



Land Use Committee Report

City of Newton **In City Council**

Tuesday, May 9, 2017

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

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

#101-17 Special Permit to extend nonconforming use at 46 Farwell Street
BRIAN MCDONALD/CONTINUOUS IMPROVEMENT REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to convert the existing detached truck storage structure into a residential unit and continue the office use in the front structure, constituting two uses on site at 46 FARWELL STREET, Ward 3, Newtonville, on land known as SBL 21001 0014, containing approximately 8,529 sq. ft. of land in a district zoned MULTI RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 5.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Postponed to June 6, 2017**

#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: **Land Use Approved Withdrawal without Prejudice 5-0 (Cote not Voting)**

Note: With a request to withdraw the petition without prejudice before the Committee, Councilor Auchincloss motioned to approve the withdrawal without prejudice which carried unanimously.

#80-17 Special Permit to allow six-unit multi-family with accessory parking at 39 Herrick Road
HERRICK ROAD REALTY TRUST petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct three-story, six unit, multi-family dwelling in excess of 24' with ground floor residential use, allow a reduction to 1.25 parking stalls per unit, allow parking in the side setback, allow a reduced minimum aisle width, allow reduced minimum entrance and exit drive width, allow off street parking on a separate lot, waive perimeter screening requirements, waive lighting and surfacing requirements at 39 Herrick Road, Ward 6, on land known as SBL 61035 0007, containing approximately 12,979 sq. ft. of land in a district zoned

BUSINESS USE 1. Ref: 7.3.3, 7.4, 4.4.1, 4.1.2.B.3, 5.1.4, 5.1.13, 5.1.8.A, 5.1.8.C.2, 5.1.8.D.1, 5.1.9.A, 5.1.10 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Approved Withdrawal without Prejudice 5-0 (Cote not Voting)

Note: Councilor Schwartz moved approval of a request to withdraw the petition without prejudice and the Committee members voted unanimously in favor.

#2-15(3) Request for an Extension of Time for Special Permit at 300 Boylston Street ATRIUM WELLNESS CENTER request for an EXTENSION of TIME in which to EXERCISE special permit #2-15, granted on April 6, 2015 to repurpose an existing vacant building into a mixed-use commercial facility including general office, medical office, laboratory, retail uses, and restaurants at 300 BOYLSTON STREET, Ward 7, Newton Centre, said EXTENSION will run from April 6, 2017 to April 6, 2018. Ref: 30-24, 30-23, 30-21, 30-11(b)(3), 30-11(d)(9), 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

Action: Land Use Approved Extension of Time 5-0 (Cote not Voting)

Note: Attorney Alan Schlesinger with offices at 1200 Walnut Street, presented the request for an Extension of Time from April 6, 2017 to April 6, 2018 to exercise the special permit for restaurant and RDNA use at the Atrium Wellness Center. Attorney Schlesinger noted that an amendment to the Special Permit will be before the Committee on May 23.

On May 8, 2017 the Zoning and Planning Committee approved a technical amendment to allow extensions of time up to three years. Deputy City Solicitor confirmed that there is no controversy related to the amendment and that the Land Use Committee may approve the extension of time. Councilor Schwartz moved approval of the extension of time which carried unanimously.

#100-17 Special Permit for three-family at 62 Walnut Park THOMAS JOSEPH HYNES III petition for SPECIAL PERMIT/SITE PLAN APPROVAL to alter the use of the existing nonconforming detached barn by converting it into a residential unit, creating a three-family in two structures at 62 WALNUT PARK, Ward 1, Newton, on land known as SBL 12005 0024, containing approximately 30,209 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 3.2.13, 3.4.3.A.1, 7.8.2.C.1 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Approved Withdrawal without Prejudice 5-0 (Cote not Voting)

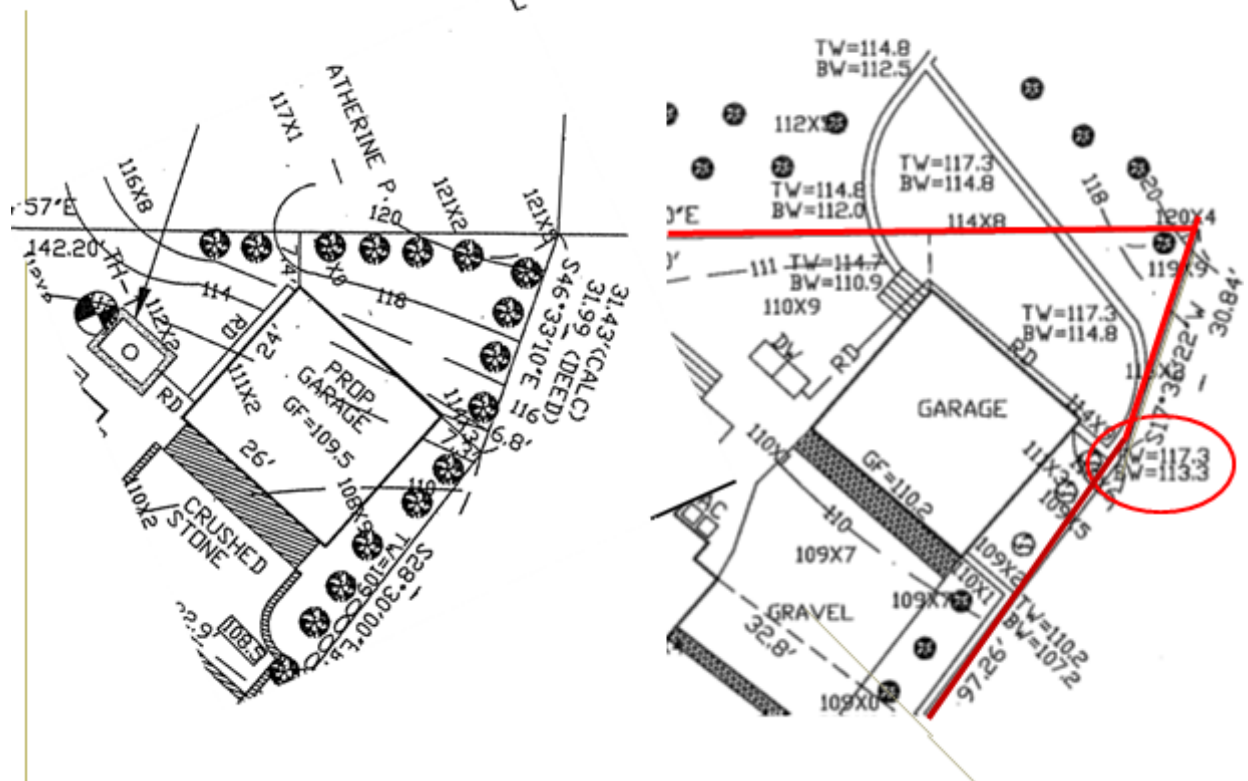
Note: The petitioner submitted the attached request to withdraw the petition without prejudice. Councilor Auchincloss motioned to approve the withdrawal without prejudice which carried unanimously.

Request for a Consistency Ruling relative to 39 Hawthorne Avenue. Requesting a finding that the as built conditions are consistent with the Special Permit #178-16 site plan approved in 2016.

Note: Petitioners John and Daniel Arone presented the request for consistency to the Committee. Due to severe soil erosion and water runoff issues during construction at 39 Hawthorne Ave, the petitioners constructed a two tier retaining wall that was not on the site plan approved during the permit process. Mr. Arone stated that the combined height of the two walls is 46" high.

Senior Planner Michael Gleba demonstrated the location and photos of the retaining wall and demonstrated detail differences in the proposed and as built site plans (pictured below). Mr. Gleba stated that the height of the retaining wall varies and there are places where the wall is just below 4'. He noted that the retaining wall crosses into and in the setback of adjacent property to the rear on Unity Street. A flat space is created between the retaining walls at the rear of the garage at 39 Hawthorne Avenue.

Site Plan- Special Permit & As-Built- Detail



Deputy City Solicitor Ouida Young noted that a portion of the space incorporated within the retaining wall belongs to the adjacent property. She stated that while there is common

ownership of the properties currently, without an easement, there is no legal right for the wall to remain on the adjacent property. Mr. Daniel Arone stated that the property line has been identified to the buyer of the home at 39 Hawthorne Street and noted that some landscaping remains to be planted. He stated that the landscaping will create a clear boundary between the properties. Mr. Arone noted that a use easement has been drafted and will be recorded upon sale of the house. Committee members requested that the use easement be discussed between Atty. Young and the petitioner's counsel. Atty. Young expressed concern about reconciling the plans.

The Chair emphasized to the petitioner that the Committee's role in consistency rulings is in providing recommendations, but confirmed that the determination is ultimately made with the Commissioner of Inspectional Services. Additionally the Chair noted that the Committee's role isn't to discuss the merits of the petition, but to determine whether the as built conditions are consistent with the nature of the approved plans.

It was noted that the existence of the retaining walls was not identified by City staff until the petitioners were seeking the Certificate of Occupancy. When reviewing the as built plans, the Planning Department was unable to find the as built plan consistent with what was approved. Councilors questioned why Inspectional Services did not find that the retaining wall was being constructed at an earlier point.

Mr. John Arone reiterated that the wall was built directly in response to environmental challenges during construction. He stated that while they were aware the special permit was for the FAR, he believed the retaining wall less than 4' was within his right to construct. He confirmed that ISD visited the site several times and raised no concerns. A Committee member noted that because there is common ownership of the properties, it is unlikely that ISD would have received a complaint to investigate.

A Committee member visited the site and noted that there are water runoff issues in the area and that the retaining wall is necessary. It was noted that the developers spent a significant amount of time during the public hearing listening to public comment and incorporating neighborhood input into the plans.

Most Committee members found the retaining walls generally consistent with the approved special permit. The Committee was in agreement that given water runoff and erosion issues at the site during construction, the actions taken by the developer to construct the retaining walls were an appropriate remedy even though they were not on the previously approved site plan. Councilors shared concern that the walls were not identified at an earlier stage in the process.

#98-17**Special Permit to EXTEND nonconforming front setback at 37 Troy Lane**

DONALD FABRIZIO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a single family dwelling, extending the structure vertically within the

nonconforming front setback at 37 TROY LANE, Ward 5, Waban, on land known as SBL 53004 0008, containing approximately 5,791 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4, 3.2.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Approved 5-0 (Schwartz not Voting)

Note: Architect Ralph Kilfoyle, 825 Beacon Street presented the request to demolish and rebuild the single family structure at 37 Troy Lane. The existing structure is in the front setback and the petitioner proposes to continue the front setback nonconformance. As the petitioner plans to add a half story to the second level, the Commissioner of Inspectional Services has requested that the massing be pushed further back onto the site. Mr. Kilfoyle stated that the walls on the second floor will be 8' high and there will be no usable attic space.

Mr. Gleba reviewed the requested relief for the project and demonstrated the location and photos of the house. He noted that the existing front façade is 8.8' from the street and the new structure will be 9.5' from the street.

With no member of the public wishing to speak, Councilor Lennon moved to close the public hearing which carried unanimously. Councilor Lennon moved approval of the petition. The Committee reviewed the standard conditions for the special permit. Finding that the proposed extension of the nonconforming front setback is not substantially more detrimental than the existing setback is to the neighborhood because the addition will not encroach any farther into the setback than the existing structure and the property will remain compliant with all other dimensional controls of an old lot in the Multi-Residence 1 zone, the Committee voted 5-0 in favor of the motion to approve.

#99-17 **Special Permit to EXTEND nonconforming use and FAR at 49-51 Clinton Place**
RALPH KOHL petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a two-story rear addition, increasing the nonconforming two-family use and nonconforming FAR at 49-51 CLINTON PLACE, Ward 2, Newton Centre, on land known as SBL 13024 0037, containing approximately 4,050 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

Note: Architect Peter Sachs presented the petition to increase the nonconforming two-family use in the SR2 district and FAR at 49-51 Clinton Place. Mr. Sachs noted that the rear second story addition will expand the structure by 49 square feet.

Mr. Gleba reviewed the relief for the project and showed the location of the proposed addition on the site plan. With no member of the public wishing to speak, Councilor Auchincloss' motion to close the public hearing carried 6-0. Councilor Auchincloss moved approval of the item. Committee members voted unanimously in favor of the petition after finding the following:

1. The site in a Single Residence 2 (SR2) district is an appropriate location for the proposed expanded two-family dwelling (§7.3.3.C.1);
2. The proposed expanded two-family dwelling will not adversely affect the neighborhood (§7.3.3.C.2);
3. The proposed expanded two-family dwelling will not create a nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
4. Access to the site over streets is appropriate for the types and numbers of vehicles involved (§7.3.3.C.4);
5. Given its scale, the proposed increase of the dwelling's floor area ratio (FAR) from 0.61 to 0.62 where 0.48 is allowed is consistent with and not in derogation of the size, scale and design of other structures in the neighborhood (§3.1.9);
6. The proposed extension of the existing nonconforming use with the enlargement of the existing nonconforming two-family dwelling with approximately 49 square feet of floor area will not be substantially more detrimental than the existing nonconforming use is to the neighborhood, given its size and location above existing living space (§7.8.2.C.2).

#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 6-0**

Note: Associate City Engineer John Daghljan provided a review of the revised Engineering Plans received on May 8, 2017. He stated that the plans have been revised to meet most of the recommendations from the Engineering Department. He noted that slight modification is required for the front infiltration system and driveway infiltration system. He stated that the Department of Environmental Protection requires that water from the underground garage is treated before leaving the property. In response to concerns raised by abutters at the site, Mr. Daghljan noted that the City is not aware of any flooding issues in the area. He confirmed that a site visit has occurred and stated that he does not have concerns about water runoff as the petitioner plans to infiltrate all water on site.

Attorney Terry Morris, with offices at 57 Elm Street, reviewed historical background on Dalby Street and stated that the density on the east side of Dalby Street is consistent with the proposed structure. He noted that 3/13 lots on the east side of Dalby Street have units that exceed two-family housing. He added that the neighborhood also has a 9 unit condominium, a commercial car repair facility and other multi-unit structures.

As requested, the architect for the proposed project created a “by-right” version with two, two-family structures. Each unit, set back 12.5’ on each side, has an at grade driveway with an individual curb cut. Atty. Morris noted that the four unit plan have more frontage and take up more streetscape. He noted that the proposed plan replicates the existing structures and maintains the appearance of a single family facing the street.

Mr. Gleba noted that there is no new information for the Planning Department, but confirmed that he has not yet seen the plans relative to the turning radius in the garage.

Public Comment

Steve Weiner, 44 Dalby Street, has been communication with Attorney Morris and is appreciative of his responsiveness. He noted that the garage is very industrial looking and stated that it is the first thing he notices. He expressed concern that there is no record of flooding.

Richard, 266 Cherry Street, noted that there are constant flooding issues in the area. He believes that the builder should build what they are allowed to build, by-right. He has concerns about parking congestion in the neighborhood.

Paula Battista, 23 Dalby Street, noted that Dalby Street experiences continuous flooding. She stated that she is not opposed to adding value in the neighborhood, but doesn’t want to see the area turned into a metropolitan area. She has concerns about construction impacting the water runoff.

Sabrina Dennison, 44 Dalby Street, Questioned if the units will be owner occupied or rented.

Mr. Dan McCauliffe, builder for the property, noted that he is not sure at this point whether the units will be rented or owner occupied. He added that any flooding at the site is not out of the ordinary in the City.

Councilor Lennon motioned to close the public hearing which carried unanimously. Atty. Morris confirmed that one common garage door could be placed at the entrance to the garage. A Committee member suggested that this could help reduce the commercial appearance of the garage. Atty. Young confirmed that two, two-family dwellings could be built by right as long as they complied with all dimensional standards.

A Committee member noted that the proposed plan should be compared with the by right alternative. It was noted that the proposed plan has more open space, below ground parking and less massing on the site. Some Committee members had concerns about the added density in the neighborhood. It was noted that while adding six units in a village center may be appropriate, six units on Dalby Street may be out of character. Committee members also noted that locating six units on Dalby Street could begin to change the context of the neighborhood.

Committee members were in agreement that receiving additional materials immediately prior to the start of the meeting does not allow adequate time for review by Councilors or staff. The Chair emphasized the importance of ensuring that City staff has an appropriate amount of time to review revised plans.

Atty. Morris confirmed that plans related to the turning radius in the garage can be supplied prior to the next public hearing. Councilor Lennon requested that Councilors direct all questions and concerns to him prior to the next public hearing. In order to allow additional material to be submitted, Councilor Lennon motioned to reopen the public hearing and hold the item until May 23, 2017. Both motions carried unanimously.

#97-17 Special Permit to EXTEND nonconforming use at 966 Watertown Street
BR STONE CORP./STEPHANIE OLIVEIRA DIAS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to use a portion of the legally nonconforming wholesale site to cut and fabricate stone countertops, further extending the nonconforming use to manufacturing at 966 WATERTOWN STREET, Ward 3, West Newton, on land known as SBL 31005 0003, containing approximately 13,408 sq. ft. of land in a district zoned BUSINESS 1. Ref. 7.3.3, 7.4, 4.4.1, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held 6-0**

Note: Attorney Stephen Buchbinder, with offices at 1200 Walnut Street, presented the request to allow cutting and fabrication of stone countertops at 966 Watertown Street. Atty. Buchbinder noted that the site has been used for granite and marble wholesale services and is considered legally nonconforming. Accessory cutting and fabrication of stone countertops is considered manufacturing use as determined by the Commissioner of ISD, requiring a special permit to extend the nonconforming use. Atty. Buchbinder that the business is low key and there are no more than 5 employees on site at any time. The Fire Department has confirmed that code is met at the site.

It was noted that funeral home director David Brezniak submitted a letter stating that there is little noise as a result of the business and that the business is less impactful than the prior use at the site. Atty. Buchbinder noted that when Mr. Gleba conducted a site visit, the garage doors were open and noise could be heard from the inside of the business. He noted that the petitioner would be amenable to a condition requiring that the garage doors are shut when stone is being cut.

Mr. Gleba reviewed the requested relief for the project and the following criteria for consideration:

- The specific site is an appropriate location for the stone cutting and fabrication use (§7.3.3.C.1);
- The stone cutting and fabrication use as developed and operated will adversely affect the neighborhood (§7.3.3.C.2);
- There will be no nuisance or serious hazard to vehicles or pedestrians (§7.3.3.C.3);
- Access to the site over streets is appropriate for the types and number of vehicles involved (§7.3.3.C.4);
- The stone cutting and fabrication use will be substantially more detrimental than the existing nonconforming use is to the neighborhood (§7.8.2.C.2).

He noted that there are no other nonconforming manufacturing uses in the neighborhood. The public hearing was opened.

Public Comment

Paula Rohrlück, 73 Davis Avenue, has concerns about the health issues caused by stone dust. She noted that OSHA has identified stone dust as a carcinogen. Although water is used in the process, stone dust can linger in the air. She stated that The Fire Department has determined that if the forklift is in use, the door must remain open and noted that often the garage doors are left open. She has concerns that allowing manufacturing opens the doors to other factories opening up.

Tatiana Cherkova, 953 Watertown Street, took time off from work to determine if she could hear noise from the building. She noted that on both days, the garage doors were open and the noise was noticeable.

Greg Dorsey, 77 Davis Avenue, is a small business owner and often pro-business. He noted that the site has been wholesale since 1947 and he hopes that it remains that way. He has concerns about who will ensure the garage doors are closed during cutting. He noted that frequently the doors are open and he can hear stone cutting on the weekend. Mr. Dorsey has concerns about the noise and does not believe that having a factory within 300' of residential should be allowed.

Alex Cherkova, 953 Watertown Street, has concerns about the fabrication in the residential area. He noted that there is a sensitive alarm at the site that frequently goes off. He is concerned that the additional dust will create even more sensitivity for the alarm.

Committee members agreed that safety should be ensured and the site should be compliant with OSHA's regulations. Councilors were also in agreement that the Health Department should evaluate the health risks of having stone cutting and fabrication in a residential neighborhood. Committee members were in agreement that they do not want to encourage factory use in residential neighborhoods and will want to ensure that a Board Order is carefully crafted to eliminate noise and health related concerns.

Atty. Buchbinder noted that they were not previously aware of any noise complaints in the neighborhood. He reiterated that the door could be required to be shut during fabrication and cutting and confirmed that he could provide a video of the stone cutting in addition to hosting a site visit for all interested parties. Atty. Buchbinder confirmed that in the interim, the garage doors will remain shut during cutting/fabrication. Councilor Schwartz motioned to hold the item which carried unanimously.

Respectfully submitted,

Marc C. Laredo, Chair