



Land Use Committee Report

City of Newton

In City Council

Tuesday, February 28, 2017

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

Also Present: Councilors Albright, Norton, Brousal-Glaser

City Staff: Director of Planning and Development Barney Heath, Chief Planner Alexandra Ananth, Deputy City Solicitor Ouida Young, Associate City Solicitor Robert Waddick, Commissioner of Public Buildings Joshua Morse, Chief of Staff/Chief Financial Officer Maureen Lemieux, Community Preservation Program Manager

Referred to Land Use and Finance Committees

- #10-17** **Appropriate \$2 million for development of housing units at 70 Crescent Street**
HIS HONOR THE MAYOR requesting authorization to appropriate two million dollars (\$2,000,000) from the November 16, 2016 Overlay Surplus Declaration for the purpose of funding the City's share of the development of market rate and affordable housing units at 70 Crescent Street. {12/28/16 @ 4:48 PM}
Item split into Part A and Part B:
Part A – Balance of City's Funds for Project Construction \$1,701,500 – HELD
Part B - Project Design Funds \$298,500
Action: **Land Use Approved Part B 7-0 @ \$298,500 (Cote not voting)**

Referred to Programs & Services, Land Use and Finance Committees

- #35-17** **Appropriation of CPA funds for design of the Crescent Street Project**
COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of two hundred sixty thousand dollars (\$260,000) from the Community Preservation Fund to the Public Buildings Department for feasibility and design work on affordable housing and playground expansion and improvements at 70 Crescent Street, as envisioned by Council Order #384-11(4) and as described in the December 2016 proposal to the Community Preservation Committee and the Community Preservation Committee's detailed funding recommendation. [01/23/17 @ 5:19 PM]
Programs & Services Approved 2-0-2 (Hess-Mahan and Leary abstaining) on 02/22/17
Action: **Land Use Approved 7-0 (Cote not voting)**

Note: Chair of the CPC, Jane Sender presented the request to appropriate \$260,000 of CPA funds for the design of the Crescent Street Project. She stated that the intention is to move forward with the design phase of the project including four market rate units, four affordable units and 20,000 sq. ft. of park space. She noted that the community has expressed concern about the cost of the project, but that the City is committed to reducing costs. Chief of

Staff/Chief Financial Officer Maureen Lemieux noted that the City will be bonding the expense of the project with tax exempt bonds and the income generated from the rental properties will go directly to construction costs.

Committee members emphasized the importance of clearly establishing design metrics. A Councilor stated that while the estimated cost per square foot may be high, creative design can result in a cost effective, high performance building. It was noted that increasing the performance standards does not have to correspond to an increase in cost per square foot if carefully considered. Additionally noted was that the Design Review Committee is in the process of establishing design guidelines. Commissioner of Public Buildings Joshua Morse confirmed that the project would be reviewed by the Designer Selection Committee, Design Review Committee and would go through the 5-58 process with the City Council. Commissioner Morse confirmed that contamination at the site is currently being treated and may require one additional treatment.

Councilors expressed support for the project on behalf of the community and Council members. It was noted that Councilors are excited to move forward with the project. It was requested that Commissioner Morse be cognizant of high standards when selecting a designer.

Councilor Harney motioned to approve the request for \$260,000 for CPA funds. Councilor Harney motioned to split item #10-17 into two parts; A. \$1,701,500 and B. \$298,500. Councilor Harney motioned to hold part A and approve part B. All items carried unanimously.

#180-16 (2) MARK NEWTONVILLE, LLC petition for a change of zone to Mixed Use 4 for land located at 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, Ward 2, currently zoned Business 1, Business 2, and Public Use, further described as follows:
Beginning at a point on the northerly line of Washington Street, running thence;
Along the northerly line of Washington Street, south 89 degrees - 04 minutes - 40 seconds west, a distance of 433.14 feet to a point; thence
Along the easterly line of Washington Terrace north 02 degrees - 03 minutes - 34 seconds west, a distance of 278.34 feet to a point, thence, the following four (4) courses along the existing zone lines of MR-1 and MR-3:
North 86 degrees - 11 minutes - 41 seconds west, a distance of 15.07 feet to a point; thence

North 01 degrees - 52 minutes - 35 seconds west, a distance of 3.01 feet to a point; thence

South 86 degrees - 11 minutes - 41 seconds east, a distance of 85.43 feet to a point; thence

North 88 degrees - 31 minutes - 34 seconds east, a distance of 370.56 feet to a point on the westerly line of Walnut Street; thence

Along the westerly line of Walnut Street, south 04 degrees - 12 minutes - 48 seconds east, a distance of 261.82 feet to a point of curvature; thence

Along a curve to the right having a radius of 17.00 feet, a central angle of 93 degrees - 17 minutes - 28 seconds, an arc length of 27.68 feet, a chord bearing of south 42 degrees - 25 minutes - 56 seconds west, a chord length of 24.72 feet to the point and place of beginning.

Containing 123,765 square feet, or 2.84 acres, more or less.

Note: A request for withdrawal without prejudice was received from the petitioner on February 23, 2017. Councilors discussed the request and details can be found below.

Action: Land Use Held 8-0

#179-16 MARK NEWTONVILLE, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a mixed use development in excess of 20,000 square feet consisting of three interconnected buildings with building heights not exceeding 60 feet and five stories, total gross floor area not exceeding 235,000 square feet incorporating not more than 163 residential units, not exceeding 45,000 square feet of commercial space, not exceeding 2,500 square feet of community space, not less than 350 onsite parking stalls outside at grade or within a below-grade garage, and related site improvements; to authorize uses including retail of more than 5,000 square feet, personal service of more than 5,000 square feet, restaurants over 50 seats, standalone ATMs, health club establishments at or above ground floor, animal service, and street level office; to allow FAR of not more than 1.90, lot area per dwelling unit of approximately 775 square feet, reduction of the overall non-residential parking requirement by 1/3, 1.25 parking stalls per residential unit, and free standing signs; to grant waivers of not more than 97 parking stalls and of the height setback and facade transparency and entrance requirements; to grant waivers of certain parking facility design standards including dimensional requirements for parking stalls, parking stall setback requirements, entrance and exit driveways, interior landscaping, interior planting area, tree plantings, bumper overhang, lighting of one foot candle, curbing and surfacing, wheel stops, guard rails, bollards, and maneuvering space

for end stalls; and to grant waivers as to number, size, location, and height of signs and number of required loading bays, at 22 Washington Terrace, 16-18 Washington Terrace, 10-12 Washington Terrace, 6-8 Washington Terrace, 875 Washington Street, 869 Washington Street, 867 Washington Street, 861-865 Washington Street, 857-859 Washington Street, 845-855 Washington Street, 245-261 Walnut Street (a/k/a 835-843 Washington Street), 241 Walnut Street, 22 Bailey Place, 14-18 Bailey Place, and an unnumbered lot on Bailey Place, also identified as Section 21, Block 29, Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 19A, 20, 21, 22, and 23, containing approximately 2.84 acres of land in a proposed Mixed Use 4 District. Ref.: Sections 4.2.2.A.2; 4.2.2.B.1; 4.2.3; 4.2.5.A.2; 4.2.5.A.3; 4.2.5.A.4; 4.2.5.A.4.c; 4.2.5.A.6; 4.2.5.A.6a; 4.2.5.A.6.b; 4.4.1; 5.1.4.A; 5.1.4.C; 5.1.8.A; 5.1.8.A.2; 5.1.8.B; 5.1.8.B.1; 5.1.8.B.2; 5.1.8.B.6; 5.1.9.B; 5.1.9.B.1; 5.1.9.B.2; 5.1.9.B.3; 5.1.9.B.4; 5.1.10; 5.1.10.A.1; 5.1.10.B.3; 5.1.10.B.5; 5.1.12; 5.1.13; 5.2.13; 5.2.13.A; 7.3; and 7.4 of Chapter 30 of the City of Newton Revised Zoning Ordinances, 2015.

Public Hearing Opened on June 7, 2016 and continued to July 12, September 13, October 6, 2016, November 1, 2016, November 29, December 15, 2016, January 12, 2017, January 31, 2017, February 7, 2017 and February 28, 2017.

Note: A request for withdrawal without prejudice was received from the petitioner on February 23, 2017. Councilors discussed the request and details can be found below.

Action: Land Use Held 8-0

Note: The Chair read the items into the record and noted that the petitioner had submitted a request to withdraw without prejudice the Special Permit petition and request to rezone the Orr Block. After the submission of the request to withdraw the petition without prejudice, the Chair worked with the President of the Council to schedule a Committee of the Whole on March 20, 2017. It was noted that while the Land Use Committee has had the benefit of presentations and public comment, the Full Council has not. Due to a ruling from the City's Law Department, the petition to rezone the site requires a $\frac{3}{4}$ vote. Committee members emphasized the importance of ensuring that deliberations related to the project happen publicly. The Chair's expectations are that Councilors will make their concerns about the project clear during the Committee of the Whole. He reiterated that the public hearing remains open and noted that the Council will not vote to approve or deny the petition on March 20, 2017. If the petitioner does not wish to continue with the Special Permit process, the Land Use Committee may act on the request to withdraw the petition that evening.

Councilors expressed concern about voicing a formal opinion prior to the close of the public hearing. The Chair noted reluctance to close the public hearing in the event that the project details have substantial changes. Committee members agreed that Councilors could discuss their concerns without voicing a formal opinion.

The Chair requested that the petitioner's attorney and petitioner be prepared to engage in a discussion regarding remaining concerns including; height, density, intensity, workforce housing vs. affordable housing. Committee members asked that the Planning Department provide data and analysis regarding the City's housing needs. The Chair confirmed that information regarding the structure and expectations of the Committee of the Whole would be distributed to Councilors prior to the meeting. Committee members requested that visuals be provided with respect to different heights of the building that has been proposed at the site.

Attorney Buchbinder noted that the petitioner's preference remains to go through the special permit process and that they are grateful for the opportunity to engage in discussion with the Full Council. Committee members asked the Law Department to provide clarification about whether the zone change can be approved without the Special Permit and if doing so will preclude a 40B at the site.

Public Comment

Kathleen Kouril Grieser, 258 Mill Street, believes that transparency is important but noted that a Committee of the Whole will not hear public comment. She noted that the impacts of rezoning to MU4 cannot be mitigated and suggested that the petitioner is looking to rezone in several parts of the City.

Robert Smith, Foster Street, asked if public comment would be taken after the Committee of the Whole. The Chair confirmed that if the petitioner decides to move forward with the petition, the public hearing will continue at a Land Use Committee meeting. Mr. Smith requested that the petitioner provide visuals of the proposed structure from the abutters' yards.

Kenneth Roberts, 252 Cabot Street, noted that small businesses in Newtonville will be impacted by the Council's decision on this project. He cautioned that not voting in favor of the project might have unintended consequences.

Peter Bruce, Claflin Place, noted that there is misinformation circulating about what will happen with the approval of a 40B project.

Ellen Fitzpatrick, Foster Street, questioned whether it is appropriate for Council members to meet independently with the attorney for a petitioner with an open petition.

Alison Conant, Questioned the Planning Department's role in working with the petitioner. The Chair noted that the Planning Department works for the Mayor's office and provides professional advice to the Land Use Committee.

Fred Arnstein, Briar Lane, Comments Attached.

Committee members reiterated that the intent of the Committee of the Whole is to engage in discussion, publicly with Councilors who have not previously seen the details of the project. Councilors noted that meeting in a Committee of the Whole is a tool used to organize Councilors and not uncommon. Councilor Lipof motioned to hold the items until March 20, 2017 which carried unanimously and the Committee adjourned at 8:51 pm.

Respectfully submitted,

Marc C. Laredo, Chair

To: Newton Land Use Committee and others
From: Fred Arnstein, Neighbors for a Better Newtonville
Date: February 27, 2017
Subject: The future of the Orr Block — Request for innovative action from the City Council

After months of LUC meetings, Robert Korff says he wants to withdraw his petition and take the 40B route instead. Does he really mean it? As I write, with an LUC meeting tonight, this drama is almost as exciting as the Oscars. The following is my view, and the view of many in my group, Neighbors for a Better Newtonville.

What he really wants — MU4. We've known all along that Mr. Korff has wanted MU4 rezoning for the Orr Block. But there's also a bigger prize at stake. We see him actively buying and investigating other properties along Washington Street and elsewhere. If he wins rezoning for the Orr Block, he will have a much easier time doing the same elsewhere. So will other developers.

He has shown himself willing to compromise. He started out wanting 171 apartment units. After months of saying that he couldn't possibly go lower, he came down to 161, his new absolute limit. But then, as he foresaw he might lose the council vote, he came down to 141 — his new absolutely final position. So there's every reason to believe that he could compromise further.

40B will be a problem for him. We think that 40B would be a difficult option for Mr. Korff. As we understand the process, he would be subject to conditions imposed by the ZBA, where new hearings, maybe lengthy ones, would have to be held. If he didn't like those conditions, there would be a long appeals process. It would likely be several years before he could build, and what he could build might be much less than he wants.

Our proposal. I'm told that the committee has almost never rejected a request to withdraw a petition like Mr. Korff's. But what if you did? He would still have the option to go ahead with his 40B plan, but this might in reality be an unsavory prospect for him — as it is for all of us.

So let's think innovatively. Suppose you encourage Mr. Korff to return immediately and file a revised petition. It couldn't be for MU4, because he would have to wait two years after you reject his request to withdraw. But our understanding is that he could re-apply immediately within the current BU1/BU2 framework.

This route would allow for creative approaches that might benefit everybody. For example:

(a) The current zoning lines could be redrawn. The BU1 zone (up to three stories) would be closer to the abutters, while the BU2 zone (up to four stories) would be switched to the Washington Street side. Appropriate setbacks from the abutters could be included.

(b) A variance could be requested for more density than the BU zones allow; this would give Mr. Korff more revenue, which is what he says he needs. We believe this variance could be achieved, given that both the gas station and the parking lots contain sufficient contamination to qualify for a variance. This practice has been used by the Board of Aldermen in the past.

(c) Some of the space above the first floor could be devoted to offices. Mr. Korff has claimed that there's little demand for office space at the Orr Block. But consider that Newton is trying to encourage 'innovative' businesses to locate near Route 128. Why not in the heart of Newtonville? The spot would be great for innovative enterprises and we believe it would suit the abutters because the area would be less active during the evening hours.

As I said, these are examples. No doubt other creative directions could be taken. The resulting project would be smaller than Mr. Korff has wanted, and he would lose his precedent. On the other hand, he could start construction much sooner, please the residents, and create a true enhancement for Newtonville. And he could fight for MU4 another day, maybe very soon, as he starts working on his other purchases.

Orr Block — Current Zoning — BU2 parts are shaded darker

