put it on the estimate. The fence was replaced with the same exact material, type, size, design, and everything else. The fence was replaced over the course of a year, started in 2018 and finished just before construction was shut down in 2020, not sure about the timelines are in terms on when you must fulfill the 50% requirement. Homeowner also commented that we were trying to beautify the city with a beautiful new wooden fence. The previous homeowner built the house in 1943 and then built the fence in the 60s or 70s, they must have done the right thing because of the street noise. There is more street noise now, garbage thrown over the fence. The previous owners had beautiful sugar maple trees and they wanted to protect them so they couldn't set it back by 2 feet. Someone also probably thought about height, people were putting up 6-foot-tall fences and that's what they did. The fence along Longmeadow is 30 plus feet and then somebody makes it askew to make it 25 feet from the corner. There are drawings showing the measurements of 30 plus feet and 25 feet. The fence was replaced 3-4 years ago, and we didn't hear anything until about a month and a half ago from Andy, Zoning Enforcement Officer that the fence is in violation. Homeowner mentioned that he spoke to Andy and asked him if he came out to the house to measure the fence and Andy responded that he didn't come to the house but used Google Maps for measurements. According to the homeowner, Andy suggested that the homeowner apply for a permit (kind of in retrospect), and Andy didn't answer the question about 25 feet distance. Andy requested the homeowner to measure the distance and provide a drawing. The homeowner mentioned that the fence is about 34 from the middle of the house and then slants towards Dedham Street which according to the homeowner's measurement is 25 feet. The homeowner also mentioned that he measured the distance how Andy explained to measure the distance, you draw two lines and where they come together is, the shortest distance from that point is the distance (draw a perpendicular line). The homeowner also commented that to Mr. Kaufman's point, people should be punished and there should be consequences. If they had known, homeowner said they would have applied for a permit before building the new fence. It would have been cheaper and easier to apply for a permit before than after the fact.

Mr. Kaufman thanked the homeowner. The Commission looked at the drawings and discussed the distance of the fence from the street and corner. The homeowner commented that 4 feet is the shortest distance from the sidewalk line to the deepest part of the fence. 25 feet is the shortest distance from the sidewalk line to the most prominent part of the fence that's most prominent towards Long Meadow. However, where the two lines come together is even further because that corner, the right angle is probably about a foot away from there. So diagonally it's going to be even longer but again, geometry law says it must be perpendicular and perpendicular is exactly 25 feet.

Mr. Kaufman commented that the fence is quite far back from the corner to begin with. It usually happens when there are two fences that are coming together on two property lines coming together at the corner and they have to be cut back. In this case, you can easily see around the corner. Not

sure if it comes under UDC purview. Staff commented that they haven't gotten any complaints about this from the Traffic Engineer.

Homeowner commented that he filed a complaint with the Traffic Engineer in the past about an issue with traffic. People were cutting across and going in the wrong direction from Longmeadow to Dedham. People were going the wrong way because there was no sign and then a sign was placed. There was never an issue with safety due to this fence.

Mr. Kaufman commented that the distance is 34 feet from the house so 25 feet appears to be correct.

Staff commented that UDC doesn't always ask for a survey, but staff spoke to the Andy, Zoning Enforcement Officer and both thought it will be best to ask for a survey to determine the distance to avoid any conflict. Staff also commented that even if UDC doesn't ask for a survey, ISD may ask for a survey before issuing a fence permit. It's up to the Commission to decide if a survey is needed in this case. Ms. Saeyan commented that maybe UDC doesn't ask for a survey, if ISD wants to ask for a survey later then that would be up to them. Staff commented that she is concerned that if UDC decides without the survey that they agree it is 25 feet and ISD may not ask for a survey but if they do, and if it turns out that is 24 feet, the homeowner will have to change the fence and they will not be able to come back to UDC for the same exact reason. Staff also mentioned that she spoke to Andy, and he also recommended a survey be done. Staff commented that it is homeowners' responsibility to provide all the measurements.

Mr. Kaufman commented that UDC can't ask for a survey. Staff responded that all fence appeal applications are required to provide a survey, but UDC typically doesn't always ask for it but sometimes in the past UDC has requested a survey. Ms. Saeyan commented that she agrees with Mr. Kaufman that UDC shouldn't ask for a survey. Staff made a recommendation that UDC does not provide any decision about the corner because the homeowner has shown the distance to be 25 feet and UDC just makes a decision on the six feet tall fence that is along Dedham Street and if that is an issue, then it's up to ISD of how they want to proceed with that and they may not do anything, but maybe UDC just makes a decision on the six foot tall fence along Dedham Street. The reason staff asked for a survey was because it is in the violation notice but since the homeowner has shown UDC that the distance is 25 feet and UDC is comfortable with that dimension, then UDC doesn't need to review it.

The UDC determined that the distance from the corner is 25 feet and hence a survey is not required since relief is not needed for visibility on corner lot.

UDC discussed the fence violation along Dedham Street. Mr. Kaufman commented that he understands the violation had to do with replacing more than 50% of the fence. It is obvious that because of the landscaping, homeowner probably couldn't put it back without harming some landscape. So, the question is does UDC want to insist that it'd be a lower fence in compliance or does UDC think that because it's essentially a replacement of the existing fence even though they may or may not have violated the rule by, replacing more than 50%? The question is this a situation that's worth making changes? Mr. Kaufman commented that he would like to hear from the two other commissioners. Mr. Winkler asked if the petitioners were asking for replacement of a six-foot existing fence, would UDC ask that at least the top two feet of it be open lattice? Mr. Kaufman responded that if they were applying for a permit, the permit would have been denied and then they

would have to UDC for an appeal. At that point, UDC would have talked about a fence that was not installed yet but at this point UDC is talking about a fence that is already installed. The question for UDC is does it create a hardship at this point to make them take down part of this fence to make it comply or not and UDC also knows they have been misled by their fence contractor. Mr. Kaufman commented that he believes that we should leave the fence alone, so he would vote to grant the appeal. Mr. Winkler commented that he would probably go along with that, although he would have liked to see how it look with an open lattice at the top. Mr. Winkler commented that it doesn't appear that trees were an issue in locating the fence. The homeowners commented that there are trees and bushes within inches and 1-2 foot away from the fence. The Commission looked at the pictures submitted by the applicant.

Mr. Kaufman commented that UDC could ask for a lattice top, but he doesn't see the point in doing it at this point. Not sure why a violation was issued almost 5 years after the fact. Staff commented that someone probably complaint about the fence and hence a violation was issued. Homeowner responded that somebody was looking for a permit, probably a general contractor and they decided to complain. The homeowner commented that they drove around the neighborhood and found a few fences that appear to be in violation, new, within the last 10 years.

Mr. Winkler commented that he's okay with Mr. Kaufman's suggestion but would like to point out that for future reference that if we were starting from scratch, this fence could have been designed to wiggle around the two trees and there are a lot of fences in Newton that are set back two feet and folks have put some nice planting in that two feet, between the sidewalk and the fence. And it probably is a much better-looking installation but agree with Michael that after all these kind of mix ups that he's happy with this as it is. Ms. Saeyan agreed with both Commissioners.

MOTION: Mr. Kaufman moved the motion to grant the appeal for the fence height along Dedham Street and the Commission grants an exception for the height. The violation of the corner issue be referred back to ISD, UDC is not going to comment on that. Mr. Winkler seconded the motion. All the members present voted, with a 3-0 vote, Michael Kaufman, Visda Saeyan, and William Winkler in favor and none opposed.

2. 274-276 Adams Street – Fence Appeal

Homeowner: Dino Rossi

Fence Appeal:

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.

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

Part of the proposed fence along the side property line appears to be not consistent with the fence criteria outlined in §5-30(d)(2) of the Newton Code of Ordinances.

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 had 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 Inspector said the 4' is measured from the street gutter not grade at fence and Inspector 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 height dropped to under 4' as measured from gutter not sidewalk/property grade. Potter Street is a private non-public street.
- Mr. Kaufman asked about the issues with the fence. Applicant responded that there are two issues:
 - Inspector Gifford is measuring from the bottom of the street, not the sidewalk
 - Inspector is also saying that it should have been in 25 feet, but UDC said at the meeting that it can done to the whole thing because it was on a private non-public road.
- Mr. Kaufman commented there are two issues:
 - On a regular fence, the fence is measured 4 feet from the grade. The portion of the fence that is in question is in the 25 feet corner.
- Mr. Winkler asked how high the fence is. Applicant responded the fence is 4 feet tall but since the Inspector measured from the street gutter, it is about 4-6 inches taller.
- Applicant asked the Commission to vote to say that the way it is built at four feet from the grade is acceptable. Mr. Kaufman responded that the Commission already voted on that last time to allow 4 feet but now the Inspector is measuring it differently. Mr. Kaufman also commented he's not sure if it is in UDC's purview to go against what is probably a traffic issue, it's a safety issue.
- Staff suggested that she can check with the Traffic Engineer and ask for their guidance/opinion on this issue and if they don't see any issues with this then it can come back to UDC and then UDC can make a decision.
- Mr. Kaufman commented that UDC has already granted the appeal. Maybe staff needs to talk to the Law department since UDC has already granted the appeal. Staff mentioned that she has spoken to the Law department about this appeal, and they have said that ISD's decision about how to measure the fence is the final decision.
- Mr. Kaufman commented that UDC has already granted an appeal. Can ISD override UDC's decision? Staff commented that ISD is not overriding ISD's decision, the homeowner can build a 4-foot-tall fence at the front property line without an appeal since the fence ordinance allows it. In ISD's opinion, the fence is taller than 4 feet, it's about 4'-6" (exact height has not been provided by the applicant). Mr. Kaufman commented that he disagrees with ISD's decision.
- UDC believes the fence is 4 feet tall and ISD is not correct in measuring the height. There are two conflicting heights given in the ordinance.
- UDC requested staff to check with the Traffic Engineer about the fence. After the meeting, staff checked with the Traffic Engineer and his recommendation is *"Having the fencing along the front lot line not exceed the 4-foot height will help ensure safer sight lines for all Potter St residents in the future."* Staff also checked with Commissioner of Inspectional Services Department about the fence height, and Commissioner says *"Section (f)(7) of the fence*

ordinance actually states; No fence on a corner shall be erected or maintained more than 4' above the established street grades within the triangular area."

At 8:40 p.m., the Commission adjourned the Fence Appeal Board portion of the meeting and reconvened as the Urban Design Commission.

III. Old/New Business

1. Meeting minutes

Staff was not able to send the meeting minutes for the previous meeting.

IV. ADJOURNMENT

Mr. Kaufman made a motion to adjourn the meeting and there was general agreement among the members.

The meeting was adjourned at 8:44 p.m.

Respectfully submitted by Shubee Sikka

Approved on October 11, 2023.