

### **Land Use Committee Report**

## City of Newton In City Council

### Tuesday, March 7, 2017

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

Also Present: Councilors Albright, Brousal-Glaser

City Staff: Deputy City Solicitor Ouida Young, Senior Planner Michael Gleba

#40-17 Temporary license to hold Nonantum Village Day

NONANTUM NEIGHBORHOOD ASSOCIATION requesting a temporary license pursuant to Chapter 30 Section 2.3.3 of the City of Newton Ordinances to hold NONANTUM VILLAGE DAY on Sunday, June 4, 2017. [02/14/17 @ 2:58 PM]

Action: <u>Land Use Approved 4-0 (Councilors Lipof, Schwartz, Harney, Crossley not</u>

voting)

**Note:** President Lennon presented the request for a temporary one day license to hold Nonantum Village Day on behalf of the Nonantum Neighborhood Association. He stated that the only major change to Nonantum Village Day would be the incorporation of a Memorial Road Race in the morning. He noted that all are welcome to attend. With a motion to approve from Councilor Lennon, the Committee voted unanimously in favor.

#17-17 Special Permit to further extend nonconforming structure at 14 Llewellyn Road

SINEAD AND JOHN EVANS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to further extend the nonconforming rear setback to 8' where 15' is allowed by adding a 483 sq. ft. rear addition at 14 Llewellyn Road, Ward 3, West Newton, on land known as SBL 34026 0001, containing approximately 7,350 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. 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: Public Hearing Closed; Land Use Approved 6-0 (Councilors Schwartz, Harney

not voting)

**Note:** Architect for the petitioner Bee Howes presented the special permit request to extend the nonconforming structure at 14 Llewellyn Road by constructing a first floor rear kitchen and second floor bath and bedroom.

Senior Planner Michael Gleba reviewed the requested relief for the project and noted that the criterion for consideration is whether the encroachment will be substantially more detrimental than the existing nonconforming structure. He presented photos of the corner lot and stated that the addition will not extend further than the existing rear structure. The Public Hearing was Opened and Closed with no public comment after a motion from Councilor Cote. Councilor Cote motioned to approve the item. Committee members reviewed the findings and

found that the proposed structure will not be substantially more detrimental than the existing structure. Mr. Gleba noted that standard conditions apply. The Committee voted unanimously in favor of the item.

### #18-17 Special Permit to further increase nonconforming FAR at 26 Sterling Street

CHRISTOPHER DUVAL petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a rear addition with enclosed mudroom and covered porch, further increasing the nonconforming FAR to .35 where .34 exists and .33 is allowed at 26 Sterling Street, Ward 3, West Newton, on land known as SBL 32011 0016, containing approximately 10,663 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3.3, 7.4, 3.1.9, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: <u>Public Hearing Closed; Land Use Approved (Councilors Schwartz, Harney not voting)</u>

**Note:** Architect Richard Levy presented the request to construct an addition to the rear of the dwelling at 26 Sterling Street, increasing the already nonconforming FAR from .34 to .35 by increasing the structure by 83 square feet. The petitioner confirmed that he has communicated plans with his neighbor and that no concerns have been indicated.

Mr. Gleba reviewed the requested relief and plans to construct the enclosed rear porch and mudroom. He noted that the 83 sq. ft. addition would be a limited change and that the Committee must find that the change is consistent with the neighborhood. Mr. Gleba noted that the addition would be within the fence already on the property.

No member of the public spoke for or against the petition. Councilor Cote motioned to close the public hearing which carried unanimously. Councilor Cote motioned to approve the item. Committee members reviewed the proposed findings, standard conditions and voted unanimously in favor of the petition.

### #19-17 Special Permit to rectify already constructed garage at 129 Cabot Street

MICHAEL MENDIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to rectify the building permit issued in error due to a garage with an oversized dormer on the half-story above the first level at 129 Cabot Street, Ward 2, Newton, on land known as SBL 13008 0010, containing approximately 8,793 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3, 7.4, 1.5.4.G.2, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: <u>Land Use Held 8-0</u>

**Note:** The petitioner presented the request to legitimize a garage dormer greater than 50% of the first floor. The petitioner was issued the building permit for the garage in error and was then told that he needed a special permit to rectify the dormer. He confirmed that he

submitted the same plans for the building permit that were submitted for the special permit application. Mr. Gleba reiterated that the special permit is required for the dormer larger than 50% of the floor below it on the garage and noted that the existing dormer is 71% of the first floor.

### **Public Comment**

Bob Gaynor, 121 Cabot Street, is a direct abutter. He noted that the homes in the neighborhood are predominantly Tudor style homes and that the garage is an eyesore to the neighborhood. He believes that the structure will harm the value of the house and noted that the petitioner has indicated that the space below the dormer could be used as apartment or storage space. Mr. Gaynor noted that the yard has not been well maintained and that the walkway was never shoveled creating dangerous conditions.

Steve Greenberg, 108 Cabot Street, Noted that the garage is huge and not in keeping with the rest of the neighborhood. He noted that there is another structure is the backyard.

Suzanne Crisci-Schyrokj, 149-151 Cabot Street, questioned why the garage was not being attached to the house as is consistent with Tudor Style houses. She noted that the structure is overwhelmingly large and an eyesore in the neighborhood. She does not believe the garage should have been allowed.

Robert Young, 128 Cabot Street, noted that the Planning memo indicates that the aesthetics of the garage contribute to the concern related to the dormer. He questioned if the petitioner plans to improve either the garage or landscaping at the site.

Mark Vasu, 140 Langdon Street, believes that the space beneath the dormer will be used as a playroom or in-law apartment. He noted that the garage creates visibility issues on the corner. He stated that the driveway easement shared with the petitioner has not been discussed with him as stated in the Planning Department memo. He confirmed the existence of a third large structure in the yard.

Bill Martin, 149-151 Cabot Street, noted that he has had interactions with at the site with the family and someone who may be renting garage space.

Mark Wadness, 35 Laudholm Road, agrees with the comments made by other speakers.

Marcis Voldins, 131 Langdon Street, lives across the street and is opposed to this structure.

Sally Babigian, 34 Laudholm Road, stated that her friends that are residents have said that the structure is an eyesore in neighborhood. She noted that the three different structures at the site do not flow.

Brenda Elzinga, 134 Langdon Street, noted that she has concerns about the use and FAR based on the third structure. She questioned if both structures were both built by right. She noted that the structures are not high quality.

Chris Elzinga, 134 Landon Street, stated that the garage blocks visibility traveling from Langdon to Cabot Street.

Mr. Mendis confirmed that there is no gas or plumbing in the garage and that he has never intended to use the space below the dormer as living space. He stated that he plans to use the space as storage or possibly office space. He also noted that he obtained a building permit for the shed located on the lot. Mr. Mendis stated that he had planned to add siding to the garage to make it consistent with the house.

The Chair explained that when reviewing a special permit, the Land Use Committee must look at the project on the basis of the requested relief and not design. He noted that because there is a request for a special permit, there are conditions that can be imposed in order to mitigate the impacts of the garage. He also clarified that the space below the dormer may not be used as an accessory apartment without a special permit. Committee members emphasized the importance of sharing plans with the neighborhood prior to construction to solicit feedback.

Councilors acknowledged that changes to the dormer would result in added expense to the petitioner but noted that the size and style of the structure is out of context in the neighborhood. Committee members requested that the Planning Department analyze the total FAR at the site and multiple open building permits. Committee members expressed concern about the sight lines being impacted based on testimony from the public. Councilors asked that the petitioner meet with Councilor Auchincloss and members of the public to discuss plans and ways to mitigate the impact on the neighborhood. The Committee voted unanimously to hold the item until April 4, 2017 with a motion from Councilor Auchincloss.

# #20-17 Special Permit to extend nonconforming use and FAR at 85 Fuller Terrace D&L REMODELING, INC/ANDREW DIPASQUALE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing two-family residence to a single dwelling unit and construct an 1,840 sq. ft. second dwelling addition with two car garage,

extending the nonconforming two-family use and exceeding the maximum FAR at .43 where .41 is allowed and .19 exists at 85 Fuller Terrace, Ward 3, West Newton, on land known as SBL 34016 0039, containing approximately 10,097 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.9, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: <u>Land Use Held 8-0</u>

**Note:** Attorney Terry Morris, offices at 57 Elm Road, presented the request to extend the nonconforming two-family use at 85 Fuller Terrace. Attorney Morris stated that a neighborhood meeting was held on February 18, 2017 with invitations extended to the residents of Hatfield Road and Fuller Terrace to review the proposed plans. There were neighborhood concerns that the historical address was misrepresented when being reviewed by the City. Atty. Morris noted that Preservation Planner Katy Holmes confirmed that the property successfully completed review by the Newton Historic Commission.

After receiving a building permit for interior renovations of the two-family structure, the petitioner discovered water damage that needed to be replaced. Because the work to replace the damaged structure fell outside of the scope of the building permit, a stop work order was issued. Attorney Morris reviewed the request to convert the existing two-family into a single family dwelling and locate a second attached dwelling. He stated that the height of the new addition would be 30' where 36' is allowed, that the two dwelling spaces would help in diversifying the housing stock and that the petitioner would agree to a condition allowing the Planning Department to dictate landscaping at the site. He noted that if not approved for the special permit, the petitioner intends to convert the structure into a single family residence of approximately 4,000 square feet.

A Councilor provided additional context for the public and the Committee. It was noted that the Historic Commission was given the current address of the house, not the original, historic address. The petitioner applied for a building permit for a two-family in July 2016 then later applied as a single family in November 2016. Renovations made with the single family building permit included three new dormers, which are not by right on a multi-family dwelling. Councilors questioned whether the petitioner's intent was to convert the two-family into a single family, thereby losing the nonconforming two-family status.

Attorney Morris stated that when the petitioner applied in November for single-family renovations, it was to allow for renovations in the event that the special permit was not granted for the two-family use. He noted that it was never the petitioner's intent to abandon the two-family status.

### **Public Comment**

William Byrne, 76 Hatfied Road, noted that the structure is too large and out of character in the neighborhood.

Michelle York Hope, 74 Fuller Terrace, does not believe that the site is appropriate for the location. She provided a real estate analysis of the homes in the neighborhood (attached). She does not think that overdeveloping the site is respectful of the neighborhood.

Joan Schulz, 64 Hatfield Road, agreed that not everything has to be built to the maximum that it can be. She noted that there are 150 signatures on a petition opposed to the project (attached). She does not believe there is any reason to extend the nonconforming use and stated that Ms. Holmes indicated that Atty. Morris misrepresented the historical address of the home.

Julia Cradle, 30 Lodge Road, noted that there are elderly residents on Lodge Road who have concerns about the development.

Attorney Peter Harrington representing Mario Patriarca, 505 Waltham Street, provided a map of the area. He noted that the area was rezoned from two-family to single family units to create an area of modest sized homes. Most of the homes in the area are single family homes ranging from 1700-2800 sq. ft. He requested that if the special permit is approved, the abutters are protected from dust and debris damage during construction. He noted that the neighborhood is subject to flooding and he requested that runoff is contained on site. He questioned whether the petitioner has lost rights as a nonconforming two-family. He also stated that the proposal will have a more detrimental effect as it will be doubling the size of the existing structure.

Dave Schulz, 64 Hatfield Road, noted that the dormers that dormers have been added to the structure and the basement has been lowered already. He stated that there are existing groundwater issues in the area and he has concerns about the additional drainage on abutting properties. He is opposed to the proposed development and believes that the structure is too close to abutting properties.

Roman Muzykin, 60 Hatfield Road, noted that the structure is too large to be a single family house. He does not believe it is going to serve the best interests of the neighborhood.

Katheleen Kouril Grieser, 258 Mill Street, representing the Newtonville Alliance, noted that it is not the first time she has seen tricks like lowering the basement creating habitable attic space and giving the incorrect address. She stated that this proposal is a perversion of grandfathering

the nonconforming use and noted that it is unclear when the house was converted to two-family. The asserted that the request is too excessive.

Ying and Ya Chin, 45 Pleasant Street, are direct abutters, believe that the proposed structure is too large and has concerns about their privacy.

Ron Baker, is opposed to the petition. He noted that the proposal is too excessive and urged the Committee to deny the petition.

Eric Brody, 59 Fuller Terrace, agrees with Mr. Baker. He noted that the proposal is 1.5 times the size of the existing structure. He has concerns about the FAR and doesn't believe that there is a reason to grant FAR relief. He agrees with previous speakers and Council members noting that because you can do something by right, does not mean you must.

Andrew Morse, 7 Fuller Terrace, is opposed to the petition and noted that there has been confusion related to the information given by the petitioner.

Julia Wolfe, 170 Cherry Street, agrees with the neighborhood opposition. She noted that another large development in the neighborhood is still on the market after 2 years.

George Mansfield, 312 Lake Avenue, noted that this house was buit between 1890 and 1907. In 1921 the first zoning map appears and this house is a single family house. He noted that the same family lived there until 1935. In 1962, when the City is rezoned, the house obtained two-family zoning somehow.

\*Mr. Gleba noted that there is a building permit from 1962 that converts the house to a two-family and that in 1962 private residences permitted two family use.

Rena Getz, Pine Ridge Road, requested that the permitting be further reviewed. She noted that the building permit online was to renovate a single family. She sees this as a conversion to a single family forfeiting the two-family use.

Roopshree Shah, 29 Pleasant Street, agrees with the other statements and believes that more diverse housing should be built.

Committee members confirmed that when asked to extend the nonconforming use, it applies to any changes beyond the existing footprint of the structure. Deputy City Solicitor Ouida Young confirmed that because the petitioner's plans reflected two-family use in July and they could renovate the interior to two-family again, they have not lost the nonconforming status. She also

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noted that to lose the nonconforming status, the two-family use must be abandoned for a period of two years. She stated that without the existing nonconforming use, the petitioner could not locate a two-family residence at the site.

Committee members stated that they could not be supportive of the petition as proposed, noting that there is value in being a conscientious neighbor and suggested that because something can be done by right, does not mean it is appropriate or considerate of the neighbors. It was noted that not every project needs to be built to capacity at the site and stated that neighborhood input at an earlier stage could have helped create a better project. Committee members noted that the public is not opposed to a two-family or to renovations, but just asked that the renovations not be excessive. With a motion from Councilor Cote, the Committee voted unanimously to hold the item until April 13, 2017.

The Committee adjourned at 9:35 pm.

Respectfully submitted,

Marc C. Laredo, Chair

# SF Analysis of Houses Surrounding 85 Fuller Terrace based on Zillow.com 3/7/17

Prepared by Michelle York Hope & Allen Hope, 74 Fuller Terrace

Two-Family Homes	74 I uner lettace
# Address	SF Notes
1 15-17 Hatfield Road	2,552
2 27-29 Hatfield Road	1,856
3 40-42 Hatfield Road	2,456
4 45-47 Hatfield Road	1,856
5 46-48 Hatfield Road	3,152 SF likely includes basement
6 52-54 Hatfield Road	1,920
7 57 Hatfield Road	1,629
Total	15,421
Average Two-Family SF:	2,203
PROPOSED SF for 85 Fuller:	4,336
Difference:	2,133 Proposed structure will be 2,133 SF greater than the average two-family in the neighborhood
Proposed / Average:	1.97 Proposed is roughly 2 times the size of the average two-family in the neighborhood
Single Family Homes	요요. 마상도 그 전에 보고 하는 사람들이 되었다. 그 전에 가장 하는 것이 되었다. 사용하는 사용하는 사용하는 사용하는 사용하는 사용하는 사용하는 사용하는
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2 54 Fuller Terrace	1,534
3 59 Fuller Terrace	1,372
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# Address	SF	Notes
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2 54 Fuller Terrace		534
3 59 Fuller Terrace		
4 60 Fuller Terrace		<b>124</b>
5 65 Fuller Terrace	and the second of the second o	516 This house is a grand-fathered 2 family but is currently setup as a single
6 66 Fuller Terrace	1.8	306
7 71 Fuller Terrace		772
8 74 Fuller Terrace		330
9 75 Fuller Terrace		135
10 81 Fuller Terrace	2,8	
11 51 Hatfield Road	1,6	
12 60 Hatfield Road	2,2	
13 63 Hatfield Road	1,9	
14 64 Hatfield Road	1,6	
15 70 Hatfield Road	2,1	
16 75 Hatfield Road	2,0	
17 76 Hatfield Road	1,5	
18 80 Hatfield Road	1,19	
Total	33,82	

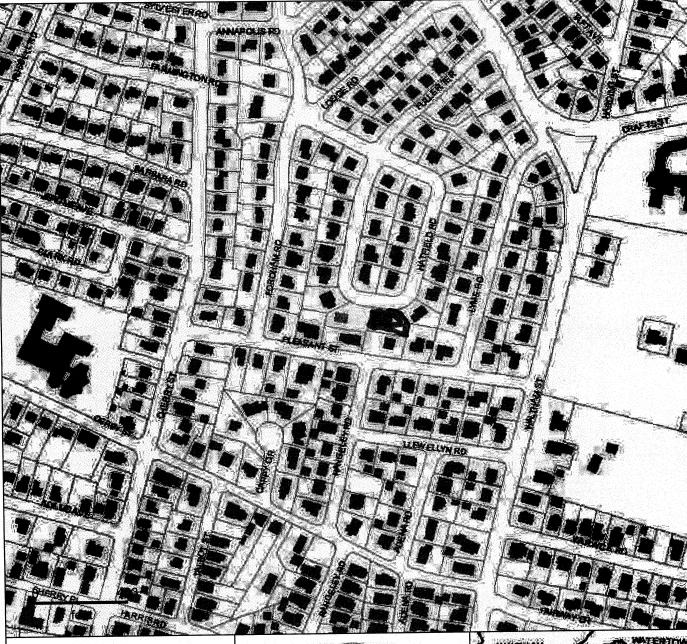
Average Single Family SF:		1,879
PROPOSED SF for 85 Fuller:		4,336

Difference: 2,457 Proposed structure will be 2,457 SF greater than the average two-family in the neighborhood 2.31 Proposed is roughly 2.3 times the size of the average single family in the neighborhood Proposed / Average:

Average Single AND Two-Family SF: 1,970 PROPOSED SF for 85 Fuller: 4,336 Difference:

2,366 Proposed structure will be 2,366 SF greater than the average two-family in the neighborhood Proposed / Average: 2.20 Proposed is roughly 2.2 times the size of the avg single & two-families in the neighborhood

# City of Newton

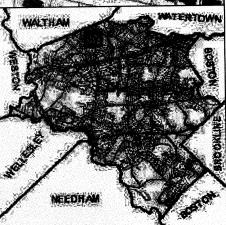


Property ID: Address: Owner: 34016 0039 85 FULLER TER D & S REMODELING INC



MAP FOR REFERENCE ONLY NOT A LEGAL DOCUMENT

Because of different update schedules, current property assessments may not reflect recent changes to property boundaries. Check with the Assessors' Office to confirm boundaries uses at the time of assessment.



1

We, the citizens of West Newton, petition the city of Newton Land Use Commune and enforce the zoning laws by NOT granting the owners/developers of 85 Fuller From Terrace their special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or additional square footage of the special permit request for zoning relief, or zoning

The owner/developers have applied to the Land Use Committee to "...petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing two-family residence to a single dwelling unit and construct an 1,840 SF second dwelling addition with two car garage, extending the nonconforming two-family use and exceeding the maximum FAR at .43 where .41 is allowed...". Essentially, they are asking First, to reverse the zoning of the existing structure from a two-family "non-conforming" status to a single family residence SR3. which conforms to the current zoning code. Then, they want to request to have the property return to the "non-conforming" designation so they can build a second house (and because it is connected by the garage/living space it can be deemed a "two-family" again). In reality, they are using a technicality to call it a two-family when it is truly a multifamily development!

#	Name	Address	Signature ( ) / /
1	Michelle York Hope	74 Fuller Terrace	
2	Jogn Schulz	64 Hattio MRoad	Jane 1 Sen 20
3		74 Fuller Terrale	
4	Donald A. Schulz	64 Hart Field Ro	And Sithis
5	Anna M. Annese	34 Hatfield Rd.	amach. amace
6	Joseph E. Annese	34 Hatfield ad	Joseph Filmresa
7	LISA MUSUMES	19 Fullerterr	Light Chisugnain
8	Katharm Clarke	13 Fuller Ten	Agthain Clarks
9	Helono Murthy	18 Fordran Rd	Itelen n. musphy
10	Di ana Chagnon	112 For I ham Rd.	Diona M. ChAGan
11	Jona Sour	115 Fordhankel	Soma Sun
12	HUMIN DESTIT	115 Rovaha Rd	apera.
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14	Stren Cahu	90 FORDham	844
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17	Timothy Street	100 Fordham	To the same of the
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21	JULIE BAKER	-21 LODGE	Son Sale
22	John Bell	6 FULL CR	Chapita of Bill
23	ERIC BROME	59 FULLER TOR	
24	SEEMA BRODIE	59 Fuller Ter	See Sade
25	Usa Gregger	11 Hatfield Rd	
26	JAMIE GRESSER	11 HATFIELD RD.	13-12h

Petition Regarding 85 Fuller Terrace Proposed Construction

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33	JAMES CANT	176 Cherry S	1 James Cay	w 2450
34	Nancy Sydman	126 Cherry	1 Joseph	
35	MARKEGLEUSKI	68 Pleasant	11/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1/1	
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