



Petition: #79-24
Public Hearing:
3/12/24

Ruthanne Fuller
Mayor

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

Barney S. Heath
Director

PUBLIC HEARING/WORKING SESSION MEMORANDUM

DATE: March 7, 2024
MEETING DATE: March 12, 2024
TO: Land Use Committee of the City Council
FROM: Barney S. Heath, Director of Planning and Development
Katie Whewell, Chief Planner for Current Planning
Cat Kemmett, Senior Planner
CC: Petitioner

In response to questions raised at the City Council public hearing, the Planning Department is providing the following information for the upcoming public hearing/working session. This information is supplemental to staff analysis previously provided at the Land Use Committee public hearing.

PETITION #79-24

136-144 Hancock Street

Petition #79-24 for SPECIAL PERMIT/SITE PLAN APPROVAL to amend the special permit to substitute a cash payment in lieu of providing the units at 136-144 Hancock Street

The Land Use Committee (the "Committee") held a public hearing on February 6, 2024 on this petition. This memo reflects additional information addressed to the Planning Department as of March 7, 2024.

BACKGROUND

In 2022 the petitioner obtained a special permit, SP#395-22 (**Attachment A**) and approval to rezone 136-144 Hancock Street (#394-22), containing approximately 58,492 square feet of land, from Single Residence 3 (SR-3) to Multi Residence 2 (MR-2). The approved project consists of 16 units in four buildings with 27 parking stalls. In accordance with the City's Inclusionary Zoning Ordinance, SP#395-22 requires the petitioner to provide 2.4 (rounded down to two, plus a fractional payment) deed-restricted affordable housing units in the project that will be affordable to households earning 80% of the Area Median Income.

The petitioner seeks to amend their special permit to substitute a cash payment in lieu of providing these affordable units, which is at the discretion of the City Council and subject to specific findings in accordance with §5.11.5 of the Zoning Ordinance. If approved, a revised condition requires an amendment to reflect that the petitioner will provide an increased cash payment of \$1,560,000 in total in lieu of providing two affordable units and a partial cash payment. Should this petition be approved, the project will remain 16 units in total, but the two units that would have been affordable will be market-rate.

The first public hearing on this petition was opened February 6, 2024. In Committee discussion, Councilors expressed the desire to save both or at least one of the affordable units. The petitioner agreed to work with Planning staff to assess the possibility of having one affordable unit on site and a cash payment for the other unit. The item was held for the petitioner to return at a later time with that information. Since February 6th, Planning staff has been in communication with the petitioner about the possible paths forward contemplated in the zoning ordinance.

ANALYSIS:

By right options: At the previous public hearing, it was asked what by-right options would be available for this site. The site is located in the Single-Residence 3 district. However, if the petitioner exercises SP#395-22, that special permit includes relief to change the use to Multi-Residence 2. By-right uses for the parcel in SR-3 if the special permit is not exercised include a single family detached dwelling, non-profit education, religious, and day care. Because of its location in the Auburndale historic district, development would be subject to the Auburndale Historic District Commission's approval.

Future development on neighboring parcel: There was discussion at the previous hearing about the potential cash payment from this project being for the adjacent parcel since there are potential plans to develop a housing project there in the future. If approved, the cash payment will be made to the City's Municipal Affordable Housing Trust Fund and distributed equally to the Newton Housing Authority and the Newton Affordable Housing Trust. The timeline for when and if that project will be approved is uncertain, and ultimately the decision about how the funds will be utilized is up to the Affordable Housing Trust.

Possible Options: Staff have identified three pathways the petitioner has available to them in proceeding with this project allowed by the ordinance.

1. The petitioner can continue to pursue the relief included in this petition, wherein the petitioner will pay the full payment in lieu of the two required affordable units in the amount of \$1,560,000 for the 2.4 affordable units required by the ordinance.
2. The petitioner builds the project as approved in their special permit, which would include two affordable units that are equally distributed and comparable to the market rate units, subject to approval by Housing staff, and pays the \$260,000 required fractional payment.
3. The petitioner may seek relief to amend their special permit to provide one inclusionary unit that complies with the ordinance and a payment of \$910,000 for the 1.4 affordable units not built on site.

If the applicant chooses to provide one inclusionary unit and pay the fractional payment for the second unit, that inclusionary unit must comply with the regulations set forth in the ordinance. Planning staff have reviewed a draft plan from the petitioner that proposes one affordable unit on the ground floor of the Walker Center which would be 1,675 square feet. However, as proposed this plan would not comply with the ordinance. To meet the requirements of the ordinance the plan would need to demonstrate the following:

- Per 5.11.7.C.A , the inclusionary units provided on-site must be proportionally distributed and located in no less desirable locations than the market-rate units. There are two units proposed on the ground floor parking level of the Walker Building. If one inclusionary unit is provided onsite it cannot be one of these units.
- The affordable units must also have an equivalent level of accessibility as that of the market rate units. Therefore, if only one affordable unit is provided, it must be accessible to meet that requirement. This means that the ground floor location is not an added benefit for the unit, as it is required to be accessible.
- Per 5.11.7.C.3, the total square footage of the affordable units in a proposed development must not be less than 10% of the sum of the total square footage of all market-rate and all affordable units in the proposed development. In the draft plan shared by the petitioner, the square footage of all the units combined is 35,595 square feet. That would mean the affordable unit must be at least 3,559.5 square feet, over twice the size of the affordable unit proposed.

Because the ordinance does not contemplate the approach suggested here where half of the required affordable units will be located on site and the other half would be provided via a cash payment, a unit that cannot comply with the zoning ordinance due to insufficient size and lack of proportional distribution would require additional relief from the Zoning Board of Appeals.

ATTACHMENTS

Attachment A Draft Council Order

CITY OF NEWTON
IN CITY COUNCIL

ORDERED:

That the Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the Site, as defined below, 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 Council Order #395-22, which allowed 16 dwelling units in four buildings with dimensional relief and parking relief, to allow for a cash payment in lieu of providing two affordable units as recommended by the Land Use Committee for the reasons given by the Committee, through its Chair, Councilor Andrea Kelley.

1. The specific site is an appropriate location for the amendments to Council Order #395-22. (§7.3.3.C.1)
2. The amendments to Council Order #395-22 will not adversely affect the surrounding neighborhood. (§7.3.3.C.2)
3. The amendments to Council Order #395-22 will not create a nuisance or serious hazard to vehicles or pedestrians. (§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. There will be an unusual net benefit to achieving the City's housing objectives as a result of allowing a cash payment rather than requiring the development of Inclusionary Units. (§5.11.5.A.2)

PETITION NUMBER: #79-24

PETITIONER: Walker Center for Ecumenical Exchange

LOCATION: 136-144 Hancock Street, on land known as SBL 43, 31, 1, and 43, 31, 16 containing approximately 58,492 square feet of land

OWNER: Walker Center for Ecumenical Exchange

ADDRESS OF OWNER: 144 Hancock Street
Newton, MA 02466

TO BE USED FOR: 16 dwelling units in 4 buildings and 27 parking stalls

EXPLANATORY NOTES: Amendment to Council Order #395-22

ZONING: Multi Residence 2

Approved subject to the following Conditions.

This Special Permit/Site Plan Approval amends Council Order #395-22 by altering or eliminating Conditions 5, 6, 7, 8, 9, 10, 1, 30, 31, and 32. All other conditions of Council Order #395-22 and #197-23 remain in full force and effect except as modified below.

1. Conditions 5, 6, 8, 9, 10 shall be deleted in their entirety.
2. Condition 7 shall be deleted and replaced with the following: "The Petitioner shall provide a fractional cash payment of \$1,560,000 in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy."
3. Condition 31.b shall be revised to read "Submitted the payments required in accordance with conditions #7, #15.a and #15.b"
4. Condition 31.c is to be deleted in their entirety.
5. Condition 32 shall be modified by deleting e through h.
6. Condition #7 shall be modified as follows: "The Petitioner shall provide a fractional cash payment of \$1,560,000 in accordance with the City's Zoning Ordinance, §5.11, prior to the issuance of any certificate of occupancy."
7. Condition 15.b. shall be modified to allow the payment at any certificate of occupancy.