



Land Use Committee Agenda

City of Newton

In City Council

Tuesday, August 9, 2016

7:00 PM
Chamber

Request for a Consistency Ruling Relative to #416-12(3) 244 Commonwealth Avenue (Modern Barre).
Requesting a change in the ratio of staff to customers.

#260-16 Special Permit Petition to exceed FAR at 11 Scarsdale Road
PHOEBE AND ED OLHAVA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to EXCEED FAR by building a two story rear addition, single story rear addition and deck, creating an FAR of .43 where .40 is allowed at 11 Scarsdale Road, Ward 2, Newtonville, on land known as SBL 24029 0015, containing approximately 8,480 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

#259-16 Special Permit Petition to increase nonconforming rear setback at 6 Glastonbury Oval
LISA AND ANDREW SILVERMAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER EXTEND NONCONFORMING USE by adding a second story to a rear addition and constructing a two story rear addition increasing the already nonconforming rear setback at 6 Glastonbury Oval, Ward 5, Waban, on land known as SBL 44023 0006, containing approximately 7,017 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref. 7.3.3, 7.4, 3.1.4, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

#215-16(2) Special Permit Petition to construct parking stalls and retaining wall at Dunn Gaherin's
SEANA GAHERIN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct six parking stalls in a side setback, waive aisle width requirements, waive screening requirements, waive security lighting requirements and allow a retaining wall greater than 4', modifying special permit #501-94(2) at 342, 342A, 344-346 Elliot Street, Ward 5, Newton Upper Falls, on land known as SBL 51041 0010, 51041 0011, 51041 0012, containing approximately 9,676 sq. ft. of land in a district zoned BUSINESS 1. Ref: 7.3.3, 7.4, 5.1.8.A.1, 5.1.13, 5.1.8.C.1, 5.1.9.A.1, 5.1.10.A, 5.4.2.B of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Chairs Note: The Committee will discuss how to improve the Special Permit process and enforcement by Inspectional Services.

Respectfully submitted,
Marc C. Laredo, Chair

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting:* jfairley@newtonma.gov, or 617-796-1253. For Telecommunications Relay Service dial 711.

RECEIVED
Newton City Clerk

Terrence P. Morris, Esq.

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JUL 26 AM 10:14

David A. Olson, CMC
Newton, MA 02459

July 21, 2016

By electronic transmission

Councilor Mark Laredo, Chairman
Land Use Committee
Newton City Council
1000 Commonwealth Avenue
Newton, MA 02459

Re: Request for Consistency Ruling
244 Commonwealth Avenue
Petition #416-12(3)

Dear Chairman Laredo:

Please consider this request for a consistency ruling by the Land Use Committee in the above-referenced matter. On August 12, 2013 the then Board of Aldermen passed Board Order #416-12(3) (the "Order") permitting the use of one-half of the building (the "Locus") for massage therapy, "*or a similar low parking demand/turnover personal service business*" that met certain conditions set forth in the Order. Conditions # 5 and #6 specifically limited occupancy on the Locus to no more than 3 customers and 3 staff members for the service use at any one time.

As you know, the current tenant, Modern Barre, has occupied the Locus for more than two years and more recently was a petitioner who sought an amendment to the Order that would have allowed Julia Williamson to operate her service business at a different level of activity. Unfortunately despite the passage of an amended order to do just that, the Landlord-Owner, who was a co-petitioner has opted not to exercise the new permit.

As a result, my client, faced with the prospect of closing her business, is now seeking a ruling that would allow her to operate under the terms of the previous Order within a reasonable adjustment of the aforesaid conditions. Specifically, Ms. Williamson requests a ruling that would maintain the limitation on the total number of occupants to six at any one time. However, the ratio of staff to customers would be 1 to 5.

A careful reading of the Order indicates that it was not limited to any one type of service use. Rather by its very terms it provided for "*a similar low parking demand/turnover personal service business*" to occupy the Locus. It has been clearly established that the operation of the Modern Barre studio is intermittent by nature with no activity for more than one-half the available hours established in condition

#4. Accordingly, this letter also requests a ruling that would acknowledge Modern Barre's ability to introduce other *low parking demand/turnover* personal services that complement its fitness use.

It is my understanding from speaking with you that there is space available on the Land Use Committee agenda for Tuesday August 9, 2016. By copy of this letter, I am asking that Committee Clerk place this request on said agenda.

Thank you for your consideration.

Terrence P. Morris

Terrence P. Morris, Esq.
Counsel for Modern Barre

Cc: by email

Land Use Committee
Councilor R. Lisle Baker
Councilor Ruthanne Fuller
Nadia Kahn, Committee Clerk
John Lojek, Commissioner Inspectional Services
Alexandra Ananth, Chief Planner
G. Michael Peirce, Esq.
Julia Williamson, Modern Barre