



Land Use Committee Report

City of Newton

In City Council

Tuesday, March 28, 2017

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

Also Present: Councilor Albright

City Staff: Associate City Solicitor Bob Waddick, Senior Planner Neil Cronin, Director of Planning and Development Barney Heath

#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.

Action: **Public Hearing Closed; Land Use Approved Withdrawal without Prejudice 6-0 (Lipof not voting)**

#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 and February 7, 2017.

**Action: Public Hearing Closed; Land Use Approved Withdrawal without Prejudice 6-0
(Lipof not voting)**

Note: Attorney Buchbinder, representing petitioner Mark Newtonville, LLC., presented the request to withdraw without prejudice the requests to rezone the Orr Block and the special permit petition for Washington Place. After the Land Use Committee meeting held on March 20, 2017, he consulted with the petitioner and it was determined that they would not have the necessary eighteen votes required to rezone the site. Atty. Buchbinder confirmed that it is likely that the petitioner will file a revised petition in a short period of time.

The Chair stated that based on the pending request to withdraw the petitions without prejudice, it is his intent that the public hearing is closed without further comment. He informed members of the public that if the petitioner files another petition, the process begins again and there will be ample time for public comment. The Chair noted that if the petitioner refiles the petition, the considerable amount of work completed on behalf of the petitioner, Councilors and City staff can be beneficial. The Chair welcomed written feedback related to the process. Councilor Auchincloss moved to close the public hearing which carried unanimously. Councilor Auchincloss motioned to approve the request to withdraw without prejudice the request to rezone the Orr Block and the Special permit petition. The Committee voted unanimously in support of the withdrawal.

#37-17 Special Permit to extend nonconforming FAR & front setback at 8 Hazelwood Ave

JOEL AND MARGHERTIA ROBBINS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story rear addition and deck in front of the house, further extending the nonconforming front setback and nonconforming FAR to .62 where .50 is allowed and .55 exists at 8 Hazelwood Avenue, Ward 3, West Newton, on land known as SBL 44003 0030, containing approximately 4,750 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.1.9, 7.8.2.C.2, 3.1.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 6-0-1 (Schwartz abstaining)

Note: Joshua Bishop from Crossroads Contracting represented the petitioner to present the request to remove the existing house at 8 Hazelwood Avenue, leaving the foundation and rebuilding a two-story house with four bedrooms and two bathrooms. Mr. Bishop noted stated that the current second floor does not have adequate space to allow for remodeling. He confirmed that there will be attic space for storage and will not be habitable.

Senior Planner Neil Cronin reviewed the relief requested for the petition which includes the extension of the nonconforming front setback and nonconforming FAR. He reviewed the criteria for consideration, presented an aerial view, site plan and stated that there is a shed at the rear of the property would need to be relocated. Mr. Cronin noted that there are stairs at the site that are considered an architectural feature based on their size. The stairs are 6.75'

from the front lot line and were built in 2014 after the issuance of a building permit in error. Because the bottom of the staircase goes in two directions, Inspectional Services has determined they are in excess of what is required for egress.

The Public Hearing was opened. With no member of the public wishing to speak, Councilor Cote motioned to close the public hearing which carried 7-0. Councilor Cote noted that the Ward Councilors have not heard any concerns related to the existing stairs.

A Committee member questioned whether the petitioner has considered removing or modifying the staircase to legitimize it. It was suggested that as the petitioners are taking down the entire house, it might not be unreasonable to require them to remove the stairs as well. Mr. Bishop noted that the petitioner had not considered removal of the stairs because they were recently installed and not inexpensive. He noted that if the petitioners had known the stairs required a special permit, they may have designed them differently.

Councilor Cote motioned to approve the item. Committee members reviewed findings and proposed conditions. A Committee member stated that the finding should identify that the stairs are existing. Committee members felt that as there have been no complaints, the stairs have not been detrimental to the neighborhood and asked that the findings reflect that. With Councilor Cote's motion to approve, the Committee voted 6-0-1 in favor of the item with an abstention from Councilor Schwartz.

#38-17 Special Permit to exceed FAR at 1016 Centre Street

CLAUDINE GROSSMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to demolish an existing garage, structure and deck and to construct an attached two-car garage and indoor sport court, exceeding the maximum allowable FAR to .38 where .33 is allowed and .31 exists at 1016 Centre Street, Ward 7, Newton Centre, on land known as SBL 73049 0010, containing approximately 19,878 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Held 6-0 (Schwartz not Voting)**

Note: Architect Miriam Spear presented the request on behalf of Claudine Grossman to build an attached two car garage, indoor play space and replace an existing deck. Ms. Spear presented an overview of the project. Included in her presentation was data from neighboring homes to highlight the square footage in the surrounding neighborhood. She noted that the carriage house is currently 3' from the neighbor at Centre Street and 4' from the neighbor on Alden. The new structure would be farther from both properties. Ms. Spear noted that when designing the property, they were cognizant of setbacks, existing features of the home and made sure to incorporate varied rooflines. She noted that the design was approved by the Historic Commission. Ms. Spear added that the atrium space in the proposed structure drives the FAR increase. The height in the structure is necessary for playing basketball.

Councilors noted that the proposed structure is a two-story structure essentially. Ms. Spear noted that a shadow study reflected no shadows on the abutting properties during the year. In December, the main house structure casts a shadow on 1010 Centre Street. After viewing the shadow study, Councilors noted that the proposed structure does cast a shadow on the yard of the abutting property.

Mr. Cronin reviewed the requested relief and criteria for consideration for the attached two-car garage and sport court. He noted that the property is a corner lot.

The Public hearing was opened.

Tim Patterson, 1010 Centre Street, is the abutting neighbor. He noted that while that the new structure is shifted away from the property line, the proposed height is more than double. He is concerned about possible shadows and the height of the structure. He requested that consideration be given to shifting the sport court partially underground to mitigate the massing of the building. Mr. Patterson agreed that the site renovations have been well designed and he is appreciative of the work.

Isabelle Albeck, 240 Winsor Road, attended the Historic Commission meeting and noted that there is an incredible attention to detail and care in the project. She noted that the Historic Commission was appreciative of that.

Councilors questioned whether the petitioner has considered putting any of the sport court underground. Ms. Spear noted that there is considerable cost to putting the structure below grade. She emphasized the appreciation of the Historic Commission related to the varied rooflines. Committee members noted that the wall adjacent to 1010 Centre Street would be very high and putting part of the structure underground might not help with FAR, but could mitigate the impact of the mass. Councilors were in agreement that the design was of high quality but remained concerned about the impacts of the proposed structure on abutting properties. Committee members asked Planning to provide an analysis of the impact on FAR and massing after putting part of the proposed structure underground. Mr. Cronin noted that because the atrium drives the increased FAR, the petitioner may have to put a significant amount of the structure below ground. A Committee member noted that the property is on a corner lot and would have less of an impact than if it were not. The petitioner added that there are ten arborvitae between the proposed structure and 1010 Centre Street.

The Committee asked that the petitioners collaborate with abutters, Planning and architect to discuss possible solution to mitigating the impact of the sport court. Mr. Cronin had concerns that analysis might require more than one week and could require additional Historic Commission review. Committee members voted unanimously to hold the item pending additional information.

#43-17 Special Permit to extend non-conforming two-family use at 893 Watertown Street

JAMES AND CAROL HOOPEs petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a single-story rear addition extending the existing non-conforming two-family use at 893 Watertown Street, Ward 3, West Newton, on land known as SBL 31014 0005, containing approximately 19,560 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 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Postponed to May 2, 2017 6-0 (Crossley not voting)

Note: The petitioner needs to submit additional information for the petition. A motion to hold the item from Councilor Cote motioned to postpone the petition to May 2, 2017 carried 6-0.

#39-17 Special Permit to locate a daycare center at 45-47 Bryon Road

LARISA BANKOVSKY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to terminate the residential use at the property and use it for a day care center to enroll 34 children, requiring a waiver of four parking stalls, a waiver for parking in the setback, a waiver for the parking stall dimensions, waiver for the minimum aisle width for two-way traffic, waivers for lighting requirements for parking, a waiver for the outdoor play area vegetative buffer at 45-47 Bryon Road, Ward 8, Chestnut Hill, on land known as SBL82043 0007, containing approximately 10,050 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Dover Waiver, 7.3.3, 7.4, 7.4.5, 6.3.4.3, 5.1.4.A, 5.1.13, 5.1.8.A.1, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.C.2, 5.1.10, 6.3.4.B.3.a, of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 7-0

Note: Attorney Morris presented the request to locate a daycare at 45-47 Bryon Road. He stated that the property has been used as two daycares for 8 years by two different family members. The petitioner hopes to consolidate the two daycares, increase the student enrollment to a maximum of 34 students and increase the number of employees to 7. Attorney Morris noted that the petitioner is willing to comply with the recommendations proposed by the Planning Department, which includes an available staff person for student drop-off.

Mr. Cronin reviewed the requested relief for the petition. He noted that the petitioner is seeking to waive four parking stalls, to locate parking in the front setback, waive minimum aisle requirements for two way traffic and waive parking lot lighting requirements. The petitioner is also seeking waivers for outdoor play area requirements and a waiver for the drop off requirements. Mr. Cronin confirmed that the interior and exterior at the site will remain unchanged. He noted that the parking area will maintain the same number of stalls and the petitioner proposes to add a vegetative buffer to shield the parking lot.

The Public Hearing was opened.

A 12 year old student at the daycare, has siblings who have all gone to this daycare. He has a lot of great memories and believes that the being a student at the daycare is a positive experience and hopes it can be shared with more children.

Eleni Katsiani , 272 Lagrange , lives diagonally to the property. She believes that the change in use at the property will negatively affect the surrounding properties and has concerns that there may be an increase in noise from the children which will negatively impact their quality of life.

Rosalie Gersh, 170 Country Club Road, noted that the parking lot has been improved and there have been no incidents related to parking. She questioned why the request was necessary. The Chair explained that review by the Council is necessary based on the request to consolidate the two daycares into one.

Spyridon Nikas, 272 Lagrange Street, has concerns about the impact of the daycare and corresponding noise on nearby residents' quality of life.

Oleg Cohen, 5 Colby Street, Needham, has a son who attends the daycare. He noted that the area is generally safe and people are careful when they park. He added that the children are well behaved and spend limited time on the playground.

Billy Lee, 80 Bryon Road, has concerns about the traffic impacts. He noted that busses frequently stop to pick up children on the street.

Sook Jae Lee, 264-266 Lagrange Street, lives behind the daycare. She noted that the busses are frequently causing traffic strains. She believes the increase in number of children will be hard for the neighborhood.

A resident of 1405 Lagrange Street, noted that the busses are not related to the daycare and the noise emanating from the daycare is typically short in duration. He noted that the parking lot has become more comfortable for use. He added that although there is competition in the Russian language daycare market. He noted that they send their children to this daycare because they stick to the rules.

Anya, 1405 Lagrange, has a child that goes to the daycare. She noted that she has never seen or experienced any traffic or risky behavior at the site. She believes that increasing the number of children in the daycare will allow more flexibility for parents who currently have to call to confirm availability each day.

With no one else wishing to speak Councilor Lipof motioned to close the public hearing which carried 6-0.

Associate City Solicitor Bob Waddick noted that the Dover Amendment permits the use of a childcare facility subject to reasonable regulations. He noted that the statute identifies bulk, height of structure, yard size, lot area, setback and building coverage requirements as factors for consideration and that denial for reasons beyond these would cause a court to pay close attention to the decision. Councilors noted that noise is not something that is appropriate for consideration. The petitioner has represented that several employees take public transportation or walk to work. Committee members questioned how the petitioner would arrange for parking if the staff changed and needed additional parking. Attorney Morris noted that the petitioner has agreed to a lookback provision.

Margartia Druker, 131 Old Farm Road, has been helping the petitioner with the special permit process. She noted that parking has not been an issue because most employees use public transportation or walk. She stated that Bryon Road has no restrictions and noted that there are some parking spaces in front of the property. Additionally, the petitioners have spoken to the condo association across the street to discuss the option of renting spaces there. The daycare owners are instructing parents to come down Bryon Road one way and leave the other way in order to better control the traffic flow.

Committee members noted that the Transportation Management Plan should be reflected in the Council Order. It was suggested that residents speak with the School Department and Ward Councilors to discuss possible resolutions to the many school busses on the street. Councilor Lipof motioned to approve the item. Committee members emphasized the cap of 34 students and the site and noted that a request for additional students would require an amendment to the special permit. Committee members asked that the Council Order reflect that the waiver of parking stalls relates to the total number of required stalls at the site (students + staff). Committee members voted unanimously in favor of Councilor Lipof's motion to approve the item.

#431-16 Special Permit to allow three attached dwellings at 377 Langley Road
367-377 LANGLEY ROAD LLC., petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow three attached single-family dwellings, reduce frontage requirements for attached single family dwellings, reduce side setback requirements, allow parking within 20' of a side lot line and a driveway within 10' of a side lot line and to allow placement of a retaining wall of 4 feet or more within a setback at 377 Langley Road, Ward 6, Newton Centre, on land known as SBL 65019 0058, containing approximately 23,545 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 3.4.1, 3.2.4, 6.2.3.B.2, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held 7-0**

Note: Attorney Morris represented the petitioner to update the Committee on changes to the plans since the initial public hearing. He stated that there have been four neighborhood meetings and all of the Ward Councilors have visited the site. Attorney Morris expressed

concern related to the Planning Department Memo's review of the changed plans. He noted that the Planning Memo does not reflect that literal compliance is impracticable based on the shape, size and grade of the lot. He added that the building has been moved in the new plans based on feedback from the community. Although the Planning Memo notes that building modification could mitigate the need for setback relief, Atty. Morris does not believe that this is possible with a three-family dwelling. He noted that the building cannot be reoriented on the site because of the rear lot grade changes and heavily wooded surroundings and emphasized that much of the livable area would be basement space if not for the topography changes.

Mr. Cronin reviewed the requested relief for the petition and criteria for consideration. He noted that the new proposal pulls the structure back and the project has removed two parking stalls within 10' of the lot line. He stated that in order to meet side setback regulations in the MR1 zone, the third unit size would have to be decreased. Committee members asked how the proposal meets the needs specified in the Comprehensive Plan. Mr. Cronin stated the Comprehensive Plan calls for additional housing. Committee members noted that the City does not have a shortage of 2900 sq. ft. structures, which is the size of the third dwelling proposed.

Councilors noted that no updated plans were provided and no responses to the questions from the first public hearing related to the retaining walls. Committee members asked how the park will be protected from the development and what the public benefit of the project is. Committee members requested that updated and enlarged plans be provided for the next meeting.

Committee members acknowledged the petitioner's attempts to solicit neighborhood feedback, but noted that concerns related to the mass of the development remain. Attorney Morris agreed with Committee members about the importance of a site visit and agreed to schedule one. Councilor Schwartz motioned to hold the item which carried unanimously.

Consistency Ruling relative to Special Permit 257-13, 257-13(3), 257-13(4) to discuss allowing the operation of a 9-week summer program.

Note: Mr. Cronin presented the request for the consistency ruling. The site at Wells Ave currently permits indoor amusement, and day care use. During the summer months, enrollment at the daycare is down. The petitioner is seeking to operate a summer program. It was noted that the total number of students/staff using the property at the site will not change. Councilors noted that the use is essentially the same and felt that the request was consistent with the existing use.

Referred to Land Use, Programs & Services, and Finance Committees

#256-16 Request to extend notification area of notice for special permit petitions

COUNCILORS COTE, NORTON, HARNEY, BLAZER, BROUSAL-GLASER, AND LEARY requesting an amendment to the City Council Rules, Article X; Section 6 – Additional Notification Requirements, to include that the area of notice for special permit petitions be expanded beyond the abutters to abutters within 300’ required by Massachusetts General Law Chapter 40A to also include property owners within 600’ of the subject property. This notification will apply to all classes of building except for residential 1 and 2-family units that will remain 1 or 2-family units after receiving a special permit. Only abutters to abutters within 300’ will be entitled to the rights conferred by Massachusetts General Law Chapter 40A. [07/01/16 @2:09 PM]

Action: **Land Use Held 7-0**

Note: The Clerk’s office stated that there is no existing system that will readily allow for separate noticing of abutters between 1’-300’ and 301’-600’. It was noted that the current system would require separate, manual sorting to account for the different notices. Councilor Cote noted that the item was created in order to send earlier notices to abutters. He noted that City Clerk David Olson provided a cost analysis which reflects an increase in cost approximately \$700/year. He noted that the additional notices up front may help in reducing the amount of time spent in later public hearings. Additionally, it was noted that the additional noticing only would apply to larger projects.

Some Committee members were in agreement that the increase in the notification area would not greatly increase attendance at public hearings and noted that when large projects occur, there are community meetings in advance of the filing of the petition. Councilors agreed that if the Clerk’s office can do the additional noticing, it is not cost prohibitive. It was requested that the Clerk’s office provide estimates of the additional staff time and the amount of time it would require for IT to create a computer generate program to do the separation of abutters. Committee members suggested that the signage on the property should also be revisited.

The Committee adjourned at 10:00 pm.

Respectfully submitted,

Marc C. Laredo, Chair