



# Land Use Committee Report

## City of Newton

## In City Council

**Thursday, June 22, 2017**

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

**Also Present:** Councilors Leary, Norton, Albright

**City Staff:** Senior Planner Neil Cronin, Senior Planner Michael Gleba

### **#60-17**

### **Request to Rezone Hovey Street parcels**

SUNRISE DEVELOPMENT, INC./431 WASHINGTON STREET, LLC petition for a change of zone to Business Use 2 for land located at 29 Hovey Street, also identified as Section 12, Block 006, Lot 004, and an unnumbered lot on Hovey Street, also identified as Section 12, Block 006, Lot 003, containing approximately 34,361 sq. ft. of land in a district zoned MULTI RESIDENCE 2, further described as follows:

Beginning at a point on the Westerly side of Hovey Street, said point being N 21°00'54" W and a distance of one hundred twenty-six and no hundredths (126.00) feet from a bound at the Northwesterly intersection of Hovey and Washington Streets being the Southeast corner of the parcel herein described; thence

S 69°15'05" W	A distance of seventy-three and forty hundredths (73.40) feet to a point; thence
S 69°07'43" W	A distance of one hundred forty-five and no hundredths (145.00) feet to a point; thence
N 20°20'22" W	A distance of forty-five and fifty hundredths (45.50) feet to a point; thence
N 18°34' 11" E	A distance of sixty-one and forty-seven hundredths (61.47) feet to a point; thence
N 21°09'23" E	A distance of two and forty-one hundredths (2.41) feet and on the same bearing a distance of thirty-six and eight hundredths (36.08) feet to a point; thence
N 21°31'11" E	A distance of one hundred sixteen and eighty-eight hundredths (116.88) feet to a point; thence
N 28°57'55" E	A distance of twelve and seventy hundredths (12.70) feet to a point; thence
N 71°07'46" E	A distance of sixty-four and fifteen hundredths (64.15) feet to a point; thence
S 21°00'54" E	A distance of one hundred thirty-one and no hundredths (131.00) feet and on the same bearing a distance of eighty-three and no hundredths (83.00) feet by the

Westerly sideline of Hovey Street to the point of beginning.

Said parcel containing 34,361 square feet or 0.789 acres, more or less.

**Action:** **Land Use Held 5-0**

**#61-17** **Special Permit Petition to construct elderly housing on Washington Street**  
SUNRISE DEVELOPMENT, INC./431 WASHINGTON STREET, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct elderly housing with services in excess of 20,000 sq. ft. of gross floor area, consisting of 85 living units in a four-story structure not to exceed 48' in height and Floor Area Ratio not to exceed 2.0, extending the existing nonconforming front setback and constructing a retaining wall greater than 4' in a setback at 431 Washington Street, 29 Hovey Street, and the adjacent unnumbered lot to the north on Hovey Street, on land known as Section 12 Block 006 Lots 003, 004, and 005, containing approximately 66,909 sq. ft. of land in districts zoned BUSINESS 2 AND MULTI-RESIDENCE 2. Ref.: 7.3, 7.4, 4.1.2.B.1, 4.1.2.B.3, 4.1.3, 4.4.1, 5.1.13, 5.4.2.B, 5.11.11, 6.2.10, 6.2.10.B, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

**Action:** **Land Use Held 5-0**

**Note:** Atty. Buchbinder presented updates to the proposed assisted living facility on Washington Street at Hovey Street. At the May 23, 2017 public hearing, the petitioner was asked to consider creating a more residential structure and move the building frontage closer to Washington Street. He noted that the design team has worked to craft these changes. Atty. Buchbinder noted that the proposed development has been removed from the rear lot and moved forward, pushing 19.5% more massing on Washington Street. The petitioner shared the revisions to the plans with the neighbors, who were generally appreciative. Additionally, the petitioner has gabled the roofline and added dormers to add a more residential effect. Atty. Buchbinder confirmed that the Fire Department is supportive of the plans to maintain the front courtyard entrance.

As a result of moving more massing to Washington Street, the front pocket park will have to be removed. Atty. Buchbinder confirmed that the petitioner will take the square footage from the previously proposed front pocket park and ensure that it is incorporated into the public space in the rear lot.

It was noted that the City's Law Department and Planning Department are still working with the petitioner to find a solution that meets the City's inclusionary housing ordinance. Because the facility is assisted living with services, it does not meet the standard protocol for affordable housing. Deputy City Solicitor Ouida Young noted that the formula for the type of facility calculates gross revenue as a factor. While the beds can be counted, the associated services will vary.

Senior Planner Michael Gleba noted that the Planning Department is appreciative of the petitioner's responsiveness to feedback and the redesign of the structure. He stated that

pushing the massing closer to Washington Street is consistent with the Urban Design Commission's recommendation. He noted that the building in the new proposal is slightly increased in size from the original proposal, but still within the allowable FAR.

The Chair invited members of the public to speak.

Phil Herr, 20 Marlboro Street, believes that the type of facility is in demand in the City, the location is appropriate and the design is quality.

Kathleen Hobson, 128 Dorset Road, agrees with Mr. Herr. She noted that the Council on Aging is also supportive of the proposal.

Fran Godine, 19 Crofton Road, is supportive of the project.

Bryan Flanagan, 5 Hovey Street, is thankful for the back and forth with the petitioner. He noted that the petitioner has not conceded on the size of the building and hopes that the petitioner may consider a three floor while still satisfying community needs. Mr. Flanagan has concerns about traffic and the impact of construction on the neighborhood.

Henry Dowd, 21 Avon Place, noted that the concessions from the developer have been excellent but noted that the neighborhood is congested. He noted that the traffic in the area is difficult to navigate and he has concerns about large delivery vehicles.

Janet Sterman, 120 Church Street, does not live in the direct neighborhood. She noted that Evans Park has been a good neighbor, but stated that they don't shadow on abutting properties. She noted that it will be a very large structure and hopes that Council members will be conscious of that.

Peter Kronberg, 86 Jewett Street, noted that the community is supportive of nursing homes. He questioned if the development can be scaled back to coexist and complement the neighborhood and community. He noted that cutting off natural light to the neighborhood will be detrimental and he hopes the architect can come up with a better solution.

Daniel Lawryy, 33 Waban Street, is a member of the neighborhood association in the neighboring condo association. He noted that the meetings with the petitioner have been productive and they are appreciative of the changes that have been made. He noted that the number one concern of the neighborhood association (size) has not yet been addressed.

Will Truslow, 110 Jewett Street, noted that at the first public hearing he was not supportive of the plans. He commended the efforts of the petitioner to move so much of the massing forward on the site. He noted that his main concern has been about open sky and he is supportive of the amended proposal.

Sue Dickinson, 93 Waban Park, is appreciative of the efforts made to improve the site. She remains concerned about the size of the proposed development.

Bill Dickinson, 93 Waban Park, does not want the neighborhood to become a commercial area and noted there is already a lot of construction going on in the neighborhood. He hopes that the density will not change the character of the neighborhood.

John Kazakoff-Eigen, 136 Jewett Street, is thankful that Sunrise moved the proposal closer to Washington Street. He asked that the rezoning be contingent on Sunrise's ownership of the site.

Caitlin Flanagan, 5 Hovey Street, hopes that the third lot can be maintained as open space and not commercial use.

In response to public comment, Atty. Buchbinder noted that the petitioner is amenable to deed restricting the rear lot to prohibit any structure. Deputy City Solicitor Ouida Young noted that the rezoning at the site would be contingent on Sunrise exercising the special permit. She confirmed that no changes to the site plan or use at the site would be permitted without amending the approved Special Permit. The Chair noted that a construction liaison committee can be created as part of the Board Order. It was also noted that time restrictions related to delivery vehicles can be incorporated into the Board Order.

A Committee member requested that the petitioner provide a list of the type of jobs that will be added to the community with the development of Sunrise. Mr. Kroskin noted that the footprint of the building will remain the same. Based on questions and concerns from the public, it was confirmed that the petitioner will provide a revised shadow study. The Chair thanked the petitioner for being receptive to neighborhood feedback and encouraged continued communications. Councilor Schwartz motioned to hold the items until August 8, 2017 and the Committee voted unanimously in favor.

**#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 Approved 5-0

**Note:**      Attorney Laurance Lee, of Rosenberg, Freedman and Lee, with offices at 246 Walnut Street, presented the petition to extend a nonconforming use at 46 Farwell Street to create a residential use in the second, rear structure. Atty. Lee noted that the structure in

question, is considered legally nonconforming having been extended without proper permitting. He noted that the site has historically been used for commercial truck storage and has no define parking spaces or definition.

Atty. Lee noted that there is pavement to the rear of the site that is encroaching into the Charles River. The petitioner proposes to pull back the pavement into the property, better define the front parking spaces and legitimize the nonconformities at the site. Atty. Lee noted that the Conservation Commission has approved of the plans and there is an order of conditions for the site. It was noted that the petitioner will work with the Fire Department and ISD to bring the rear structure up to code for residential living. Atty. Lee believes the improvements will be of greater benefit to the public and will help to clean the site. He noted that while the petitioner did not reach out to abutters, they have not heard any negative feedback about the proposal.

Senior Planner Michael Gleba noted that in 2001, a building permit was issued to a previous homeowner to repair the rear structure that suffered fire damage. Although the permit stated “no extension”, the structure was extended to include a second floor and now is considered legally nonconforming. Mr. Gleba noted that the structure precedes ISD staff members, so it is difficult to determine how the nonconformity was not identified sooner. Mr. Gleba noted that the extension of the nonconforming use is to allow a residential use, in a district zoned multi residence, while maintaining the commercial use at the front of the site.

The Chair invited members of the public to speak. With no one from the public wishing to speak, Councilor Cote motioned to close the public hearing which carried 6-0. Atty. Lee confirmed that the petitioner is willing to restrict the rear structure to one residential unit. Atty. Lee noted that the current site is one long curb cut and the parking spaces about the lot line. He stated that the area is not heavily trafficked.

Councilor Cote moved approval of the item. Committee members reviewed the draft conditions and findings. The Planning Department suggested that the Board Order include a condition that require an apron to the left and right of the curb cut to prevent parking on the side lot lines. Committee members were in agreement that the Order should be conditioned so that the rear structure is commonly owned. With Councilor Cote’s motion to approve, the Committee voted unanimously in favor of the petition.

**#131-17      Special Permit to allow parking stall in front setback at 54 Lakewood Road**  
CAROLINE GENCO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow parking within 5’ of the street, in the front setback at 54 Lakewood Road, Ward 6, on land known as Section 52 Block 018 Lot 0002, containing approximately 4,145 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4, 5.1.7.A of the City of Newton Rev Zoning Ord, 2015

**Action:**      Land Use Approved 5-0

**Note:**      Architect Susan Sangiolo presented the petition to locate parking in the setback at 54 Lakewood Road. Ms. Sangiolo noted that there have been no changes to the proposal.

After reviewing the option to put the front yard retaining wall under the front porch to gain additional space for the parking stall, it was determined that the front porch would need to be rebuilt and cost prohibitive. Ms. Sangiolo noted that the Engineering Department has confirmed the need for the retaining wall. She stated that the by right alternative plan to locating parking in the front includes a 20' curb cut, one fewer street parking space and less green space.

Caroline Genco, 54 Lakewood Road, noted that she has done a lot of work on the property and hopes to go for the more aesthetically appealing (special permit) option.

John Seferiadis, Lakewood, Civil Engineer, noted that while he is sensitive to the needs of the petitioner, there are ways to push the retaining wall back without having to remove the porch. He stated that the soil beneath the porch could be excavated and regraded so that a small retaining wall can be located there. He noted that approval of the special permit would not be pushing back the setback, but eliminating it.

Seeing no other member of the public wishing to speak, Councilor Schwartz motioned to close the public hearing which carried unanimously.

Mr. Cronin confirmed that the front porch would need to be rebuilt in order to accommodate a new retaining wall. Committee members deliberated the appropriateness of locating parking in the front setback and the by right alternative. The Committee was in agreement that the special permit option is the more appealing option and noted that the Council has approved other permits with no setback. A Committee member noted that in the event a car is in the public right of way, the petitioner could be subject to ISD citations. Councilor Schwartz motioned to approve the item and Committee members voted 5-0 in favor of the item.

**#130-17      Special Permit to exceed FAR at 164 Highland Avenue**

ROBERT AND CINDY LAUGHREA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to demolish a portion of the rear dwelling, front porch and detached garage and construct a two-story rear addition and attached garage for more than three vehicles and in excess of 700 sq. ft. increasing the FAR to .28 where .27 is allowed and .19 exists at 164 Highland Avenue, Ward 2, on land known as Section 24, Block 12, Lot 20, containing approximately 22,230 sq. ft. of land in a district zoned SINGLE RESIDENCE 1. Ref: 7.3, 7.4, 3.1.9, 3.4.2.C.1 of the City of Newton Rev Zoning Ord, 2015.

**Action:**      **Land Use Held 4-0-1 (Auchincloss abstaining)**

**Note:**      Architect Alan Mayer presented the petition to locate a six car garage, with four cars below grade and accessible by lift at 164 Highland Avenue. While no changes to the petition have been made, Mr. Cronin noted that the lift can generate a decibel level of 80. He stated that a blender/dishwasher generate a decibel level of 70 and a gas powered lawnmower can generate a decibel level of 100.

Mr. Cronin noted that the by using the Mansard style architecture, the design requires additional use of FAR. If the garage were built in a more typical manner, the FAR would be by right.

The Chair invited members of the public to speak.

Kenneth Mack, 171 Highland Avenue, noted that he remains concerned about the permanent six car garage structure and future owners. He noted that while his neighbors, the current property owners have promised to have a car turnaround at the front of the site, a future owner could decide that they do not want one. He believes that the petitioner should have to demonstrate need for this use and noted that there are car storage facilities in the area.

Seeing no one else wishing to speak, Councilor Auchincloss motioned to close the public hearing which carried unanimously.

Councilors deliberated whether a six car garage is something they want to see in residential neighborhoods. A Committee member noted that the ordinance was likely written to prevent the creation of large garage structures and driveway space, not vehicle storage. It was noted that a condition could be crafted to prohibit commercial use at the site. It was noted that although the lift may reach a decibel level of 80, the lift will be 50' back on the property, in a below grade structure. Councilors discussed appropriateness of a more industrial style garage, but questioned what impact it has, if any, on the neighborhood.

One Committee member was prepared to vote in favor of the petition. Mr. Mayer requested that the item be held to a subsequent Land Use Committee to further discuss details of the petition. Councilor Schwartz motioned to hold the item which carried 4-0-1 with an abstention from Councilor Auchincloss.

**#129-17      Special Permit to reduce lot area by 4% at 19-21 Beaconwood Road**

LENTO DEVELOPMENT, LLC/KENNETH LENTO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to raze and replace a two-family structure and allow a 4% reduction to the required lot area after combining lots at 19-21 Beaconwood Road, Ward 8, on land known as Section 54, Block 22, Lot 0044 and Section 54, Block 022, Lot 0047, containing approximately 9,602 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3, 7.4, 7.8.4.D.4, 7.8.4.D.5, 7.8.4.A of the City of Newton Rev Zoning Ord, 2015.

**Action:      Land Use Postponed to July 11, 2017 5-0**

**Respectfully submitted,**

**Marc C. Laredo, Chair**