



## Land Use Committee Report

### City of Newton

### In City Council

**Thursday, April 13, 2017**

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

**City Staff:** Deputy City Solicitor Ouida Young, Associate City Solicitor Bob Waddick, Senior Planner Michael Gleba

**#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:**      **Land Use Approved Withdrawal With Prejudice 5-0 (Lennon, Laredo not Voting)**

**Note:**      Attorney Terry Morris, with offices at 57 Street, presented the request to withdraw the special permit petition for 85 Fuller Terrace. He stated that comments from members of the public and Councilmembers moved the petitioner to reconsider the project. The petitioner has subsequently solicited neighborhood feedback and is working to redesign the project to reduce the massing. Attorney Morris confirmed that the petitioner is seeking a withdrawal with prejudice. Deputy City Solicitor Ouida Young noted that failure to withdraw the petition without prejudice would limit the petitioner from reapplying for a special permit within two years. With a motion to approve the withdrawal with prejudice, the Committee voted unanimously in favor.

**#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.

**Note:**      **Land Use Postponed to May 9, 2017**

**#62-17**      **Special Permit to extend nonconforming use at 489-491 Commonwealth Ave**

RONALD GOLD petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze and replace the existing nonconforming two-family dwelling with attached garage, further extending the nonconforming front and side setbacks at 489-491 Commonwealth Avenue, Ward 7, Newton Centre, on land known as SBL 73043 0001, containing approximately 20,136 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** **Land Use Approved 6-0 (Lennon not Voting)**

**Note:** Attorney Jonathan Gold and Managing Partner for 489-491 Commonwealth Avenue Ronald Gold presented the request to replace the existing two-family with a new two-family structure at 489-491 Commonwealth Avenue. The proposed-two family structure requires relief to continue the existing non-conforming two-family use in an SR2 zone. Mr. Jonathan Gold noted that the structure will conform to all dimensional standards.

Mr. Ronald Gold reviewed details of the property, noting the two-family structure has been in existence at 489-491 Commonwealth Avenue since 1922. He stated that the existing structure is in poor physical condition and cannot be rehabilitated. He believes that the design of the proposed structure is sensitive to the neighborhood surroundings and showed an aerial map, indicating the presence of 18 nearby two-family homes. Mr. Gold stated that while a large single family structure could be built at the site, he believes the two-family use addresses the demand for smaller units. He believes the project will help to enhance the streetscape, reducing the curb cut on Westbourne, setting the garage back on the site and controlling the drainage on site. The proposed landscape plan includes the planting of native shrubs and trees.

Senior Planner Michael Gleba reviewed the requested relief and criteria for consideration. He confirmed that the relief is to continue the two-family use. Mr. Gleba demonstrated the location of and existing features of the house.

The Public Hearing was opened.

James McGinley, 150 Eastbourne Road, has concerns that the proposed elevations are too high. He noted that the retaining wall on the property line also is high and has concerns about the containment of water on site. He is appreciative of the design of the project, but hopes construction can be done in a careful way.

Committee members agreed that the project was thoughtfully designed, but had concerns about the proximity of the retaining wall to the abutting plantings located at 150 Eastbourne Road. Mr. Verne Porter, Civil Engineer for the project confirmed that the retaining wall is set back 4' from the property line in order to avoid interference with the adjacent plantings. He confirmed that the locating of the retaining wall is to address drainage concerns and should be effective in keeping runoff out of the yard of the abutting property. Associate City Engineer John Daghlian expressed concern with regard to the tree roots on Commonwealth

Avenue being damaged. Mr. Gold confirmed that he will work with the Engineering and Planning Department to create a solution that does not compress the roots of the tree. Councilor Laredo motioned to close the public hearing. With a motion to approve the item, Committee members reviewed the draft findings and conditions. It was noted that the condition for a construction management plan should adequately address the concerns of the abutter at 150 Eastbourne Road. Committee members voted unanimously in favor of the motion.

**#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 Approved Subject to Second Call 5-0-1 (Lennon not Voting)**

**Note:**      Attorney Morris presented updates to the proposed three attached dwelling structure at 377 Langley Road. He stated that at the site visits held, the common concern was related to the impact of the development on the rear hillside. In response to the concerns he worked to draft a Preservation Restriction, to be referenced in the conditions of the Council Order. The Preservation Restriction would prohibit any activity on wooded hillside to the rear of the site and would require consultation with the Tree Warden for any tree removal. The Preservation Restriction would also prohibit recreational activity in the rear hillside area. Atty. Morris noted that the landscape plan has been expanded and the proposed FAR reduced to .41 which is the FAR that would be allowable with a two-family structure. The revised plan also includes a 6" reduction on each side of the proposed structure in addition to the elimination of parking stalls in the side setback.

#### **Public Comment**

Boris Millman, 383 Langley Road, Unit 9, was appreciative of the ongoing correspondence and responsiveness from Attorney Morris but expressed remaining concerns with regards to the landscaping plan.

Councilor Schwartz motioned to close the public hearing which carried unanimously. Attorney Morris confirmed that the petitioner is open to modifying the landscape plan to address the concerns of the abutter at 383 Langley Road. The Law Department confirmed that the Preservation Restriction can be referenced as a 99 year deed restriction in the Council

Order, but will require some modification. Committee members asked that the Conservation Commission review the Preservation Restriction to ensure that it will adequately address the preservation of the hillside.

Mr. Gleba confirmed that he had an opportunity to review the landscape plans and that he has no concerns. He noted that the FAR calculations have not been submitted on any set of architectural drawings and requested that a complete, stamped set of plans with FAR calculations be provided. Councilor Schwartz moved approval of the item, subject to second call pending the Law Department's review of the Preservation Restriction. A Committee member noted that it is helpful to have the Preservation Restriction to avoid setting a precedent to approve petitions on lots where the topography is substandard.

Mr. Gleba reviewed the criteria for consideration, and draft Council Order. Deputy City Solicitor Ouida Young confirmed that if the lot that has the non-conforming frontage has an existing one or two family structure, the petitioner could build a new one or two-family structure by right, in the existing footprint. The Committee voted 5-0-1 in favor of the motion. Councilor Laredo abstained because he does not believe it is appropriate to put three large attached units on the substandard lot after work has already been completed.

**#63-17      Special Permit to allow six-unit multi-family at 16-26 Dalby Street**

DALBY DEVELOPMENT, LLC. petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct six dwelling units with shared underground parking by combining three lots at 16-26 Dalby Street, Ward 1, Newton, on land known as SBL 11007 0046, 11007 0045, 11007 0044, containing approximately 23,400 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:      Land Use Held 7-0**

**Note:**      Architect Charles Calhoun presented the petition to locate two structures, each containing 3 units at 16-26 Dalby Street. The petitioner proposes to replace the existing structures and connect the lots with a shared underground garage and above ground courtyard. Mr. Calhoun noted that each unit will have a backyard and individual access and the setback will be increased. From the street, the structures will appear similar to the existing structures and the open space at the lot will be 70%. It was confirmed that the property will be raised by 5' to allow the locating of the underground garage. Attorney Morris noted that the unit sizes will range from 1800 sq. ft. – 2000 sq. ft. and stated that there will be no usable attic space.

Mr. Porter addressed concerns raised in Associate City Engineer John Daghlian's Memo. He noted that the ramp is 15% which is standard but confirmed that the ramp could be heated, if required. With regard to drainage, Mr. Porter stated that no groundwater will be displaced. The regrading of the site will help to mitigate potential drainage issues. He stated that all water will be contained on site and runoff will be less than the existing runoff.

Mr. Gleba reviewed the requested relief and criteria for consideration. He confirmed that by right, one or two family structures could be built on the two flanking lots. Attorney Morris noted that the four units could be much larger than what is proposed. Mr. Gleba provided plans and photos to show the proposed development and neighborhood context.

The Public Hearing was opened.

Penelope Caponigro, 63 Hyde, Director of Tree Conservancy, noted that in 2014 two trees were put in front of Dalby Street; a crab apple and a cherry tree. The crab apple is where the proposed curb cut is. The cherry tree can be preserved if protected during construction. It was noted that the middle lot is undevelopable.

The Law Department confirmed that if the three lots are merged, the single large lot is developable.

Steven Weiner, 44 Dalby Street, questioned if this development would be approved in other parts of the City. He has concerns about the flooding and water runoff from the property. He was appreciative of the design of the project but questioned if there is a way to better design the access to the underground garage. He questioned whether the ramp will be ADA compliant and indicated concerns about increased traffic from the additional units.

Sabrina Dennison, 44 Dalby Street, is concerned that the units will be rented and not owner occupied.

Wendy Protheroe, 46 Dalby Street, believes that the width of the underground garage will be too large. She noted that the existing traffic is congested and she has concerns that it will increase.

Paula Battista, 23 Dalby Street, spoke on behalf of her parents who would prefer a simpler project that is not as large. She has concerns about flooding and hopes that the development can be made with a maximum of four, owner occupied units.

Megan Rodriguez, 11 Faxon Street, lives behind the proposal. She has concerns about the elimination of the open space. She believes it is disconcerting to see a large project in the neighborhood.

A resident at 90 Dalby Street, questioned if the structures will be used as rentals or sold. Atty. Morris confirmed that a decision has not been made yet.

Committee members asked for further review from the Planning Department with regard to the existing vs proposed height of the structure, whether the attic space is habitable and should be counted towards FAR and clarification on the turning radius in the garage. It was asked that the petitioner provide a narrative with regard to addressing the runoff issues, an

enhanced garage plan and clarification on the varied underground heights. It was noted that public benefits can be discussed at the continued public hearing on May 9, 2017.

**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:** Committee Clerk Nadia Khan provided an update with regard to addressing the extension of notification area for special permit petitions. Chapter 40A requires legal notice to abutters and abutters to abutters. GIS System Administrator Doug Greenfield has confirmed that the City’s current software program does not allow for an independent selection of abutters between 300 and 600 feet. He confirmed that purchase or development of a new system would be necessary to generate different abutters’ lists, in addition to extensive staff training.

The Clerk’s office has asked the Law Department if the written legal notice can be changed so that it can be sent to all property owners within 600’, eliminating the need for separate notices.

It was noted that this item was created to meet concerns that the neighborhood was not getting notified for special permit projects. Some Councilors agreed that the purchase of a new system to allow a larger area of noticing might be necessary and beneficial.

Associate City Solicitor Bob Waddick noted that the Clerk’s office is currently over noticing. Because the current GIS system can only generate a list within a certain range (i.e. 300’) not abutters and abutters to abutters, the notice is being sent in excess of what is required. It was noted that this can be problematic when decisions are appealed. If a property owner other than an abutter or abutter to an abutter believes they are aggrieved, they can argue that their presence on the abutters’ list supports that claim. This can lead to undue delays in the appeals process. Atty. Waddick confirmed that the Law Department is reviewing the option for a uniform notification, but noted that it might not be a practical approach.

Some Councilors questioned whether a single notice would inadvertently create some level of uncertainty, but noted that separate noticing could be time consuming. With more information needed regarding cost and time estimates from IT, the Committee agreed to wait until May 9, 2017 to continue the discussion. Councilor Crossley motioned to hold the item which carried unanimously.

**Respectfully submitted,**

**Marc C. Laredo, Chair**