



Land Use Committee Report

City of Newton In City Council

Tuesday, January 10, 2017

Present: Councilors Laredo (Chair), Schwartz, Lennon, Lipof, Crossley, Harney, Cote, Auchincloss

Also present: Councilors Baker, Fuller

City Staff: Deputy City Solicitor Ouida Young, Senior Planner Neil Cronin, Chief Planner Alexandra Ananth

#340-16 Special Permit Petition to increase nonconforming front setback at 15 Cottage Court

SEAN ELISEEV AND EVGENIA ELISEEVA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE NONCONFORMING SETBACK AND USE by enclosing the front porch and extending a bathroom on the second floor, adding a new roofline and further extending the front setback, nonconforming residential use and number of stories at 15 Cottage Court, Ward 1, Newton, on land known as SBL 14014 0031, containing approximately 6,000 sq. ft. of land in a district zoned BUSINESS USE 2. Ref: 7.3.3, 7.4, 4.1.3, 7.8.2.C.2, 4.1.2.B.3, 7.8.2.C.2, 4.4, 6.2.2, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 8-0.**

Notes: Petitioner Sean Eliseev provided updates to the Committee on the request to enclose the front porch, extend a second floor bathroom above the porch and add a new roofline. The proposed changes will result in a further extension of the nonconforming setback. At the first public hearing in November 2016, Committee members shared concerns that the plans; scheduled for Historic Commission review in December, were subject to change.

At the Historic Commission meeting, it was determined that the dwelling is of historical significance, but not preferably preserved. The Historic Commission believes that the changes would improve and protect the dwelling in its existing condition. The petitioner noted that many of the residences in the neighborhood are nonconforming.

Senior Planner Neil Cronin reviewed the request for the petition and criteria for the Council's consideration as specified in the draft Council Order dated January 6, 2017. With no member of the public wishing to speak, Councilor Lennon moved to close the public hearing which carried unanimously. After a review of the Council Order, Councilor Lennon's motion to approve the item carried 8-0.

#308-16 Special Permit Petition to further increase nonconforming setback at 79 Kenwood Ave

SURRENDRA DUDANI AND SHALINI SEN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE THE NONCONFORMING SETBACK by razing the existing 12'x22' detached garage and construct a 22'x22' detached garage, reducing the setback from 16.2' to 6.2' where 25' is required at Kenwood Avenue, Ward 6, Newton Centre, on land known as SBL 64 20 01, containing approximately 7,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.4, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Held 8-0.

Notes: Petitioners Surrendra Dudani and Shalini Sen presented original plans to the Land Use Committee on October 13, 2016. The full Council recommitted the item to Land Use based on safety concerns related to sight line issues with the existing vegetative screening.

The petitioners provided updated plans to the Committee that replace the existing, east facing garage with a new garage on the north side of the lot. This change increases the setback from 6.2' to 7.6' and an increase in the garage height from 13' to 14'. The petitioner proposes to replace the existing driveway with permeable pavers, locate a patio, guest parking and maintain two curb cuts. The petitioner noted that there have not been any driving incidents as a result of the vegetative screening along the driveway. The petitioner hopes to maintain the original driveway in order to accommodate guest parking.

Mr. Cronin reviewed the relief to extend the nonconforming setback on the corner lot. Committee members were concerned that abutters have not seen the revised plans. Additionally, Committee members were concerned that the pattern of the nonconformance is inconsistent with the surrounding properties. Committee members noted that if the new garage is further set back on the lot, there will be additional space for guest parking in the driveway. The petitioner stated that the garage cannot be pushed closer to the house because there is a boiler exhaust that needs adequate ventilation. The Committee discussed whether the petitioner should revise the original plan and reducing some landscaping. The Committee urged the petitioner to collaborate with the Planning Department and their design professional to create a safer solution to the plans and noted that the Committee will not support a second curb cut. Councilor Schwartz motioned to hold the item until January 26, 2017 which carried unanimously.

#392-16 Special Permit to amend Special Permit #416-12(3) at Modern Barre

JULIA WILLIAMSON/WALLY ZAINOUN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend special permit #416-12(3) to allow for more than 3 customers at one time, expanded hours of operation and amend the previously approved site plan at 242-244 Commonwealth Avenue, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a

district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 7-0-1 (Harney abstaining)

Notes: The Committee reviewed findings and conditions as specified in the draft Council Order dated January 10, 2017 provided by Deputy City Solicitor Ouida Young in order to organize discussion. Attorney Young noted that the draft Council Order includes language to consolidate previous orders and provide historical context for special permits at the site.

The Chair noted that the second tenant at the site has been determined by Inspectional Services and Planning to be office use. It was stated that the landlord did not exercise the special permit petition approved in 2016 because there were conditions that did not meet his needs. Because Inspectional Services has determined that number of vehicle trips is not a useful tool for enforcement, the Committee's intent is to create a Council Order that includes a cap on the number of people allowed in the building while allowing some flexibility for current and future uses.

Lee McIntyre representing the petitioner and Elizabeth Benedict of Elizabeth Home Décor (second tenant with intent to purchase) provided input as the Committee reviewed the conditions in the special permit.

Ms. Benedict noted that she hopes to be able to use the basement space as a breakroom or workstation as there is a kitchenette and bathroom. She does not intend to use this as additional office space.

Committee members were in favor of supporting the condition to hold the landlord accountable for the completion of site improvements prior to a date specified. Ms. Benedict had concerns that if the site improvements were not completed, she would be in violation and would have to complete the site improvements. She was advised that there are protections that can be put in place prior to her purchase of the site, but that she should contact her real estate attorney.

After considerable deliberation and discussion relating to appropriate use at the site, number of people allowable, different uses and hours of operation; the Committee determined that the total number of people per use (with the exception of fitness use) should be as follows:

Office – No more than 6 employees

Retail – No more than 3 employees

Service – No more than 4 employees

The Committee informed Ms. Benedict that should she take over the second space at the site, she would need to return for an amendment in evaluating number of allowable people at the site. There were concerns from Councilors regarding density at the site.

Public Comment

Kenneth Parker, representing Michael Noon, noted that his client isn't about any particular use but about a Special Permit that runs with the land and underestimation of the use at the site.

Marucs Careno, 252 Commonwealth Avenue, has concerns that the current landlord will not follow through with improvements at the site.

Jill Roberts, 245 Woodward Street, believes that Modern Barre is an asset to the community and hopes the Committee will approve the special permit.

Councilor Schwartz motioned to close the public hearing which carried 8-0. Councilor Cote motioned to approve the item subject to second call which carried 7-0-1 with an abstention from Councilor Harney.

Chairs Note: The Committee heard an update on a violation of a Council Order at 28 Sumner Street relative to Special Permit #180-15.

Chief Planner Alexandra Ananth noted that the special permit was to allow for a three family attached dwelling. She demonstrated the site plan that showed existing structure that was to be preserved during attachment to the other two dwellings. The plan showed that the design was based on the original structure to be preserved. The development team built a new foundation for the structure in its original location. During the building process, they found that the existing roof would not building code and completed work to replace the roof. Because the replacement of the roof was not included in the original plans, a stop work order was issued based on a complaint and was later released. The petitioner stated that the builder spoke with Inspectional Services and that they were instructed to replace the roof after finding it structurally unsound. Some Committee members were displeased that the preservation was not completed as was planned during the special permit process. Committee members also believed that this issue should have returned to the Committee as a consistency ruling. Committee members acknowledged that the petitioner ultimately had to replace the roof at greater expense. It was also noted that the petitioner had no choice but to replace the roof. Some Councilors noted that when completed, the structure will be a replica of the original structure and will be safer.

Because this is not the first time an issue regarding preservation has occurred, the Planning department is working with the Law Department to craft a new condition as a standard for special permits that include preservation.

David Goodson, 20 Sumner Street, had concerns about the work completed and provided the attached commentary.

261-16(2) Special Permit Petition to allow site and building improvements at "The Street"

CHESTNUT HILL SHOPPING CENTER LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to ALTER A NONCONFORMING STRUCTURE to construct new buildings to allow for existing and new commercial uses including banking, office, medical office, theatre, health club, retail, restaurant and parking, to allow buildings in excess of 20,000 sq. ft., allow a building up to 60' in height, site plan review for buildings within 300' of a great pond, allow parking within a setback, extend Farmers Market special permit 230-14, update signage special permit 417-12, allow some parking stalls on portions of the site to be reduced size and in garage to be reduced stall depth, allow reduced parking facility lighting and grant exceptions for parking stall size and interior landscaping requirements at 1-55 Boylston Street, Ward 7, Chestnut Hill, on land known as SBL 63037 0025, 63037 0026, containing approximately 859,444 sq. ft. in a district zoned BUSINESS USE 4. Ref. 7.3.3, 7.4, 4.1.2.B.1, 4.1.2.B.2, 4.1.2.B.3, 5.6, 5.1.8, 5.1.13, 6.4.22, 5.8.2.C, 5.1.8.B, 5.1.10.A of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 7-0 (Cote not voting)**

Notes: Attorney Frank Stearns representing the Chestnut Hill Shopping Center, LLC., presented updates on the petition to the Committee. Because the petitioner withdrew the portions of the petition that relate to the pond buildings and 27 Boylston Street, the petition that remains is for the infill project at 55 Boylston Street (movie theatre building).

Committee members determined that the loss of 35 parking spaces on the site would not be a major impact on the site as it has over 1300 spaces. The petitioner noted that as part of special permit conditions, they regularly track the volume of cars to ensure that there is ample parking on the property. Additionally, the loss of one aisle of traffic in the infill space should not create additional traffic issues should help in reducing the number of conflict points.

Councilor Crossley motioned to close the public hearing which carried 7-0. Councilor Crossley motioned to approve. The Committee reviewed the findings and conditions in the draft Council Order.

A Councilor questioned the appropriateness of outdoor speakers after 10:00 pm. Committee members feel that the distance from the pond is adequate to allow for the outdoor speakers for background music. A condition to reflect that the background noise be music was added. It was also requested that a condition reflect that no spillover from indoor or outdoor lights. Committee members voted unanimously in favor of Councilor Crossley's motion to approve.

Class 1

#432-16

CLAY NISSAN OF NEWTON INC.
431 Washington Street
Newton Corner 02458

#1-17 **Class 1 Auto Dealer License**
MCGOVERN CHRYSLER JEEP DODGE RAM
777 Washington Street
Newton, MA. 02460

#433-16 VILLAGE MOTORS GROUP, INC.
d/b/a HONDA VILLAGE
371 Washington Street
Newton Corner 02458

Class 2
#434-16 NEW ENGLAND MOTOR MART, INC.
1221-1229 Washington Street
West Newton 02465

#2-17 **Class 2 Auto Dealer License**
MOTORCARS OF BOSTON, INC.
1191 Washington Street
Newton, MA. 02465

#435-16 JACOB & ASSOCIATES
1232 Washington Street
West Newton 02465

#436-16 SONOMA CLASSICS LLC.
1215 Chestnut Street/145 Wells Avenue
Newton

#437-16 R.J.S. SERVICE, INC.
361 Washington Street
Newton Corner 02458

#408-16 SAM'S AUTO CENTER
875 Washington Street
Newtonville 02460
Land Use Held on December 13, 2016.

#405-16 NTC-NEWTON TRADE CENTER
103 Adams Street
Nonantum 02458
Land Use Held on December 13, 2016.

Action: Land Use Approved 7-0 (Cote not Voting)

Notes: Hearing that the Auto Dealers met the criteria for renewal, Councilor Lipof motioned to approve the renewals and the motion carried unanimously.

The Committee adjourned at 11:30 pm.

Respectfully submitted,

Marc C. Laredo, Chair

CITY OF NEWTON
IN CITY COUNCIL

January 23, 2017

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 AMENDMENT to SPECIAL PERMIT/ SITE PLAN APPROVAL to amend the site plan approved by Order #416-12(3) to reconfigure the rear parking lot and to change the landscaping and fencing and the ALTERATION of a NONCONFORMING USE granted by Order #416-12(3) by changing the operational controls applicable to a fitness studio service use and to the office/retail use, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

1. Two special permit/site plan approvals, Orders #416-12(6)&(7) were approved by the City Council on February 1, 2016 but never exercised by the owner, Main Gate Realty, LLC. Orders #416-12(6)&(7) authorized reconfiguration of the parking lot and expanded operational controls relative to a fitness studio service use. Given the increased density permitted the fitness studio service uses, these Orders also restricted the number of customers (3) and staff (3) that could be allowed on site at any one time for any use operating on at the site.
2. Orders #416-12(6)&(7) were not exercised by the owner of the site because of the restrictions in the number of customers and staff imposed on any use operating at the site. Accordingly, the only special permit/site plan approval controlling operations on the site is Order #416-12(3). That Order restricted the number of tenants in the building to 2, limited to office, low parking demand/turnover service, or retail uses. That Order also only permitted ½ of the building to be used for a personal service business, and further restricted such service use to not more than 3 customers and 3 staff on-site at any one time.
3. At the current time, the fitness studio service use is operating in conformity with Order #416-12(3), restricting classes to 1 staff and 3 customers at a time. The other half of the building is currently leased primarily as an office use with accessory retail use, with 4 staff on site at any one time. The lessee of that office use is interested in purchasing the site and potentially expanding its use to the entire building, which would require an

additional parking waiver. The operator of fitness studio service use, Julia Williamson, would also like to expand her operation to more closely match the use approved in Order #416-12 (7).

4. In order to secure the operational controls for use of the site as well as improved site landscaping and reconfiguration of the parking lot proposed in Order #416-12 (6)&(7) but not exercised, it is appropriate to amend Order #416-12(3) to facilitate retaining the current office use and permit expansion of the fitness studio use with controls on both uses in the event that either or both operators of the current uses change.

1-5. The applicant's proposed changes and enhancements to the site plan approved under Order #416-12(3), which consist of a reconfigured rear parking lot, landscape plantings, and a screened/fence enclosure for trash receptacles, will minimize off-site impacts and enhance the visual appearance of the site.

2-6. The change in operational controls for the fitness studio, ~~a service use allowed on site per special permit #416-12(3)~~, to allow longer hours of operation and an increase in the maximum number of customers from the allowed three (3) to eleven (11), will not be substantially more detrimental to the neighborhood than the previous operational controls for the use as the applicant operator of the fitness studio has agreed to certain stipulations regulating the daily intensity of these uses. (§7.8.2.C.)

3-7. The extension of the nonconforming use on the site through the modified operational controls for the fitness studio service use on the first floor ~~imposed by the conditions in this special permit/site plan approval as developed and operated~~ will not adversely affect the neighborhood, as there is adequate parking along Commonwealth Avenue or the carriageway for customers to park. (§7.3.3.C.2)

8. The applicant's proposed construction of a sidewalk extension along a portion of property frontage off Manet Road is a public benefit to the City that will enhance the safety of pedestrians and improve vehicular circulation in the immediate neighborhood.

PETITION NUMBER: #392-16416-12(6) and (7)

APPLICANT(S): Main Gate Realty, LLC Wally Zainoun (hereinafter "MGR"); use of the term "MGR" in this Order shall include MGR, its successors and assignees) and Julia Williamson (hereinafter the "Fitness Studio operator" and any successor engaged in the same service use)

LOCATION: 242-244 Commonwealth Avenue, on land known as Section 61, Block 13, Lot 11, containing approximately 7,452 square feet of land

OWNER: [Main Gate Realty, LLC Wally Zainour](#) (hereinafter "MGR"); use of the term "MGR" in this Order shall include MGR, its successors and assignees)

ADDRESS OF OWNER: 11 Carter Drive
Natick, MA 02459

TO BE USED FOR: Reconfiguration of Parking Lot and Expanded Operational Controls for Fitness Studio Service Use

EXPLANATORY NOTES: §7.8.2.C., to amend an existing site plan approved in Order #416-12(3), to reconfigure the rear parking lot and add landscaping; and to further amend an existing special permit, Order #416-12(3), to permit more than three customers and change the allowed hours of operation for the Fitness Studio Service Use.

ZONING: Multi-Residence 1 district

This special permit supersedes, consolidates, and restates provisions of prior special permits to the extent that those provisions are still in full force and effect. Any conditions in prior special permits not set forth in this special permit #392-16 are null and void.

Approved subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with the plans entitled:
 - a. Proposed plot plan titled "242-244 Commonwealth Ave., Chestnut Hill, MA – Proposed Plot Plan", prepared by Peter Nolan & Associates, LLC., dated January 15, 2016.
 - b. Ground Floor Plan, 242 Commonwealth Avenue, unsigned and unstamped, created by Jay C. Walter, AIA, dated October 17, 2010.
2. All trash and recycling areas on-site shall be maintained in a sanitary condition at all times. The collection/emptying of such receptacles shall only occur on weekdays between 8:00 a.m. and 5:00 p.m.

Comment [OCMY1]: It is important to remember that any time MGR is obligated to do something in this Order, a successor owner will also be obligated, including Designs by Elizabeth if that business purchases the site.

Comment [OCMY2]: A question has been raised regarding existing trees that are not shown on this plan. However, this is the plan that was approved in Order #416-12(6). The status of these trees should be clarified.

3. The first floor of the building shall not be occupied by more than two separate tenants, and shall be limited to office, service or retail uses with low parking demand/turnover. A service use shall occupy only ½ of the first floor of the building.
4. The basement level shall not be rented to another tenant, or used by MGR in any way unless MGR is also a tenant of the building, but such level may be used by the first floor tenant spaces for storage or other uses provided the space is not arranged to provide for a personal work area or accommodate additional staff while a service use is by either tenant.
5. The on-site parking facility, with four (4) designated parking stalls, shall be used for employee parking only, designed to prohibit tandem parking configurations, and assigned to specific tenants as follows: two (2) parking stalls for each of the first floor tenants.
6. No parking for customers shall be allowed in the on-site parking facility for any use at any time. Customers shall utilize legal on-street parking in the surrounding neighborhood, and are encouraged to park along Commonwealth Avenue or the carriageway.
7. No operation of any business on the site is allowed between 10:00 p.m. and 7:00 a.m.
8. There shall be at least 15 minutes between appointments for any office or service use occupying the first floor tenant spaces, so that new customers are not arriving before the previous customers have left.
9. Prior to July 29, 2017 any change in ownership of the property, MGR, at its sole expense, shall have installed the site improvements as shown on the site plan approved under Condition #1.
10. The hours of operation for anythe office use on site shall be Monday through Friday 8:00 a.m. to 6:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m. Any accessoryThe retail component of the any office use shall be Monday through Saturday 11:00 a.m. to 5:00 p.m. Any visit by a client to the site outside of these hours shall be by appointment only and in no event shall occur outside the hours specified in Condition #7.
11. MGRThe owner shall maintain all landscaping and features on the site in good condition. Any plant materials that become diseased or dies shall be replaced on an annual basis with similar materials.
12. Any future change in tenants shall require a building permit from the Inspectional Services Department showing that the proposed use by the new tenant complies with the conditions in this special permit/site plan approval.
13. While a service use is a tenant on site, the any office use may be limited to only six (6) employees on site at any one time. In the event that an office use occupies the entire building, such use shall be limited to only eight (8) employees on site at any one time. In the event that a retail use replaces the service use as a tenant in either ½ of the building or takes over the entire building, such retail use shall be limited to the same number of employees on site at any one time as any office use. Exceeding the restriction of the

Comment [OCMY3]: Order #416-12(6) restricted use of the basement to tenant storage only. Designs by Elizabeth would like to use the basement level for "back room" office operations or as a lunch/coffee break room rather than simply as storage. The intent would not be to locate staff offices in the basement. This condition would permit use of the basement for more than storage by either tenant.

Comment [OCMY4]: Order #416-12(6) had a specific date by which the site improvements have to be included. Given the potential closing date for any transfer of ownership, completion of the site improvements may not be possible. The previous order called for the improvements to be completed by July 29, 2016, and there's no reason a similar date of July 29, 2017 can't be used in this condition.

number of employees permitted on site pursuant to this Condition shall requirement an amendment to this special permit/site plan approval.

Comment [OCMY5]: Order #416-12(6) imposed restrictions on the number of on-site employees and customers for any use. Concerns have been raised regarding having no cap on the intensity of use for retail or office use other than the language of Condition 3 which is not easy to enforce.

14. No Building Permit shall be issued pursuant to this Special Permit/Site Plan Approval until MGR has:

- a. recorded a certified copy of this 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 order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
- c. Obtained a written statement from the City Engineer that confirms the receipt and approval of designs and plans for the sidewalk extension proposed along Manet Road.
- d. Obtained a written statement from the Department of Planning and Development that confirms plans submitted with any building permit are consistent with plans approved in Condition #1.

15. No Final Inspection/Certificate of Occupancy for the site improvements pursuant to this Special Permit/Site Plan Approval shall be issued until MGR has:

- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered land surveyor certifying compliance with Condition #1.
- b. Submitted to the Department of Inspectional Services and the Department of Planning and Development a final as-built survey plan in digital format by a licensed surveyor.
- c. Filed with the Department of Inspectional Services, and the Department of Planning and Development a statement by the City Engineer certifying that finished grades and final constructions details of driveways and parking areas have been constructed to the standards of the City Engineering Department
- d. Filed with the City Clerk and the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, final landscape features, fencing, and parking areas.

Notwithstanding any of the foregoing conditions which may be in conflict, the following conditions shall apply solely to any the Fitness Studios Service Use permitted in ½ of the building, and to the entire site to the extent applicable:

16. The Fitness Studio Service Use shall have a class schedule not to exceed 30 classes per week, including showcases and other similar events.
17. The Fitness Studio Service Use shall maintain at least a 15 minute gap between scheduled classes so as to minimize the number of clients on-site at any one time.
18. The class sizes in the Fitness Studio Service Use shall be limited to one (1) instructor and up to eleven (11) clients, and the average number of clients per class within any given week shall not exceed 9, said average being calculated on the basis of the actual number

of classes for such week. The Fitness Studio operator agrees to compile weekly attendance records containing only the number of clients attending each class and voluntarily make such records available for review by the Commission of Inspectional Services or his designee to confirm compliance with this Condition #19. To the extent permitted by the Massachusetts Public Records Law, any such records received by the Commissioner of Inspectional Services or his designee shall be considered confidential commercial information, voluntarily provided and exempt from public disclosure, but such records may be used with regard to enforcement of the conditions in this Special Permit.

19. The hours of operation for the Fitness Studio Service Use shall be Monday through Friday from 7:00 a.m. to 9:30 p.m., 9:00 a.m. to 5:00 p.m. on Saturday, and 9:00 a.m. to 5:00 p.m. on Sunday.
20. For so long as a Fitness Studio Service Use operates at the site, the Fitness Studio Service Use shall not exceed the level of intensity authorized by Conditions #176-221, and the second first floor tenant shall not have no more than six (6) employees on site any one time.
21. The changes to the operational controls governing the Fitness Studio Service Use shall expire one (1) year following the date of approval unless extended by the City Council upon petition which extension may be granted without public hearing unless the City Council shall vote to require a public hearing. If in the future an extension is not granted by the City Council, Conditions #176 through #221, above, shall be null and void, and any subsequent use of the tenant space occupied by the Fitness Studio Service Use and the second tenant space shall comply with all the current and applicable requirements of the Newton Zoning Ordinance and Conditions #1 through #143.

Comment [OCMY6]: It should be noted that while the schedule of classes provided does not include classes earlier than 9 on Saturday and Sunday, Ms. Williamson has requested earlier classes.

David Goodson
20 Sumner Street
Newton Centre

January 11, 2017

Dear Members of the Land Use Committee and Councilors Fuller and Baker,

The discussion at the Land Use meeting last night raised important issues. The first is the definition of “historic preservation.” Down the hall from the hearing room, opposite the Inspectional Services counter, is a bin full of fliers entitled “Historic Preservation Information for Property Owners,” which refers the homeowner to *The Secretary of the Interior's Standards for the Treatment of Historic Properties*. There one can find a clear definition of “preservation”:

Sustaining the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials rather than extensive replacement and new construction.

The standards clearly distinguish between “preservation” and “reconstruction.” The latter is to be considered only as a last resort, when preservation, rehabilitation, or restoration is physically impossible. It was reasonable for the abutters to assume that Mr. Sokoloff's pledge to *preserve* the 1835 house in exchange for permission to build a third unit, and the Land Use Committee's call for *preservation* of the historic structure, were using the standard definition of preservation. Furthermore, the submitted plans use the term “existing house,” which clearly implies preservation, not reconstruction. The opinion expressed by the representative of the Planning Dept. and by Councilor Crossley, that reconstruction in this case was not objectionable, is irrelevant. For me, a fake replica is not as meaningful as an authentic historic structure, but this is not the issue. The Council Order unambiguously required *preservation* and the Inspectional Services Dept. was obligated to enforce this.

The second issue concerns what was actually done to the historic structure. If the developer's construction contractor told the Commissioner of Inspections that only the rafters would be replaced, as reported last night by the Planning Dept. representative, then he intentionally misled the Commissioner. I watched from my dining room on the morning of November 4 as the work crew systematically removed each of the original first-floor wall studs and replaced them with new ones, after having removed the rafters and ridgepole the previous afternoon. (I have photographs, which I would be happy to share with the Committee if Councilor Baker's photographs do not show this.) Clearly, no one from Inspectional Services bothered to visit the work site to verify the contractor's claim. The developer, Mr. Sokoloff, lied to the Committee last night when he stated that the original wall studs were preserved.

The third issue is the contractor's claim to the Commissioner that it was impossible to restore the roof. Such a determination should have been based on testimony of an independent consultant with expertise in historical restoration. The decision should have been made by the City Council in response to a demolition permit application considered in a public hearing. Certainly, if permits were required for the demolition and reconstruction of a backyard shed, they should have been required for the historic house, which was to be the centerpiece of the development! The decision by Mr. Sokoloff not to apply for a demolition permit suggests to me that the motivation for reconstruction instead of restoration was based on financial rather than technical considerations.

The fourth issue is the illegally removed tree, which was mentioned by Councilor Baker. The deeper issue is that Inspectional Services granted the building permit even though the Construction Management Plan lacked a tree preservation plan. The Council Order on page 3 specifically states that a tree preservation plan must be submitted to the City prior to the issuance of any building permit. Under the heading “Tree Preservation Plan” the Management Plan simply says “...Tree removal and protection will be in keeping with the City of

Newton's ordinances,” but no actual plan is presented. Such a plan should include a mapping of the root systems of the trees to be preserved and an analysis of the effects of excavation on the root systems to demonstrate that the building plan is not inconsistent with the landscaping plan. It would typically involve placement of fencing to mark the extent of the root systems at the soil surface. Mr. Sokoloff's excuse that a “truck” (actually, it was an excavator digging the new foundation) accidentally ran into the tree is ridiculous. If protective fencing had been in place, this “accident” would not have happened. Here I blame the Dept. of Inspectional Services for improperly issuing a building permit while the Management Plan was incomplete. The tree in question was a healthy, mature, kousa dogwood, at least 20 feet high. I expect it will be impossible to transplant an equivalent replacement tree. Any sapling Mr. Sokoloff puts in its place will take years to attain that size. The location of the tree was opposite my living room and dining room windows. Its absence significantly affects my view.

Mr. Sokoloff's behavior has been brazen. He was granted permission for a third unit in exchange for preserving the historic home, which he then demolished—in other words, he collected the ransom and then killed the hostage anyway. He has flagrantly violated the conditions of his special permit, demolished a historic structure without a permit, and lied to the Land Use Committee. Representatives of the City had previously convinced abutters to drop their objections to the special permit application by promising them that the terms of the special permit would be strictly enforced. I believe this obligates the Land Use Committee to seriously penalize Mr. Sokoloff for violating the Council Order. Specifically, I call for the following actions:

1. The Commissioner of Inspectional Services shall be directed to immediately cancel the building permit and inform Mr. Sokoloff that, with the historic home now destroyed, it will be impossible for him to meet the conditions of the special permit.
2. The Commissioner shall impose a two-year moratorium on issuance of work permits at 28 Sumner Street (in accordance with Chapter 20, Paragraph 50, of the Newton Ordinances), with possibility of waiver only under the following conditions:
 - a. Any new building plan must conform to the ordinary zoning ordinances.
 - b. Any new building plan would preserve unbuilt the northeast corner of the lot with landscaping that includes the one surviving dogwood and a replacement for the illegally removed dogwood equal in size to the original or, if that is impossible, two dogwoods that are as large as possible.
 - c. The property owner will first make a donation to the CPA fund in an amount equal to the value of the 1835 house that was destroyed.

When I asked my neighbor across the street, who recently restored at great expense what I believe was the second oldest (now the oldest) house on this block of Sumner St., if he planned to attend the Land Use meeting, he said he thought it would be a waste of time—the City government is corrupt and the Land Use Committee is in the pocket of the developers, so our complaints will achieve nothing. (Indeed, Councilor Lipoff's continued refusal to recuse himself despite his family connections to Mr. Sokoloff plays into this narrative.) However, I trust that you will prove the cynic wrong and demonstrate that developers, as well as residents, must obey the laws.

David Goodson