



Land Use Committee Report

City of Newton In City Council

Tuesday, November 28, 2017

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

Also Present: Councilor Albright

Absent: Councilor Lennon

City Staff Present: Deputy City Solicitor Ouida Young, Chief Planner for Current Planning Jennifer Caira, Senior Planner Neil Cronin, Senior Planner Michael Gleba

Request for a Consistency Ruling relative to Special Permit #923-73(2) at 37 Hamlet Street (Houghton Village). Requesting to replace an existing maintenance shed and add \pm 159 sq. ft. of space to extend an existing community room.

Note: Senior Planner Neil Cronin reviewed details of the request for consistency at 37 Hamlet Street (Houghton Village). The Special Permit for fifty attached dwellings and one community room was approved in 1974. In 1989, the Commissioner of Inspectional Services granted the petitioner a consistency ruling to construct a 9x12 tool shed at the rear of the building. The request before the Council is to demolish the shed and rebuild it with a second floor to be used as an extension of existing second floor community space. Mr. Cronin confirmed that the Planning Department has no concerns relative to the petitioner's request. Committee members were in agreement that the request is consistent.

#147-15(3) Request for an Extension of Time to exercise Special Permit #147-15

BSL NEWTON DEVELOPMENT LLC request for an EXTENSION of TIME in which to EXERCISE special permit #147-15, granted on December 8, 2015 to rehabilitate Farwell Hall, construct an addition and grant a parking waiver and associated relief from parking lot requirements at 157 Herrick Road, Ward 6, Newton Centre, said EXTENSION will run from December 8, 2017 to December 8, 2018. Ref: 7.4.5.D, of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Committee Approved 5-0 (Lipof, Harney not Voting)

Note: Attorney Alan Schlesinger presented the request for an extension of time to exercise Special Permit #147-15 granted in December 2015. The change in ownership has taken longer than expected. The petitioner received an extension of time in 2016 and anticipates that the building permit will be issued shortly. In order to eliminate the need to question of what constitutes "exercise" of the special permit, the petitioner is seeking an extension of time. Atty. Schlesinger confirmed that the change of ownership has not impacted plans for the site. A Committee member asked whether there are remaining concerns relative to contamination of the soil next to the site. Atty. Schlesinger noted that the site is uphill of the location of the contamination and it is anticipated that clean-up will be

completed by Eversale by the end of the year. Councilor Schwartz motioned to approve the extension of time which carried unanimously.

#133-17 Request to Rezone five parcels at Northland Site

NORTHLAND OAK STREET, LLC/NORTHLAND TOWER ROAD INVESTORS, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to rezone five parcels at: 156 Oak Street (Parcel 1), 55 Tower Road (Parcel 2), 275-281 Needham Street (Parcel 3), 260 Needham Street (Parcel 4), 160 Charlemont Street (Parcel 5) to BU4 from MU1.

Action: Land Use Committee voted No Action Necessary 6-0 (Harney not Voting)

#134-17 Special Permit to allow non-accessory parking at Northland Site

NORTHLAND OAK STREET, LLC/NORTHLAND TOWER ROAD INVESTORS, LLC petition for SPECIAL PERMIT/SITE PLAN APPROVAL to develop off-site, non-accessory, single-level parking on the parcel at 55 Tower Road (Parcel 2) to serve the existing office building at 156 Oak Street (Parcel 1), requiring a waiver of 84 parking stalls, a waiver to allow non-accessory parking on a lot separate from the principal use, waivers to allow parking within setbacks, waivers to dimensional requirements for parking stalls, waivers to the maximum width for entrance and exit drives, waivers for perimeter screening requirements for parking facilities, a waiver to interior landscaping requirements for parking facilities, waivers to lighting requirements for parking facilities, and waivers to the requirement for curbing, wheel stops, guard rails, and bollards at 156 Oak Street and 55 Tower Road, Ward 5, on land known as Section 5 Block 51 Lot 0005 containing approximately 237,832 sq. ft. and Section 5 Block 28 and Lot 0005A containing approximately 483,583 sq. ft. of land in a district zoned MU1. Ref: 7.3.3, 7.4, 5.1.4, 5.1.13, 5.1.6.A, 5.1.6.B, 4.4.1, 5.1.8.A.1, 5.1.8.B, 5.1.8.D.2, 5.1.9.A, 5.1.9.B, 5.1.10.A.1, 5.1.10.B.5 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Committee Approved Withdrawal Without Prejudice 6-0 (Harney not Voting)

Note: Atty. Schlesinger presented the request to withdraw the Special Permit petition for accessory parking at the Northland site. He stated that the petitioner will seek Council approval in 2018 for the extension of a nonconforming use for the parking lot. He noted that the City's Planning Department and Administration have been working on a Vision Plan for all of Needham Street. Atty. Schlesinger confirmed that he expects that the Vision Plan will impact the design of the development to be proposed on Needham and Oak Streets. He noted that the petitioner will not file the Special Permit Petition until after the Vision Plan. Councilor Crossley motioned No Action Necessary on the request to rezone the parcel which carried unanimously. Councilor Crossley moved approval of the withdrawal without prejudice and Committee members voted unanimously in favor.

Chief for Current Planning Jennifer Caira stated that the Planning Department has begun a comprehensive community engagement process that will help influence the Vision Plan. It is expected that the Vision Plan can be used as a tool that will help guide future Land Use actions for the Needham Street Corridor as well as adopted as part of the Comprehensive Plan. The Planning Department has been working to identify stakeholders and has established a distribution list. It is expected that the

meetings will begin on December 11, 2017 and continue through April. It is the intent to bring the Vision Plan for Council approval in May.

#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: **Land Use Approved 6-0 (Harney not Voting); Public Hearing Closed 11/14/2017**

Note: At the Council meeting on November 20, Councilors raised concerns with regard to the appropriateness of approving the third unit at 69-71 Cherry Street. The item was recommitted to Land Use to resolve open questions from Councilors. Atty. Michael Peirce submitted the attached summary of the petition. The Land Use Committee must find that a third unit is not substantially more detrimental than the existing two-family.

Committee members asked Atty. Peirce to detail how legalization of the existing third unit will provide a benefit to the City. Atty. Peirce noted that the third unit is less than 1000 sq. ft. and provides an additional housing opportunity. As of right, the petitioner could consolidate the second and third unit, creating one large unit and rent the unit to four tenants. It was noted that the property is taxed as a three unit dwelling. Atty. Peirce confirmed that legalizing the third unit will require the petitioner to make minor modifications to the dwelling, making it code complaint. Senior Planner Neil Cronin confirmed that if the building was owner occupied, the apartment would not qualify as an accessory apartment because it is too large. He noted that with interior modifications to modestly reduce the size, it could qualify as an accessory apartment. It was stated that the legally nonconforming two-family could be demolished in the same footprint. A larger two-family would require a Special Permit to find that it is not substantially more detrimental.

Councilors expressed concerns relative to the police reports from tenants at the site. Atty. Peirce stated that the Police Department had three complaints filed. Two of the complaints were generated by a tenant who is no longer at the site and the third report was generated by an abutter. Atty. Peirce noted that the petitioner is willing to provide contact information to neighbors for the property manager in the event that there are issues. A Committee member noted that controlling operations is not a justifiable rationale for opposing the permit as tenancy is not a land use matter. Committee members asked that the Law Department provide direction relative to what the Committee should/should not consider. Atty. Ouida Young provided the following note: The Committee is cognizant of land use principles which call for special permit petitions to be considered on the merits of the land use being proposed without consideration of prior zoning violations. Councilor Cote expressed support for the petition and moved approval. Committee members voted unanimously in favor.

#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 Approved 4-1-2 (Auchincloss Opposed, Schwartz, Laredo abstaining) Public Hearing Closed 11/28/2017

Note: Attorney Laurance Lee presented updates to the Special Permit petition at 336 Newtonville Ave. The proposed plan includes the preservation of the existing historic home, relocating it 40' forward on the site and the construction of one attached unit and a second structure with two units. At the public hearing on November 14, 2017, Committee members expressed concerns relative to whether the density of the proposed development is in line with the neighborhood context. Atty. Lee provided a comparison of the proposed special permit with what would be allowed as of right, as requested by the Committee and noted that the petitioner was cognizant of not building to the maximum limits when designing the project.

Committee members asked to what extent the house will be preserved. Project Architect Mark Sangiolo noted that he has moved three dwellings and he is confident after examining the structure that the house can be easily moved. He noted that it is the developer's intent to preserve the trim and architectural details. He noted that the siding, roofing, windows, foundation and shingles will be removed and replaced and emphasized that the character will be retained. Atty. Lee noted that there is now a written protocol dealing with circumstances that have arisen related to preservation. They have clear expectations related to preservation of the house. Some Committee members were in agreement that a clear protocol for preservation is necessary but noted that sometimes site conditions require changes to the plan. Mr. Sangiolo confirmed that materials will be replaced in kind.

Atty. Lee noted that during the special permit process, the petitioner has changed. Committee members questioned whether the new petitioner would have to return to the Historic Commission. Atty. Young confirmed that the petitioner would have to begin the demolition delay process again, prior to any demolition.

Public Comment

Mark Susser, 40 Harvard Street, noted that the developer has not tried to contact him regarding the plans. He has concerns about the increased density and traffic at the site. He stated that there are a few abutters who are not in favor of the proposed plans.

Kim Young, 330 Newtonville Avenue, reiterated his concerns about the preservation of open space and the increased density at the site. He noted that there will be an increase in cars and visitors to the site and he has concerns about the impact on traffic. Mr. Young believes that the request is excessive.

Carl Kessner, 129 Norwood Avenue, noted that drivers use Newtonville Ave as a speedway. Mr. Kessner has concerns about the increased traffic and the changing character of the neighborhood.

Patricia Knox, 32 Harvard Street, hopes to be able to maintain the green space and character in the neighborhood and has concerns about the increased density and traffic.

Carrie Loftus, 324 Newtonville Avenue, has concerns about the impact of the reduced green space on the streetscape. Ms. Loftus noted that the by-right option may be a less beneficial option to the neighborhood and will provide no guarantees of preservation of the historic house.

Senior Planner Michael Gleba reviewed the by-right alternatives as follows:

Detached single-family or two-family dwelling:

(Several other uses, subject to listed conditions and/or administrative site plan review, including: dormitories for 20 or more residents, schools, public uses, and religious institutions.)

Dimensional requirements:

- Floor area ratio (FAR) - 0.38 (11,300 square feet of floor area in one or two units)
- Front, side and rear setbacks of 25 ft., 7.5 ft. and 15 ft., respectively (Proposed- 33.5, 25.5 and 25.5 feet)
- Height- 2 ½ stories; 36 ft. high sloped roof, 30 ft. flat roof (Proposed- 32 and 31 ft. high peaked roofs)
- Lot Coverage; 30% (more than the 25% allowed by special permit and/or proposed 22.9%)
- Open Space- 50% (Proposed- 58.8%)

Mr. Gleba confirmed that as of right, a larger single family or a large attached two-family could be built on the lot. While there could not be two separate structures, a Committee member noted that a two-family could be built attached only by a garage and appearing as two structures. The petitioner could demolish the existing structure and build a two family dwelling on the parcel, building a large two-family, 7.5' from the lot line. A Committee member noted that what is allowed by-right is larger and eliminates more open space than the proposal. Atty. Lee confirmed that the proposed development is 2,200 sq. ft. less than what could be built at the site as of right.

Some Councilors noted that granting of the special permit is also approval of the site plan and would prohibit greater reductions to the open space and preserve the historic house. Councilor Lipof motioned to close the public hearing which carried unanimously. Councilor Lipof moved approval of the Special Permit. A Committee member explained that while Councilors have concerns, the Committee must make a decision under the understanding of what can be built at the site. It was reiterated that approval of the special permit provides more control than allowing the developer to build by right. Additionally, although the City is working on zoning redesign; interim decisions can be difficult. Committee members reviewed the draft findings and conditions. Councilor Lipof's motion to approve carried 4-1-2, Councilor Auchincloss opposed and abstentions from Councilors Schwartz and Laredo.

#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 Approved 6-0 (Schwartz not Voting); Public Hearing Closed 11/28/2017

#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 Approved 7-0 (Schwartz not Voting); Public Hearing Closed 11/28/2017

Note: Atty. Buchbinder represented the petitioner and responded to questions from Committee members. The petitioner had indicated strong interest in burying utility lines onsite and on the property frontage at Langley Road. Petitioner Mr. Micozzi noted that he has spoken to the utility company and is not confident that they are willing to cooperate. In lieu of burying the utilities, the petitioner proposes a payment of \$25,000 to be used at the City's discretion for beautification. Committee members noted that the City's Engineering Department may be able to facilitate a discussion with the appropriate contacts at the utility companies. Committee members asked how the petitioner generated the sum of \$25,000 as payment in lieu of burying the utility lines. Atty. Buchbinder noted that the number was ¼ of what the petitioner expected to spend burying utility lines at the site. Councilors asked the Planning Department to consider creating a formula that will help guide the Committee and petitioners with respect to contribution of funds. Committee members discussed whether the petitioner would be willing to pay the \$100,000 within a five year time frame if the opportunity was available. Atty. Buchbinder confirmed that the petitioner would be willing to pay for burying of the utilities within a five year period, in lieu of the \$25,000 payment. The Committee ultimately decided to take the \$25,000 contribution for beautification.

With no member of the public wishing to speak, Councilor Auchincloss motioned to close the public hearing on items #284-17 and #285-17, both which carried unanimously. Councilor Auchincloss motioned to approve the request to rezone three parcels on Langley Road which carried unanimously.

Councilor Auchincloss motioned to approve the special permit. Committee members reviewed the draft findings and conditions and made the following comments on the attached draft Board order:

Draft Findings

5. A Committee member noted that the petitioner's architect Perkins Eastman submitted a memo on November 14, 2017 relative to the sustainable strategies that they are committed to implementing in addition to the analysis of additional measures. It was requested that the findings and conditions reference the petitioner's document to reflect their document. Atty. Young confirmed that the document can be referenced in the Board Order as long as it is clearly identified. It was noted that the petitioner's memo needs additional clarity. Committee members discussed whether it might be easier to include the details of the memo in the findings rather than ask the petitioner to revise the memo. The Committee asked that Atty. Buchbinder provide the revised memo for distribution to Councilors on Friday.

6. Committee members asked if the parking calculations on site were sufficient. VHB Traffic Consultant Randy Hart confirmed that the on-site and street parking are adequate.

Conditions

2. Revise to read that the affordable units will be in the proposed *new* multi-family structure.

6. Reword to read: shall meet with appropriate local school and local officials regarding safe routes to school program.

Committee members asked that the Planning Department add additional details.

8. It was noted that the \$5,000/yr. for ten years as committed by the petitioner was offered.

12. Committee members asked that the Law Department and Planning Department work to incorporate references to the Perkins Eastman Memo dated November 14, 2017.

14. Mr. Cronin confirmed that he would reference prior Board Orders to determine if a condition is necessary relative to trash pickup times.

Committee members voted unanimously in favor of the petition.

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 Voted No Action Necessary 7-0

Note: Councilor Cote stated that the item to extend the notification area for Special Permit petitions was filed in an effort to address concerns with transparency. Residents claimed that they did not receive notice and the Committee was holding the public hearing longer in order to accommodate additional public comment. Atty. Young stated that sending a notice to residents beyond 300 – 600 ft. would not give those residents legal standing as parties of interest. She noted that currently, the Clerk's office notifies all residents within 300', sometimes resulting in over notice. In the situation of the Newtonville Ave storage facility lawsuit, two plaintiffs were residents that were over noticed and believed that they had legal rights. Committee members questioned whether the petitioner can be asked to notify residents beyond 300'. It was noted that the Planning Department currently urges petitioners to do neighborhood outreach before filing. One Committee member suggested that the City could use CoUrbanize to send alerts to residents in the area. Committee members were in agreement that the City can explore options to increase notification without formal notification and the item can be refiled 2018, if necessary. Councilor Cote moved No Action Necessary on the item which carried unanimously.

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 Voted No Action Necessary 7-0

Note: Councilor Cote noted that the fees seem low when considering the staff time that will be used to work on the project. It was suggested that the Committee NAN the item and docket a new item in 2018. Councilor Cote motioned to NAN the item which carried unanimously.

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 Voted No Action Necessary 7-0

Note: Ms. Cairra updated the Committee and noted that the units at Comm Ave, Pearl Street and Eddy Street cannot be added to the SHI because they were not properly marketed at the appropriate time. Ms. Cairra noted that as the units turnover, if the City follows DHCD guidelines for

lottery and processing, the units can be added. Ms. Caira confirmed that MetroWest and CAN-DO are aware of the units and will include them as the units turnover.

The Committee adjourned at 9:50 pm.

Respectfully submitted,
Marc C. Laredo, Chair

#228-17 69-71 Cherry Street Cappadona Cherry Group

Request: special permit to alter/modify existing legal nonconforming 2-family use/building into 3-family

Standard: requires finding that: “such change, extension or alteration **shall not be substantially more detrimental** than the existing nonconforming use to the neighborhood.” [known as a §6 finding]

Zoning: entire neighborhood changed from Multi-residence to Single residence 3 on June 25, 1962

Site History:

- house constructed in approximately 1900;
- converted to 2-family via building permit 10-26-1959;
- purchased by Cappadona family 4-27-60 (57 years in Cappadona family);
- became legal nonconforming with zone change in 1962;
- for informational purposes third floor converted to unit in approximately 1960/61;*
- the Cappadona family also has owned the abutting property at 63 Cherry Street since 1973;

Grounds for making §6 finding that ‘creating’ a third floor unit is not substantially more detrimental than the existing 2-family to the neighborhood:

- streetscape remains unchanged;
- no increase in existing building;
- ample parking (enclosed and at grade), therefore no increase in pavement;
- 3rd unit is 990 sq. ft., therefore promotes diversity in housing stock (note that 2nd floor and 3rd floor would be one 2,000 sq. ft. apartment);
- largest lot (23,500 sq. ft.) in immediate neighborhood/larger than next largest lot by 9,000 sq. ft. (which is a larger area than the neighborhood average of approximately 7,300 sq. ft.);
- access on to Cherry Street, an extremely high volume connector, therefore no measurable traffic impact;
- house substantial distance from virtually every neighboring house.
- house screened by mature plantings in back yards of many abutting houses.

CITY OF NEWTON

IN CITY COUNCIL

ORDERED:

That the 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 a SPECIAL PERMIT/SITE PLAN APPROVAL to construct a 21,899 square foot, 20-unit multi-family structure of three stories and 34.41 feet in height, reduce the parking requirement from two to 1.25 stalls per unit, allow parking within the side setback, allow waivers to the requirements of parking facilities containing more than five stalls, and the extension of a nonconforming side setback, as recommended by the Land Use Committee for the reasons given by the Committee through its Chairman, Councilor Marc Laredo:

- 1) The site is an appropriate location for the building as designed, given the neighborhood's mix of residential and commercial land uses and structures of varying scales and heights, as a transitional use along Langley Road from Route 9 as well as the commercial uses to the south and the residential uses to the north (§4.3.2.B.1; §4.3.3 and §7.3.3.C.1).
- 2) The proposed project as designed, developed, and operated will not adversely affect the neighborhood as the petitioner submitted studies indicating the project will not affect vehicular traffic in the area and the petitioner has agreed to implement measures to encourage alternative modes of transportation not only for residents of the site but throughout the corridor too (§7.3.3.C.2).
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians as the main entrance to the development will not increase the number of access points to the site and the sidewalks along the frontage of the property will be widened, thereby improving the pedestrian experience (§7.3.3.C.3).
- 4) Access to the site over streets is appropriate for the types and numbers of vehicles involved due to the site's proximity to Route 9 and Newton Centre (§7.3.3.C.4).
- 5) The site planning, building design, construction, maintenance or long-term operation of the premises will contribute significantly to the efficient use and conservation of natural resources and energy. The petitioner has committed to designing a building envelope in excess of the State Building Code requirements, complemented with drought tolerant species. In addition, the petitioner has committed to studying the feasibility and return

on investment of a number of other sustainability initiatives which will be provided to the Director of Planning and Development and Co-Director of Sustainability prior to the issuance of a building permit (§7.3.3.C.5).

- 6) Exceptions to the parking requirements, including reducing the number of stalls from two per unit to 1.25 per unit, to locate parking within a setback, to waive the screening, interior landscaping, and lighting as well as surfacing requirements, and the dimensional and design controls for parking facilities containing more than five stalls are in the public interest or in the interest of safety, or protection of environmental features for the following reasons:
- a. The unit mix of studio, one-bedroom, and two-bedroom apartments along with the approximately 772 square foot average size of the units will likely attract tenants who have only one automobile per unit and or use alternative methods of transportation, making a parking waiver appropriate at this site. Covered bicycle parking will also be provided to encourage bike use.
 - b. The location of parking within property boundary setbacks makes for the most efficient layout of the parking lot and helps to maximize the number of stalls that will be available.
 - c. Existing fencing will be replaced and complemented with landscaping to screen the surface parking facility from abutting properties. Additionally, lighting will be minimized to not trespass onto neighboring properties while still lighting the facility to ensure safety.
 - d. Literal compliance with the dimensional parking requirements is impracticable due to the existing conditions and the development patterns on the subject property.

PETITION NUMBER: #285-17

PETITIONER: Langley Montrose LLC and Langley Farlow LLC

ADDRESS OF PETITIONER: 159 Cambridge Street
Allston, MA 02134

LOCATION: 392-396, 400, and 402-404 Langley Road

OWNER: Langley Montrose LLC and Langley Farlow LLC

ADDRESS OF OWNER: 159 Cambridge Street
Allston, MA 02134

TO BE USED FOR: Multi-Family Development

EXPLANATORY NOTES: Special permits per §7.3.3: To allow a 20-unit multi-family structure (§3.4.1); To allow a development in excess of 20,000 square feet of gross floor area (§4.1.2.B.1); To legalize a nonconforming side setback per MGL 40A § 7 (§3.4.1 and §7.8.2.C.2); To reduce the parking requirement to 1.25 stalls per unit (§5.1.4 and §5.1.13); To allow parking in the side setback (§5.1.8.A and §5.1.13); To waive the parking stall dimensional requirements (§5.1.8.B.1, §5.1.8.B.2, and §5.1.13); To waive the requirement for end parking stalls (§5.1.8.B.6 and §5.1.13); To waive the minimum aisle width (§5.1.8.C.2 and §5.1.13); To waive the perimeter screening requirements of parking facilities containing more than five stalls (§5.1.9.A and §5.1.13); To waive the interior landscaping requirements of parking facilities containing more than five stalls (§5.1.9.B and §5.1.13); To waive the lighting and surfacing requirements of parking facilities containing more than five stalls (§5.1.10 and §5.1.13);

ZONING: Multi Residence 3

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/Civil plans, prepared by VTP Associates, , signed and stamped by Joseph R. Porter, Professional Land Surveyor, consisting of the following six (6) sheets:
 - Topographic Site Plan, dated October 19, 2017, revised November 1, 2017 and November 13, 2017
 - Parking Plan, dated September 22, 2017, revised October 5, 2017, October 19, 2017, November 1, 2017, and November 13, 2017
 - Vehicle Path Plan, dated November 1, 2017, revised November 13, 2017
 - Grading, Drainage, and Utility Plan, dated September 21, 2017, revised October 5, 2017, October 19, 2017, November 1, 2017, and November 13, 2017
 - Detail-1, dated September 22, 2017, revised November 1, 2017
 - Detail-2, dated September 22, 2017
 - b. Architectural Plans entitled, “Langley Terrace 392-404 Langley Road Newton Massachusetts, prepared by Perkins Eastman, consisting of the following six (6) sheets:

- I. AD-10: 402-404 Garage Plan, dated November 10, 2017
 - II. A-00 Langley Terrace Garage Plan, dated November 10, 2017
 - III. A-01 First Floor Plan, dated September 8, 2017
 - IV. A-02 Second Floor Plan, dated September 8, 2017
 - V. A-03 Third Floor Plan, dated September 8, 2017
 - VI. A-04 Roof Plan, dated September 8, 2017
- c. Landscape Plans entitled, "Langley Terrace 392-404 Langley Road Newton, Massachusetts, signed and stamped by Elizabeth Giersbach, Registered Landscape Architect, consisting of three (3) sheets:
- i. L-000 Tree Removal Plan, dated October 30, 2017
 - ii. L-100 Landscape Plan, dated September 8, 2017 revised October 30, 2017
 - iii. L-101 Planting Plan, dated September 8, 2017 revised October 30, 2017
2. In accordance with the City's Inclusionary Zoning Ordinance (§5.11.4), four (4) of the residential units in the proposed multi-family structure shall be made available to households earning up to 80% of Area Median Income (AMI), as designated by the U.S. Department of Housing and Urban Development, adjusted for household size. As proposed in the Preliminary Inclusionary Housing Plan, two (2) of these units shall be made available to households earning up to 80% AMI, and two (2) of these units shall be made available to households earning up to 50% AMI. Monthly housing costs (inclusive of heat, hot water, electricity, water and sewer, and one parking space) shall not exceed 30% of the applicable monthly income limit for that unit. 70% of the Inclusionary Units shall be designated as Local Preference units, as permitted and defined by the Massachusetts Department of Housing and Community Development (DHCD).
3. To the extent permitted by applicable regulations of DHCD, the Inclusionary Units shall be eligible for inclusion on the State's Subsidized Housing Inventory (SHI) as Local Action Units through DHCD's Local Initiative Program. Prior to the issuance of any building permits for the construction of the Project, the Petitioner, City, and DHCD will enter into a Regulatory Agreement and Declaration of Restrictive Covenants, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
4. Prior to the issuance of any building permits for the construction of the Project, the Petitioner shall provide a final Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan for review and approval by the Director of Planning and Development. The Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan must meet the requirements of DHCD's guidelines for Affirmative Fair Housing Marketing and Resident Selection and be consistent with §5.11.9. of the Newton Zoning Ordinance. The Inclusionary Housing Plan and Affirmative Marketing and Resident Selection Plan should treat the units the same with respect to Affirmative Marketing and advancing Fair Housing in Newton. In accordance with DHCD's current guidelines, the units will be affirmatively marketed and leased through a lottery.

5. The petitioner shall comply with the City's Tree Preservation Ordinance.
6. The petitioner shall meet with local as well as State representatives regarding efforts to participate in the "Safe Routes to School Program" for the Bowen Elementary School.
7. Prior to the issuance of a Building Permit, the petitioner shall provide a final plan signed and stamped by an professional land surveyor or professional engineer detailing the width of the sidewalks along the Project's frontage after consultation with the Director of Planning and Development and Commissioner of Public Works. If necessary, the petitioner shall enter into an agreement with the City, under the purview of the Law Department, regarding the future maintenance of said sidewalks.
8. Prior to the issuance of a building permit, the petitioner shall commit to providing \$5,000 a year for a period of not more than ten years for the initiation and ongoing operations of a shuttle serving the project site. Said payments shall be made on or before February 1st of each year, commencing February 1, 2018, but may be prepaid in whole or in part by the petitioner at any time. In the event a shuttle is infeasible, the funds may be used by the City for any transportation measures in the area which are deemed to affect the Project.
9. Prior to the issuance of any building permit, the petitioner shall pay the sum of \$12,000 for the cost and installation by the City of two speed feedback display signs on Langley Road. The petitioner shall have no obligation regarding the ongoing maintenance or repair of said speed feedback display signs.
10. Prior to the issuance of any building permit, the petitioner shall pay for not more than three public bicycle racks, at a cost of \$600 each, which bicycle racks shall be installed and maintained by the City. One of the bicycle racks shall be located on the Langley Road frontage of the project at a location acceptable to the petitioner and the Director of Transportation.
11. Prior to the issuance of any Building Permit, the petitioner shall provide a final plan showing the combination of the three lots to the Engineering Division of Public Works for review and approval. Once approved, the Plan must be recorded at the Middlesex Registry of Deeds. A certified copy of the Plan shall be submitted to the Engineering Division of Public Works.
12. Prior to the issuance of any building permit, the petitioner shall submit final design and construction documents and a memorandum outlining how the Project will contribute significantly to the efficient use and conservation of energy and natural resources for review and approval to the Director of Planning and Development and Co-Director of Sustainability.
13. All new residential units will conform to the Massachusetts Architectural Access Board (MAAB) requirements for "Group 1" units. In addition, per MAAB guidelines, 5% of the new units shall be designed as "Group 2A" units, which are designed spatially for immediate wheelchair use. The design and construction of the site and proposed structure shall comply with Massachusetts Architectural Access Board regulations and the Fair Housing Act.

14. The trash and recycling disposal shall be handled by a private entity and collection shall be scheduled at such times to minimize any disruption of the on-site parking.
15. All on-site landscaping associated with this Special Permit/Site Plan Approval shall be installed and maintained in good condition. Any plant material that becomes diseased or dies shall be replaced on an annual basis with similar material.
16. All construction activity shall be limited to 7AM-6PM Monday through Friday and 8AM-5PM on Saturdays excluding holidays, unless extended or restricted by the Commissioner of Inspectional Services or the Commissioner of Public Works.
17. At the Petitioner's sole expense, the Petitioner shall use best efforts to locate all utility service lines on site underground, including any utility service lines along the Project's frontage on Langley Road, subject to necessary approvals from the utility companies. In the event undergrounding utilities is infeasible, the petitioner shall consult with the Director of Planning and Development, Director of Transportation, and City Solicitor to determine the level of funding for any streetscape improvements in the area from which the Project may benefit, but which in no event shall exceed \$25,000. Said funds may also be eligible for an improvement associated with the Safe Routes to School Program for the Bowen Elementary School.
18. 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 (O&M) for stormwater management to the Engineering Division of Public Works for review and approval. Once approved, the O&M must be adopted by applicant and recorded at the Middlesex South District Registry of Deeds herewith. A certified copy of the O&M shall be submitted to the Engineering Division of Public Works.
19. Prior to the issuance of any Building Permit pursuant to this Special Permit/Site Plan Approval, the petitioner shall provide a Final Site Plan for review and approval by the Department of Planning and Development, Engineering Division of Public Works and Fire Department.
20. Prior to the issuance of any building permit pursuant to this Special Permit/Site Plan Approval the petitioner shall submit a Construction Management Plan (CMP) for review and approval by the Commissioner of Inspectional Services, the Director of Planning and Development, and the City Engineer. The Construction Management Plan shall be consistent 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 of the project.
 - b. Hours of construction: construction shall be limited to between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, and between the hours of 8:00 a.m. and 5:00 p.m. on Saturdays. No construction is permitted on Sundays or holidays except in emergencies, and only with prior approval from the Commissioner of Inspectional Services. The petitioner shall consider local traffic and pedestrian activity relating to the nearby public school in determining hours and routes for construction vehicles.

- c. The proposed schedule of the project, including the general phasing of the construction activities and anticipated completion dates and milestones.
 - d. 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 and delivery vehicles, and location of any security fencing.
 - e. Proposed methods for dust control including, but not limited to: 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 City of Newton's Ordinances. 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 for protection of any existing trees to remain on the site.
 - h. A plan for rodent control during construction.
 - i. The CMP shall also address the following:
 - safety precautions;
 - anticipated dewatering during construction;
 - site safety and stability;
 - impacts on abutting properties.
21. The Petitioner shall be responsible for securing and paying for any and all police details that may be necessary for traffic control throughout the construction process as required by the Police Chief.
22. No building permit for the construction of the Project shall be issued pursuant to this Special Permit/Site Plan approval until the Petitioner has:
- a. Recorded a certified copy of this Council order with the Registry of Deeds for the Southern District of Middlesex County.
 - b. Filed a copy of such recorded Council order with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development.
 - c. Obtained a written statement from the Department of Planning and Development that confirms the final building permit plans and façade elevations are consistent with plans approved in Condition #1.
 - d. Submitted a final Inclusionary Housing Plan for review and approval by the Director of Planning and Development that is certified as compliant by the Director of Planning and Development with the information required to be included in such Plan pursuant to §5.11.9. of the Zoning Ordinance.

- e. Submitted final engineering, utility, and drainage plans, and an Operations and Maintenance plan for Stormwater Management, for review and approval by the City Engineer. A statement certifying such approval shall have been filed with the City Clerk, the Commissioner of Inspectional Services, and the Director of Planning and Development.
 - f. Submitted a final plan of land, recorded at the Middlesex Registry of Deeds, to the Engineering Division of Public Works in accordance with Condition #6.
 - g. Submitted a final Construction Management Plan (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, the City Engineer, and the Director of Transportation.
 - h. Entered into a Regulatory Agreement and Declaration of Restrictive Covenants for each of the Inclusionary Units with the City of Newton and the Department of Housing and Community Development, in a form approved by the Law Department, which will establish the affordability restriction for the Inclusionary Units in perpetuity.
 - i. Make the payments to the city required under Conditions #8 and #9.
 - j. Submitted the final design and construction documents and memorandum outlining how the Project will contribute significantly to the efficient use and conservation of energy and natural resources to the Director of Planning and Development and Co-Director of Sustainability as required by Condition #11.
23. The Petitioner shall be responsible for repairing any and all damage to public ways and property caused by any construction vehicles. All repair work shall be done prior to the issuance of a final Certificate of Occupancy, unless the Commissioner of Public Works determines that the damage to the public way is so extensive that it limits the use of the public way. In such case the repair work must be initiated within one month of the Commissioner making such determination and shall be conducted consistent with City Construction Standards, and shall be completed within an appropriate time frame, as determined by the Commissioner.
24. No final occupancy permit for the use covered by this Special Permit/Site Plan approval shall be issued until the Petitioner has:
- a. Filed with the City Clerk, the Department of Inspectional Services, and the Department of Planning and Development a statement by a registered architect and civil engineer certifying compliance with Condition 1.
 - b. Submitted to the Department of Inspectional Services, the Department of Planning and Development, and the Engineering Division final as-built survey plans in paper and digital format.
 - c. Filed with the Department of Inspectional Services and the Department of Planning and Development a statement by the City Engineer certifying that all engineering

details for the project site have been constructed to standards of the City of Newton Public Works Department.

- d. 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, final landscape features, fencing, and parking areas.
- e. Provided evidence satisfactory to the Law Department that the Regulatory Agreement and Declaration of Restrictive Covenants for all Deed Restricted Units have been recorded at the Southern Middlesex District Registry of Deeds and/or Southern Middlesex Land Court, as appropriate.
- f. Deed Restricted Units shall be constructed and available for occupancy coincident with market rate units such that no more than three market rate units may receive occupancy permits until the corresponding affordable unit has received its occupancy permit.
- g. The Commissioner of Inspectional Services may issue one or more certificates of temporary occupancy for portions of the buildings, prior to installation of required on-site landscaping/ exterior hardscape improvements required per the approved plans. Prior, however, to issuance of any temporary certificate of occupancy pursuant to this condition, the Commissioner of Inspectional Services shall require that the Petitioner first file a bond, letter of credit, cash or other security in the form satisfactory to the Law Department in an amount not less than 135% of the value of the aforementioned remaining improvements.