



Land Use Committee Report

City of Newton In City Council

Tuesday, November 14, 2017

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

Also Present: Councilors Sangiolo, Brousal-Glaser

Absent: Councilors Harney, Lennon

City Staff Present: Chief Planner for Current Planning Jennifer Caira, Associate City Solicitor Bob Waddick, Senior Planner Neil Cronin, Senior Planner Michael Gleba

Referred to Land Use Committee

#273-14(5) Request for Extension of time for Special Permit at 5-7 Elm Street

NICORE CONSTRUCTION CORP. request for an EXTENSION of TIME in which to EXERCISE special permit #273-14(2), granted on February 17, 2015, to construct four attached single-family dwellings in two buildings and to locate a driveway within 10 feet of a side lot line at 5-7 ELM STREET and 114 RIVER STREET, Ward 3, West Newton and to amend the site plan approved in special permit #40-07, dated May 21, 2007; said EXTENSION will run from February 17, 2017 to February 17, 2018. Ref: 30-24(c)(5) of the City of Newton Rev Zoning Ord, 2012.

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

Note: Attorney Terry Morris, 57 Elm Road represented petitioner Nicore Construction Corp. to present the request for an extension of time to exercise Special Permit #273-14(2) at 5-7 Elm Street, approved in February of 2015. The proposed extension will run from February 17, 2017 to February 17, 2018. Atty. Morris stated that the petitioner was unable to exercise the special permit due to difficulties in obtaining part of the title for the property and limited financial resources. Atty. Morris noted that the petitioner has applied for the building permit and will be able to begin construction upon approval of the extension of time. Councilors noted that the site has been under construction for three years which has been detrimental to the neighborhood. One Councilor expressed concern that the petitioner applied for the Special Permit prior to obtaining all necessary title documents. Atty. Morris noted that there was an unanticipated dispute over the property that went to court. He confirmed that the dispute has been resolved and the petitioner is ready to begin construction as soon as possible. It was noted that the Special Permit must be exercised by February 17, 2017 or the petitioner will have to reapply. Councilor Cote motioned to approve the extension of time which carried unanimously.

#228-17 Special Permit to extend non-conforming use at 69-71 Cherry Street

CAPPADONA CHERRY GROUP, LLC/ROSSANA CAMPOS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to legalize third unit and non-compliant lot area per unit in the existing non-conforming two-family at 69-71 CHERRY STREET, Ward 3, West Newton, on land

known as Section 34, Block 42, Lot 15, containing approximately 23,511 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.3 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 5-0-1 (Auchincloss abstaining)**

Note: Attorney Michael Peirce, 60 Walnut Street, Wellesley, represented the petitioner, Ms. Rossana Campos. Atty. Peirce presented updates to the petition. He noted that at the public hearing on October 3, 2017 a question was raised relative to whether the lot area per dwelling unit was applicable to a Section 6 finding for a non-substantially more detrimental finding for a Special Permit. The Commissioner of Inspectional Services John Lojek has determined that beyond the Section 6 finding, no additional finding is required. Commissioner Lojek has ruled that dimensional non-conformities have legal non-conforming status. With regard to what the Committee must consider when comparing the proposed three-family use with the existing two-family use (where three units currently exist), the Law Department has stated that the Committee must make the determination that the proposed three-family use is not more substantially detrimental than the existing two-family use. Atty. Peirce emphasized that this is a unique situation as the third unit has been in existence for over 60 years. The petition for a Special Permit requires relief to extend the existing non-conforming use. Atty. Peirce noted that the footprint of the existing structure will not be extended, parking on site is adequate and there is ample natural screening. With regard to concerns raised from members of the public relative to noise and disturbances, Atty. Peirce noted that the petitioner obtained police reports and determined that the complaints were generated by a previous tenant.

Senior Planner Neil Cronin confirmed that the Commissioner of ISD has determined that lot area per unit is a dimensional control and is applicable. He noted that the Commissioner will issue a memo before the Council meeting.

Public Comment

Ann Donovan, Sylvester Road, questioned why the petitioner should be allowed to make the already non-conforming structure a three-family. She questioned whether there might be more police reports. Ms. Donovan has concerns that the three-family use will create more opportunities for difficult tenants.

A question was raised relative to whether approval of the three-family use would allow the petitioner to rebuild a three-family by right in a different configuration. Mr. Cronin confirmed that upon approval of the Special Permit, the petitioner would not be able to make any structural changes without an amendment to the Board Order. Councilor Cote motioned to close the public hearing which carried unanimously. Councilor Cote motioned to approve the Special Permit. Committee members reviewed draft findings.

Committee members asked that the last phrase be removed from the following finding:

1. The proposed extension of the nonconforming two-family use to allow three units will not be substantially more detrimental than the legal nonconforming two-family use because the

petition does not require any alterations to the site or historic dwelling, parking can be accommodated on site, and the structure, with three units, ~~has existed on site for many years without complaint. (§3.4.1 and §7.8.2.C.2)~~

The Chair reiterated that the decision to allow the three-family use at the site should not be based on the existing, illegitimate three-family use and must be based on the existing two-family use. Committee members were in agreement that while the findings should not reference the use of the structure as a three-family; it can reference that no reconfiguration/expansion of the structure is necessary, parking at the site is adequate and the three-family use will allow the maintenance of three smaller (1320, 1140, 990 sq. ft.) units. The Committee asked that the Law department work to incorporate the proposed findings. Committee members reviewed the conditions of the Board Order. Mr. Cronin noted that there is a condition that the Certificate of Occupancy is issued upon confirmation that the third unit is code compliant. One Councilor questioned the appropriateness of granting the Special Permit given the complaints from neighbors. Atty. Waddick stated that the complaint issue is independent of the zoning matter. Councilor Cote's motion to approve the petition carried 5-0-1 with an abstention from Councilor Auchincloss.

#304-17 **Special Permit Petition to allow single-family dwelling in MR-1 at 336 Newtonville Ave**
DONALD AND LINDA STANTON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to relocate an existing dwelling, add a unit to the rear of the dwelling and construct two additional single-family attached dwellings in an MR-1 district, requiring a special permit at 336 Newtonville Avenue, Ward 2, Newtonville, on land known as Section 22, Block 07, Lot 19, containing approximately 29,896 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec. 7.3.3, 7.4, 3.4.1 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held 6-0 to November 28, 2017**

Note: Atty. Laurance Lee, 246 Walnut Street, represented petitioners Donald and Linda Stanton. Atty. Lee presented the attached PowerPoint provided an overview of the proposal. The petitioner proposes to preserve the existing historic structure at 336 Newtonville Avenue, moving it 40' forward on the site and constructing a second, attached unit. A second two-family structure would be constructed to the rear of the site. Atty. Lee noted that the lot contains 30,000 sq. ft. and is one of the largest in the neighborhood. Atty. Lee demonstrated the existence of other multi-family structures in the neighborhood including an abutting three-family. The proposed lot area (7,500 sq. ft.), is approximately double what is required in an MR1 zone. While some trees will be removed, many will remain. The petitioner proposes to replace more trees than required. At a community meeting, neighbors expressed concern with regard to screening. Atty. Lee noted that the petitioner plans to install a 6' privacy fence and 30 trees, including 15 evergreens. No parking or setback waivers are required and buildings are lower than the maximum allowable of 36'.

Senior Planner Michael Gleba provided an overview of the project, criteria for consideration. He noted that the Planning memo was incorrect with regard to the height of the proposed structures. The corrections to the proposed elevations are as follows:

1. The relocated and expanded front dwelling (Units 1 and 2) would measure 32.0 feet (not 28.3) in height, below the allowed 36 feet.
2. The proposed rear dwelling (Units 3 and 4) would measure 31.0 (not 28.0) feet in height, also below the allowed 36 feet.

The Public Hearing was Opened.

Kim Young, 330 Newtonville Avenue, is a direct abutter and is against the proposed development. He has concerns about the increased density and noted that he purchased his property because of the open space. He noted that there will be a significant amount of increased foot traffic. He believes the increased activity at the site will be detrimental.

Some Committee members raised concern that development of the site will reduce the amount of open space and have a negative impact on the neighborhood. Committee members asked whether a rear subdivision was considered with a more modest proposal and noted that the unit sizes are large (2,000-2,500 sq. ft.). It was noted that if the petitioner applied for setback relief, they could have maintained more of the open space on the lot. Other Committee members were in agreement that the proposal, which is not the maximum possible for the site; is appropriately dense for the neighborhood and conscious of the neighborhood surroundings. A Committee member noted that the rear portion of the site abuts four garages and it is the petitioner's intent to locate a 6' fence around the property.

Atty. Lee noted that the petitioner made efforts to be particularly conscious of not overloading the site when designing the property. They believe the density is appropriate in the area based on the surrounding lot sizes and prevalence of multi-family structures. Atty. Lee noted that an alternate, by-right proposal could locate two very large units on the lot.

Committee members asked that the Planning Department provide an example of a by-right project that could be located at the site for the continued discussion on November 28, 2017. Councilor Auchincloss motioned to hold the item until November 28, 2017 which carried unanimously.

#305-17 **Special Permit Petition to allow build factor of 28.08 at on Goddard Street**
PITSICK, LLC/JOSHUA SHRIBER/PATIENCE OROBELLO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to redraw lot lines of three existing lots into two irregular shaped lots, creating a higher than allowable build factor of 28.08 where 20 is allowed at an unnumbered lot, 22 & 26 Goddard Street, Ward 8, Newton Highlands, on land known as Section 83, Block 34, Lots 12, 13, 13A containing approximately 15,000 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec. 7.3.3, 7.4, 1.5.6 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 6-0**

Note: Atty. Hugh Starkey, 50 Congress Street, represented petitioners Joshua Shriber and Patience Orobello. Pitsick, LLC. owns property on either side of the co-petitioners. Atty. Starkey noted that the petitioners were ordered by Superior Court to seek a special permit under the same terms as the Special Permit approved in 2015. The Special Permit approved in 2015 was pursuant to a

settlement agreement between the applicant and the neighbors. The petitioner proposes to create two lots out of the three smaller lots and allow an excess build factor; due to odd shaped lots. As part of the project, one new house would be developed, a foundation on the third lot would be demolished and the third lot would be landscaped and returned to open space. It was noted that the proposed house is completed.

Senior Planner Michael Gleba confirmed that the Order is the same but has been updated to reflect the new zoning citations.

The Public Hearing was Opened.

Paul Crowley, 423 Winchester Street, is part of a group of neighbors in support of the project. He noted that the neighborhood is eager to see the removal of the foundation and landscaping on the third lot (111) and believe it will be a benefit to the neighborhood.

Councilor Schwartz motioned to close the public hearing which carried unanimously. Councilor Schwartz motioned to approve the item. Committee members were in agreement that construction should finish as soon as possible, as the property has been a construction site for too long. Atty. Waddick confirmed that the Board Order is the same as the previous order. Mr. Steve Pitrowski of Pitsick, LLC. questioned whether the conditions in the Board Order could be updated to reflect the current conditions of the site. It was noted that although some of the conditions have already been fulfilled, leaving them in the Board Order does not impact the petitioner. Atty. Waddick noted that it might not be appropriate to remove the previously approved conditions. The Chair asked that the petitioners discuss proposed changes with Atty. Waddick. It was requested that if the changes are appropriate, they be incorporated into the Board Order. Committee members voted unanimously in favor of the petition.

#284-17 Request to Rezone three parcels on Langley Road

LANGLEY MONTROSE LLC AND LANGLEY FARLOW LLC petition for a change of zone to MR-3 for land located at 392-396 Langley Road(MR-2; Parcel 1), 400 Langley Road (MR-2; Parcel 2), and 402-404 Langley Road (BU-1; Parcel 3), also identified as Section 65, Block 010, Lots 001, 008, 030.

Action: Land Use Held 6-0 to November 28, 2017

#285-17 Special Permit to allow multi-family on Langley Road

LANGLEY MONTROSE LLC AND LANGLEY FARLOW LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to develop 20,000+ sq. ft. of gross square area by razing the existing two-family at 400 Langley and constructing a three-story, 20-unit multi-family apartment building, legitimize a nonconforming deck and setback at 402-404 Langley Road, a reduction of parking to 1.25 stalls per unit or 83 stalls, parking in the side setback, a waiver of dimensional requirements for parking, a waiver for requirements for end stalls, a waiver for the minimum aisle width, a waiver of perimeter screening and interior landscaping requirements, a waiver for lighting and surfacing requirements and a waiver to allow multi-family dwellings in the MR-3 zone, at 392-396, 400, 402-404

Langley Road, Ward 6, containing approximately 79,636 sq. ft. of land in a district zoned MR-2 and BU-1. Ref: 7.3.3, 7.4, 7.3, 5.1.13, 3.4.1, 4.1.2.B.1, 5.1.4, 5.1.8.A, 5.1.8.B.1, 5.1.8.B.2, 5.1.8.B.6, 5.1.8.C.2, 5.1.9.A, 5.1.9.B, 5.1.10, and 7.8.2.C.2 of the City of Newton Rev Zoning Ord, 2015.

Action: **Land Use Held 6-0 to November 28, 2017**

Note: Atty. Buchbinder, 1200 Walnut Street, presented updates to the Special Permit Petition on Langley Road. After the Public Hearing on October 24, 2017 the petitioner worked with the Planning Department to review their plans. As a result, a revised site plan has been submitted creating a turnaround area for garbage and delivery in the surface parking lot, allowing trucks to turnaround without interfering with traffic on Langley Road. Additionally, 1' has been removed from the standard sized parking stalls at the rear of the site to increase the travel lane. Atty. Buchbinder noted that one handicapped parking stall will be relocated from the existing underground parking garage and will be relocated to the proposed garage. In response to a memo from the Transportation Division that raised concerns about adequate off-site parking, Atty. Buchbinder stated that the off-site parking is more than adequate to service existing and proposed operations.

In response to questions at the October 24, 2017 public hearing, Atty. Buchbinder noted that the level of service for traffic at the intersection of the proposed development is level B and is projected to remain at service level B after the proposed changes. He noted that the development is in keeping with the housing strategy and there are no additional school aged children anticipated as a result of the development. The petitioner has submitted to the Planning Department a method to integrate the design of the proposed buildings with the existing structure, a revised landscape and tree removal plan and a revised garage and photometric plan.

The petitioner has agreed to the following mitigation measures:

- Contribution to a shuttle service (\$5,00/yr. for 10 years); the petitioner will commit the funds even if the shuttle service does not happen.
- Widening of the sidewalk along frontage of the property according to DPW specifications
- Sponsorship of two speed feedback signs for locating on Langley Road
- 3 public bicycle racks
- Participating in safe routes to school
- Undergrounding the utilities at the site (the petitioner would like to underground the utilities at the site but has not received confirmation from the utilities that this is possible)

Ms. Lynn Sweet, LDS Consulting, noted that if a household has an income that rises beyond the affordability threshold, they may stay in the unit and pay market rate. This would require another affordable unit to be made available in the building. Because of this, the size of the unit might change, but will be in the new building and comparable.

It was noted that the petitioner has submitted an initial draft of proposed sustainability measures and will continue to work with the Planning Department and Director of Sustainability prior to November 28, 2017. Committee members asked that the Planning Department evaluate the

possibility of the shuttle service or transit collaboration between developments in the area. Councilor Lipof motioned to hold the item which carried unanimously.

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 6-0 to November 28, 2017**

Note: Without discussion, Committee members postponed discussion of the item until November 28, 2017.

Referred to Land Use and Finance Committees

#122-17

Discussion on fees for Special Permits

COUNCILOR COTE requesting a discussion with the Planning & Development Department regarding the fees charged for Special Permits and what the actual costs are for issuing Special Permits. [04-18-17 @ 12:32 PM]

Action: **Land Use Held 6-0 to November 28, 2017**

Note: Without discussion, Committee members postponed discussion of the item until November 28, 2017.

Referred to Zoning & Planning, Land Use and Finance Committees

#104-15

Qualification of affordable units developed at Comm Ave, Pearl St, and Eddy St

ALD. JOHNSON, LAREDO, AND GENTILE requesting a report from the Planning Department re how many of the affordable units developed at Commonwealth Avenue, Pearl Street, and Eddy Street qualify for inclusion on the State’s Subsidized Housing Inventory List; if a property is not on the list, what can be done to make it eligible. [04/09/15 @ 12:00 PM]

Action: **Land Use Held 6-0 to November 28, 2017**

Note: Without discussion, Committee members postponed discussion of the item until November 28, 2017.

**Respectfully submitted,
Marc C. Laredo, Chair**

Special Permit 336 Newtonville Avenue

Public Hearing – November 14, 2017

Assessors Map



Aerial View



Corner of Newtonville Ave and Harvard St.



Viewing Westerly on Newtonville Ave



Existing House Preserved

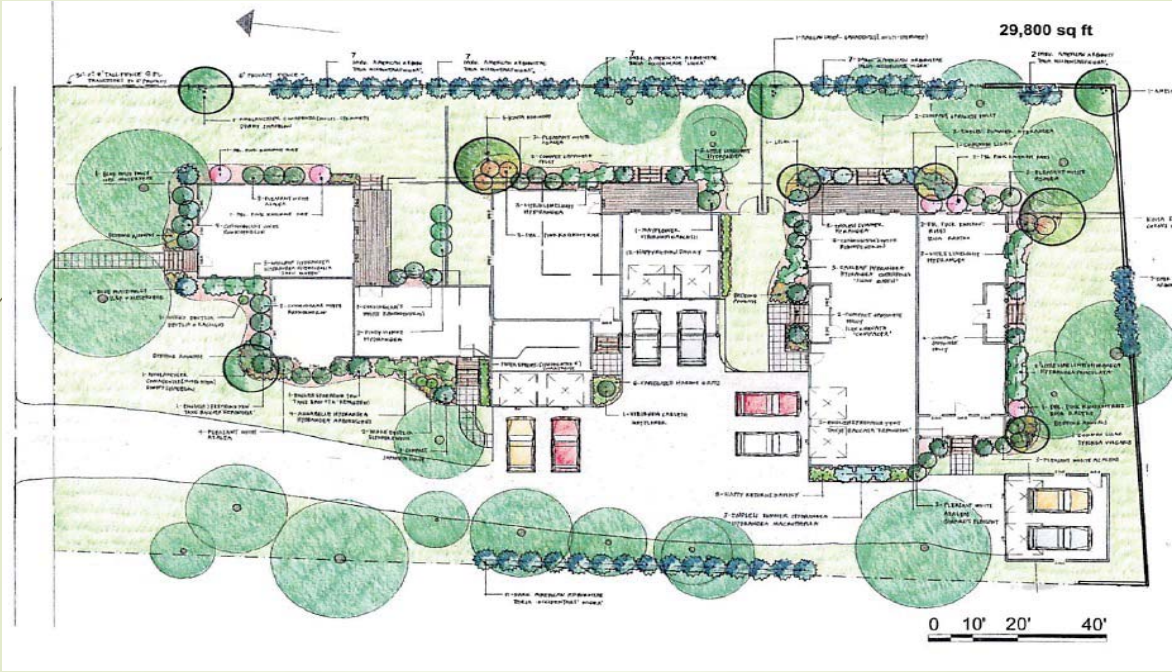
- The design of the units were inspired by the preservation of the façade and character of the existing house.



336 Newtonville Avenue (Rendering)



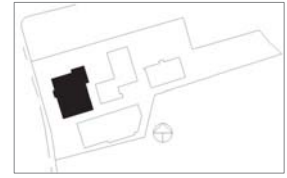
Proposed Landscape Plan



LANGLEY TERRACE

392-404 LANGLEY ROAD, NEWTON, MASSACHUSETTS

REQUEST FOR ZONE CHANGE AND SPECIAL PERMIT



	STUD.	1B1b	2B2b	TOTAL
GARAGE	-	-	-	-
LEVEL 1	2	3	2	7
LEVEL 2	2	3	2	7
LEVEL 3	2	3	1	6
TOTAL	6	9	5	20

	GFA
GARAGE	2899 SF
LEVEL 1	6696 SF
LEVEL 2	6696 SF
LEVEL 3	5608 SF
TOTAL	21899 SF

SITE LOCATION

Schlesinger and Buchbinder, LLP
Attorneys at Law

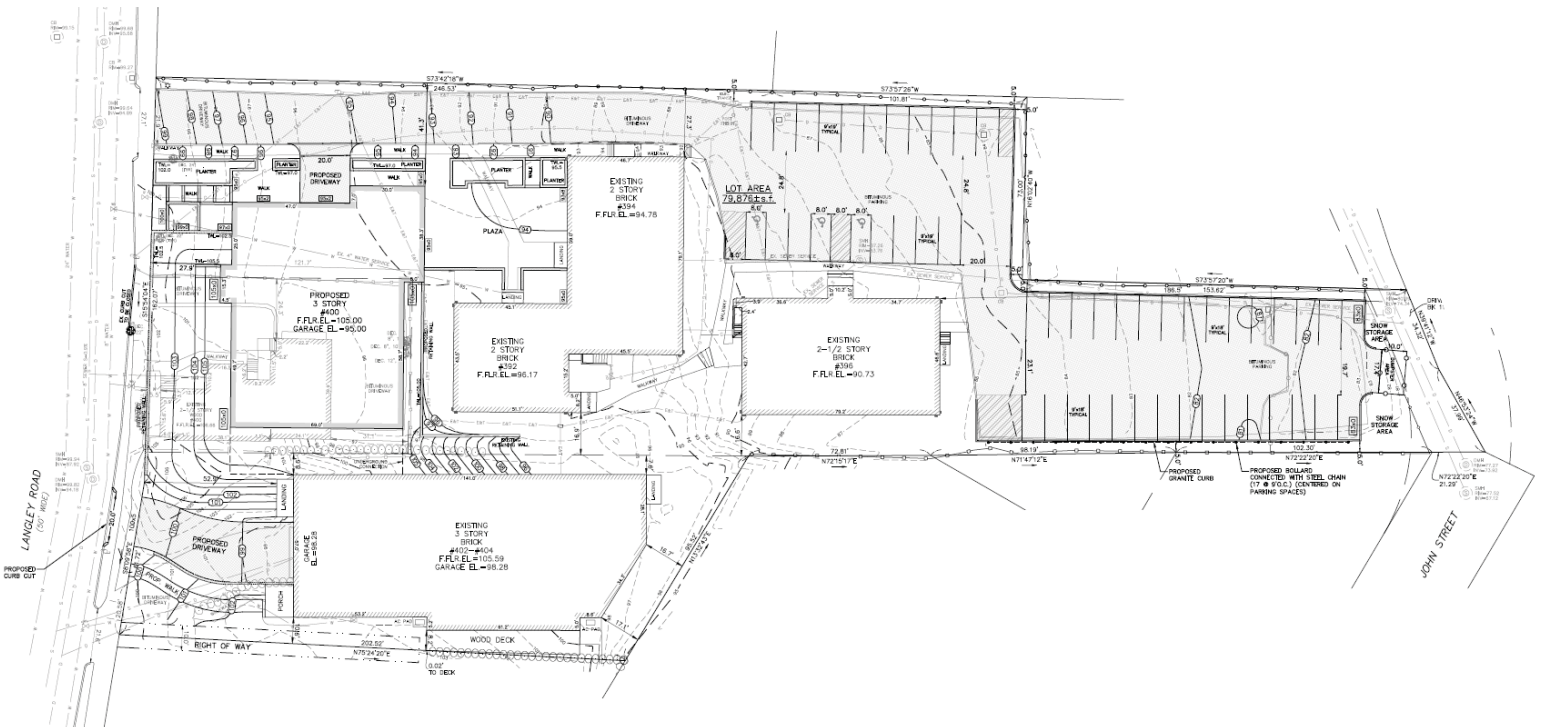
VTP
ASSOCIATES

MICOZZI MANAGEMENT, INC.

G2 Collaborative
LANDSCAPE ARCHITECTURE

OCTOBER 19, 2017

Perkins Eastman



TOPOGRAPHIC SITE PLAN

OCTOBER 19, 2017

Schlesinger and Buchbinder, LLP
Attorneys at Law

VTP
ASSOCIATES

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G2 Collaborative
LANDSCAPE ARCHITECTURE

Perkins Eastman



BIRD'S EYE VIEW FROM NORTHEAST

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G2 Collaborative
LANDSCAPE ARCHITECTURE

OCTOBER 19, 2017

Perkins Eastman