



Committee of the Whole Agenda

City of Newton In City Council

Wednesday, September 4, 2024

The Committee of the Whole will hold this meeting as a virtual meeting at 7:45 pm in conjunction with the regularly scheduled City Council Meeting on Wednesday, September 4, 2024. To view this meeting use this link at the above date and time: <https://newtonma-gov.zoom.us/j/87583802721>

One tap mobile US: +13126266799,,81166494641# US (Chicago)

Dial by your location +1 646 558 8656 Meeting ID: 875 8380 2721

Items scheduled for discussion:

Referred to Committee of the Whole

#343-24 Request to authorize City Council designee to file an appeal with the Zoning Board of Appeals

COUNCILORS GREENBERG, LEARY and OLIVER request discussion and approval to file an appeal on behalf of the City Council with the Zoning Board of Appeals (ZBA) concerning the ruling by the Commissioner of Inspectional Services dated August 14, 2024 regarding 16-22 Clinton Street, and expending \$1,000 from city council sunshine funds to file the appeal.

Special Permit Back Up Material - [Record SP-23-28 - ViewPoint Cloud](#)

Building Permit Back Up Material- [Record BP-23-3187 - ViewPoint Cloud](#)

Note: It is the opinion of the Ward 1 Councilors that the item falls within the scope of Section 2-9 of the Newton City Charter and should be declared an emergency measure necessary to protect the health and safety of the people and property of the City of Newton which requires a separate 2/3 vote of the City Council.

**Respectfully submitted,
Marc Laredo, President**

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: jfairley@newtonma.gov or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

EMERGENCY PREAMBLE

BE IT HEREBY ORDERED:

WHEREAS, it is the opinion of the City Council that the following measure constitutes an Emergency Measure under Section 2-9(b) of the Charter of the City of Newton due to the precise timeline of filing an appeal to the Zoning Board of Appeals by September 13, 2024;

WHEREAS, the City Council seeks to appeal the decision rendered by Newton's Inspectional Services Department (ISD) on August 14, 2024 regarding the project and Council Order # 195-23 for 20 Clinton Street.

WHEREAS, the City Council, in order to preserve the public confidence in the city council and the special permit process, as well as the health and convenience of residents, proposes that an appeal be filed with ZBA regarding inconsistencies between the project documentation and project in the process of being built.

THEREFORE, the following measure shall be and hereby is adopted as an Emergency Measure which shall take effect immediately upon adoption.

Referred to Committee of the Whole**#343-24 Request to authorize City Council designee to file an appeal with the Zoning Board of Appeals**

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City of Newton



Ruthanne Fuller
Mayor

Inspectional Services Department

Anthony Ciccariello, Commissioner
1000 Commonwealth Avenue
Newton, MA 02459
www.newtonma.gov

#343-24

Telephone
(617) 796-1060
Fax
(617) 796-1086
Email
ISD@newtonma.gov

August 14, 2024

TO: Request for Zoning Enforcement Complainants
RE: 16-22 Clinton Street Request for Zoning Enforcement

Inspector Buddy Lamplough and I conducted a site visit inspection at 16-22 Clinton Street on August 2, 2024, in response to a Zoning Enforcement request. During our visit, we measured the retaining walls, compared the elevations with the City Council-approved plans, and checked the areas where the patios will be installed. Everything appeared to be consistent with the approved plan. On July 25, 2024, a rough as-built survey plan was uploaded to verify the buildings' heights from the proposed average grade for compliance, which was found to be 35.1 feet and compliant with the approved plan.

Another site visit was carried out on August 6, 2024, to measure the height at the front of the buildings facing Clinton Street. The height from rough grade to the first-floor elevation was 54 inches. The height from the garage floor to the finish floor was 30 inches. I have had meetings with the architect and builder to ensure that the grading at the front entrances accurately matches the proposed finish grades on site as approved by the City Council. The contractor is working on correcting the height of the retaining walls to align with the approved site plan, which should be completed within the next few weeks.

In summary, the heights of the retaining walls will be brought into compliance within the next 2-3 weeks. The approved engineering plan indicates a 1st-floor elevation of 53.5 feet, while the as-built survey showed 53.45 feet. The grading facing Clinton Street is at 50.0 feet where the foundation meets the finished grade, with a 1st-floor elevation of 53.45 feet, resulting in a 3.45-foot difference from grade to the finished floor, as shown on the Council-approved plans.

The proposed height of the buildings is 35.34 feet from the average grade. A rough building as-built survey was completed to verify the height from the proposed average grade, which was found to be 35.1 feet, a reduction of .24 feet. Final grading is yet to be completed. I have not observed the site during rainy conditions to check for water ponding at the rear retaining wall abutting the Lincoln Street property. If this is occurring and not in conformance with the stormwater ordinance, it will be investigated and addressed.

Following ISD's site inspections and meetings with the developer, it has been determined that they are complying with the site and architectural plans approved by the City Council, and no enforcement action is required at this time.

Anthony Ciccariello
Commissioner

*Strict code enforcement makes the city safer
Before buying, renting, or leasing check zoning*

Middlesex South Registry of Deeds
Electronically Recorded Document

This is the first page of the document - Do not remove

Recording Information

Document Number	: 98677
Document Type	: DECIS
Recorded Date	: August 31, 2023
Recorded Time	: 11:40:12 AM
Recorded Book and Page	: 81951 / 453
Number of Pages(including cover sheet)	: 7
Receipt Number	: 2938058
Recording Fee	: \$105.00

Middlesex South Registry of Deeds
Maria C. Curtatone, Register
208 Cambridge Street
Cambridge, MA 02141
617-679-6300
www.middlesexsouthregistry.com

RECEIVED

2023 JUL 12 PM 12:56

#195-23
20 Clinton Street

CITY CLERK
NEWTON, MA. 02459

CITY OF NEWTON

IN CITY COUNCIL

July 10, 2023



6 pp.

ORDERED:

That the City Council, finding that the public convenience and welfare will be substantially served by its action, that the use of the site will be in harmony with the conditions, safeguards and limitations set forth in the Zoning Ordinance, and that said action will be without substantial detriment to the public good, and without substantially derogating from the intent or purpose of the Zoning Ordinance, grants approval of the following SPECIAL PERMIT/SITE PLAN APPROVAL to allow four residential units in two structures with three stories and 35 feet in height, the extension of a nonconforming side setback, a ground floor residential use, a Floor Area Ratio (FAR) of 1.1, and site plan review for a building with more than 10,000 square feet as recommended by the Land Use Committee for the reasons given by the Committee, through its Chairman, Councilor Richard Lipof:

1. The specific site is an appropriate location for the proposed residential project in the Business Use 2 district (BU-2) because the neighborhood has many residential uses, abuts an MR-2 zone, and exceeds the lot area per unit required for the zone. (§7.3.3.C.1)
2. The proposed residential project as designed will not adversely affect the neighborhood because the lot area per unit and lot size exceeds what is required for the district. (§7.3.3.C.2)
3. The proposed residential project will not create a nuisance or serious hazard to vehicles or pedestrians because the project will close an existing curb cut, and new plantings will be provided along the street frontage. The front door is also oriented to the street, while the garages are located within an internal courtyard area. (§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. The proposed extension of the nonconforming side setback will not be substantially more detrimental than the existing nonconforming setback is to the neighborhood because the setback is being slightly improved and brought closer to conformance. (§7.8.2.C.2)
6. The proposed structure with an FAR of 1.1, where 1.0 is the maximum allowed by right, is consistent with and not in derogation of the size, scale and design of other

20 Clinton Street, Newton BK 79640, Pg 352

structures in the neighborhood because the FAR is broken up between two structures and the pattern of the neighborhood is moderately sized buildings on undersized lots. (§7.3.3)

PETITION NUMBER: #195-23

PETITIONER: 20 Clinton Street LLC
675 VFW PARKWAY #327
Chestnut Hill, MA 02467

LOCATION: 20 Clinton Street, Ward 1, Newton, on land known as Section 14 Block 22 Lot 12, containing approximately 10,404 sq. ft. of land

OWNER: 20 Clinton Street LLC

ADDRESS OF OWNER: 675 VFW PARKWAY #327
Chestnut Hill, MA 02467

TO BE USED FOR: Construction of four residential units in two structures with three stories and 35.3 feet in height, ground floor residential uses, a Floor Area Ratio (FAR) of 1.1, and site plan review

RELIEF GRANTED: Special Permit per §7.3. to allow to allow ground floor residential uses (§4.4.1), site plan review for a building with more than 10,000 square feet (4.1.2.B.2), a three-story structure with up to 36 feet in height (§4.1.2.B.3 and §4.1.3), FAR of 1.1 (§4.1.3), and to alter and extend an existing nonconforming side setback (§4.1.3)

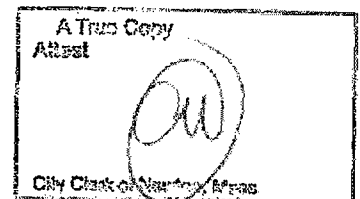
ZONING: Business Use 2 District



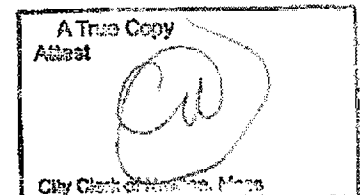
Approved, subject to the following conditions:

1. All buildings, parking areas, driveways, walkways, landscaping and other site features associated with this special permit/site plan approval shall be located and constructed consistent with:
 - a. Site plan prepared by Spruhan Engineering and Peter Nolan Associates, LLC, signed and stamped by Peter J. Nolan, Professional Land Surveyor, dated April 20, 2023 and revised June 16, 2023:
 - i. "Proposed Zoning, Layout, and Materials" (Sheet 1)

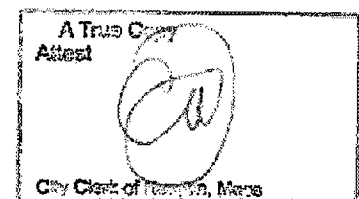
- ii. "Proposed Grading, Drainage, and Utilities" (Sheet 2)
 - b. A set of architectural drawings prepared by Pears Design Resource LLC, unsigned and unstamped, dated April 25, 2023:
 - i. "Special Permit Architectural Plans" (Sheet 9)
 - ii. "Special Permit Architectural Plans" (Sheet 10)
 - c. A landscape plan entitled "Landscape Plan," signed and stamped by Blair C. Hines, Registered Landscape Architect, dated May 30, 2023
2. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the Petitioner shall provide a final Operations and Maintenance Plan (the "O&M Plan") for stormwater management to the Engineering Division of Public Works for review and approval, should a system be required. Once approved, the O&M Plan must be adopted by the Petitioner and recorded at the Middlesex South District Registry of Deeds. A copy of the recorded O&M Plan shall be filed with the Engineering Division of Public Works and submitted with the Building Permit application.
3. The Petitioner shall do the following to remediate pest and rodent activity:
 - a. Prior to issuance of any demolition or building permit, the Petitioner, at its sole cost and expense, shall hire a licensed Pest Control Operator to assess the property for pest and rodent activity and develop and implement a pest remediation action plan to eliminate the activity and prevent off-site migration. The plan shall include the target pest, the methods for eliminating activity, and plan for preventing pest migration off-site during demolition and construction.
 - b. A copy of the Pest Control inspection report and the remediation action plan shall be submitted to the Inspectional Services Department for review and approval prior to issuance of any demolition or building permit. A copy of such approval shall be provided to the Department of Planning and Development.
 - c. The Pest Control Operator shall implement the approved remediation action plan, monitor the site for the duration of the project, and take whatever action the Operator deems necessary to control pest infestation and migration.
4. Prior to the issuance of any Building Permit, the Petitioner shall submit a Construction Management Plan (the "CMP") for review and approval to the Commissioner of Inspectional Services, the Director of Planning and Development, the City Engineer, and the Chief of the Fire Department. The CMP shall be in compliance with all applicable policies and ordinances in effect at the time of submission. The Petitioner shall comply in all material respects with the Construction Management Plan, which shall be consistent with and not in conflict with relevant conditions of this Order and shall include, but not be limited to, the following provisions:
 - a. 24-hour contact information for the general contractor. This information shall also be posted in a clear and visible manner at the construction site.



- b. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - c. Site plan(s) showing the proposed location of contractor and subcontractor parking, on-site material storage area(s), on-site staging areas(s) for construction materials and delivery vehicles and equipment, and location of any security fencing and erosion control.
 - d. A plan showing temporary pedestrian access within work zones in accordance with DPW Policy.
 - e. Proposed methods for dust control including, but not limited to: watering, covering trucks for transportation of excavated material; minimizing storage of debris on-site by using dumpsters and regularly emptying them; using tarps to cover piles of bulk building materials and soil; locating a truck washing station to clean muddy wheels on all truck and construction vehicles before exiting the site.
 - f. Proposed methods of noise control, in accordance with the Revised Ordinances, §20-13. Staging activities should be conducted in a manner that will minimize off-site impacts of noise. Noise producing staging activities should be located as far as practical from noise sensitive locations.
 - g. Tree preservation plan to define the proposed method(s) for protection of any existing trees to remain on site.
 - h. The CMP shall also address the following: safety precautions; anticipated dewatering during construction; site safety and stability; and impacts on abutting properties.
5. All appliances and utilities for the building shall be all-electric, including heating and cooling.
6. No building permit (other than a demolition permit) and unless otherwise specified shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with and the Petitioner has:
- a. Recorded a certified copy of this Special Permit/Site Plan Approval at the Middlesex South Registry of Deeds and filed proof of such recording with the City Clerk and submitted a copy with the building permit application.
 - b. Submitted final engineering, utility, and drainage plans, and a recorded copy of the O&M Plan with the Middlesex South District Registry of Deeds and provided a copy of the recorded document to the City Engineer in accordance with this Order.
 - c. Submitted a Final CMP for review and approval by the Commissioner of Inspectional Services in consultation with the Director of Planning and Development, the Fire Department, the Commissioner of Public Works, and the City Engineer in accordance with this Order.



- d. Received approval for the Pest Control inspection report and the remediation action plan and submitted a copy of such approval to the Director of Planning and Development in accordance with this Order.
 - e. Obtained a written statement/sign off from the Planning Department that confirms the Building Permit plans are consistent with plans approved in Condition #1 including all dimensional requirements.
7. No certificate of occupancy (temporary or final) shall be issued by the City pursuant to this Special Permit/Site Plan Approval unless all applicable terms and conditions have been complied with for the portion of the project for which occupancy is requested and the Petitioner has:
 - a. Filed with the building permit record statements by a registered architect (or professional engineer) and a professional land surveyor (or professional engineer) certifying compliance with Condition #1, including the as built FAR.
 - b. Submitted final as-built survey plans in digital format, stamped and signed by a professional land surveyor or professional engineer, as applicable.
 - c. Filed with the building permit record a statement by a registered landscape architect certifying compliance with the landscape plan referenced Condition #1.
 - d. Obtained approval from the City Engineer certifying that all engineering details for the portion of the Project for which a certificate of occupancy is requested have been constructed to standards of the City of Newton Public Works Department.
 - e. Filed with the Department of Inspectional Services a statement by the Director of Planning and Development approving final location, number and type of plant materials, landscape features, fencing and parking areas related to or for the portion of the Project for which a certificate of occupancy is requested.
8. The Petitioner shall install all landscaping consistent with this Special Permit/Site Plan approval and shall maintain landscaping in good condition. Any plant material that becomes diseased or dies shall be replaced as soon as feasibly possible with similar material.
9. Provided that all other requirements in Condition #7 are satisfied and the project is substantially complete, the Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for all or portions of the building prior to completion of final landscaping (including hardscape improvements).



Under Suspension of Rules

Readings Waived and Extension of Time Approved

21 yeas 0 nays 3 absent (Councilors Danberg, Gentile, and Kalis)

The undersigned hereby certifies that the foregoing copy of the decision of the Newton City Council granting a SPECIAL PERMIT/SITE PLAN APPROVAL is a true accurate copy of said decision, the original of which having been filed with the City Clerk on July 12, 2023. The undersigned further certifies that all statutory requirements for the issuance of such SPECIAL PERMIT/SITE PLAN APPROVAL have been complied with and that all plans referred to in the decision have been filed with the City Clerk.

ATTEST:


(SGD) CAROL MOORE

Clerk of the City Council



I, Carol Moore, as the Clerk of the City Council and keeper of its records and as the City Clerk and official keeper of the records of the CITY OF NEWTON, hereby certify that twenty days have elapsed since the filing of the foregoing decision of the Newton City Council in the Office of the City Clerk on July 12, 2023 and that NO APPEAL of said decision pursuant to G.L. c. 40A, §17 has been filed thereto.

ATTEST:


(SGD) CAROL MOORE

Clerk of the City Council