



Land Use Committee Report

City of Newton In City Council

Tuesday, September 27, 2016

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

Also Present: Councilor Sangiolo

City Staff: Ouida Young, Associate City Solicitor and Neil Cronin, Senior Planner, Department of Planning and Development Department

#216-16 **Special Permit Petition to continue non-conforming use & FAR at 17-19 Pulsifer St**
NANCY BOLANIS petition for SPECIAL PERMIT/SITE PLAN APPROVAL to add rear sunrooms to first and second floor, exterior stair from third floor to grade, a one car garage at the rear, replace the front porch and add two parking stalls at 17-19 Pulsifer Street, Ward 2, Newtonville on land known as SBL 22018 0003, containing approximately 7,964 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2, 3.1.9.A.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 7-0-1, Harney abstaining**

Note: Attorney Lawrence said that since July 26 two neighborhood meetings have been held with neighbors and councilors. The original petition requested to add rear sunrooms to first and second floor, exterior stair from third floor to grade, a one car garage at the rear, replace the front porch and add two parking stalls. As a result, of the neighborhood meetings, the proposed revisions include a reduced size exterior staircase only connecting to the first floor sun porch.

The FAR waiver request pertains to the detached garage by right, the exterior staircase could be built three stories and an unenclosed porch. There are ten homes in the immediate area with larger detached garages than what is being proposed. A handicap-parking ramp would be installed.

Mr. Cronin summarized what the petitioner can do by right versus what is being proposed. The detached garage meets the setbacks for detached structures. Parking is allowed in the front setback for single-family dwellings. If the petitioner wishes to enclose the sunrooms, an FAR would be required. If the sunrooms were enclosed with a permeable material, an FAR would not be required.

Councilor Auchincloss said that the neighbors feel that the staircase is aesthetically un-pleasing. There are concerns that if the staircase is built, the third floor may be rented out as a border room. He then said that most neighbors are not in support of this project moving forward.

The Public Hearing was opened.

Ron Nedelkovich, 414 Walnut Street, said that emails were forwarded to the Committee by the neighbors addressing their concerns. This project can be pursued by right, which he feels is a better option than the Special Permit proposal.

Mr. Shepherd, 364 Cabot Street, said that this is a very dense property. He said if the Special Permit is granted, he would be displeased as his home has a direct view of the rear of the property including the staircase, deck, garage and additional parking daily.

Brian O'Connor, 27 Pulsifer Street, said that the home has two interior staircases to the third floor therefore; he does not know the reason why the petitioner is requesting an exterior case. The third floor deck would over look all abutting properties.

Councilor Auchincloss motioned to close the Public Hearing and it was closed 8-0.

A Council member asked Attorney Lee how if he would proceed with this project if the exterior deck were not permitted. Attorney Lee could not determine this now whether it would be by right or by Special Permit. Attorney Lee spoke with the petitioner, who compromised and agreed to remove the third floor deck in hopes of having the Special Permit approved.

Councilor Auchincloss then made a motion to approve the Special Permit. After a review of the findings, conditions and draft Council Order. Revisions were made to the Council Order. The motion to approve carried 7-0-1, Councilor Harney abstained because he did not have an opportunity to make a site visit.

#217-16 **Special Permit Petition to extend nonconforming two-family use at 50-52 Rowe St**
NEW NEWTON, LLC./DANIEL SZETO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND NON NONCONFORMING USE by building a rear addition to existing building and construct a second two-family dwelling at 50-52 Rowe Street, Ward 4, Auburndale, on land known as SBL 44023 0006, containing approximately 19,321 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4, 7.8.2.C.2, 3.1.3, of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 6-0-2, Subject to Second Call, Laredo and Schwartz abstaining**

Note: Attorney Terry Morris stated as previously requested, the landscape plan has been updated. Mr. Cronin stated that the plan was received, reviewed by a Planning & Development staff member. Council members stated that they have not received the updated landscape plan but were willing to move forward with the discussion. Councilor Sangiolo said that the updated plan was emailed to the Ward 4 Councilors and Chair Laredo on September 20, 2016.

Attorney Morris presented this petition and said that since July 26 neighbors, property owner and councilors attended a site visit. The site visit including plans increasing the setback from 12.5 feet

to 25 feet. This increase pleased neighbors and Councilors present. Councilor Harney agreed. The petitioner initially proposed to maintain two units in the existing structure while adding approximately 1,300 square feet to it and to construct an additional detached two family dwelling on the lot. Subsequently, the petitioner has agreed to modify the proposed new structures so as to contain only a single dwelling. It would be of the same size as the previously proposed two-family structure, but would be shifted to provide a 25 foot setback. One parking space was eliminated.

Mr. Cronin stated the number of units have been reduced, from two to one to create an open space. The structure will be moved 25 feet from the neighbor at the southern lot line.

The Public Hearing was opened.

Michael Wordell, 334 Wolcott Street, said that he attended both neighborhood meetings. The meetings were very positive; the petitioner has modified the plans. He supports this petition.

Councilor Harney motioned to close the Public Hearing and it was closed 8-0. He then made a motion to approve the Special Permit, subject to second call pending the landscape plan. After a review of the findings, conditions and draft Council Order. Revisions were made to the Council Order. The motion to approve carried 6-0-2, Laredo and Schwartz abstained in order to review landscaping plans.

#263-16 Special Permit Petition for a rear lot subdivision at 100 Christina St
IRENE OSTROVSKY petition for **SPECIAL PERMIT/SITE PLAN APPROVAL** to raze the existing dwelling and subdivide the land, creating a rear lot, to construct a new single family dwelling on each lot at 100 Christina Street, Ward 8, Newton Highlands, on land known as SBL 83030 0006, containing approximately 31,372 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref. 7.3.3, 7.4, 3.1.10 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Continued; Land Use Held 8-0**

Note: Attorney Terry Morris presented this petition requesting a rear lot subdivision to raze the existing dwelling and subdivide the land, creating a rear lot, to construct a new single family dwelling on each lot to accommodate their large family and elderly parents. The property consists of 31,372 square feet in a single residence 3 zoning district. The front lot will have 10,115 square feet and the rear lot will have 21,257 square feet. The new front dwelling would contain 3,700 square feet of floor area; the dwelling proposed for the rear lot would contain 5,100 square feet of floor area. Both would include two-car garages. This project complies with frontage, height, lot coverage and open space requirements. Both of the rear lot subdivisions meet the requirement of the FAR 0.24, the maximum allowed for a single-family detached dwelling on a rear lot. The homes would not exceed the by-right allowable heights. It should be noted that the subject property is in a transitional location where it also meets mixed use with large commercial and warehouse buildings that measure in excess of 70,000 square feet in floor area. The similarly

sized 35,393 square foot property directly to the west on Christina Street contains three residential structures that comprise approximately 10,262 square feet of floor area.

Mr. Cronin stated that the site is an appropriate location for the two proposed one-family dwellings in a single residence. The proposed rear lot will not adversely affect the neighborhood. There would be no nuisance or serious hazard to vehicles or pedestrians. Access to the site over streets is appropriate for the types and numbers of vehicles involved.

Mr. Cronin then stated that Committee members should consider the following criteria:

- whether the proposed buildings or structures exceed the respective average height of abutting residential buildings and any structures used for accessory purposes
- the scale of proposed buildings or structures in relation to adjacent residential buildings and structures used for accessory purposes and in relation to the character of the neighborhood
- topographic differentials, if any, between proposed buildings or structures and adjacent residential buildings and any structures used for accessory purpose
- proposed landscape screening
- adequacy of vehicular access, including, but not limited to fire and other public safety equipment, with emphasis on facilitating common driveways
- whether any historic or conservation public benefit is provided or advanced by the proposed development
- siting of the proposed buildings or structures with reference to abutting residential buildings or any structures used for accessory purposes
- impact of proposed lighting on the abutting properties

The Engineering review memo provided an analysis of the proposal. The memo indicates a concern that the current retaining wall and landscape near the driveway apron limit the sight distance for vehicles exiting the property. The petitioner's attorney has stated that the new driveway will be wider than the existing one and bordered to the west by a new walkway, and that a new wall only three feet in height will be built four feet to the west of the existing stonewall location. The memo also indicated concerns regarding the location and function of the infiltration units. The petitioner will need to address and comply with all the recommendations put forth in the memorandum prior to issuance of building permits.

The Public Hearing was opened.

Terrance Logan, 36 Roland Street, said that most homes in the neighborhood are ranches. He feels a neighborhood meeting is warranted informing the neighbors of the proposed project.

Jennifer Williams, 8 Bernard Street, asked if the proposed project would have adequate parking.

Jim Murphy, 43 Roland Street, said that it is difficult to know if the neighborhood will be impacted.

Councilors Questions/Suggestions/Concerns:

1. Obtain professional advice to assess, monitor and protect the retaining wall.
2. Determine how the very large trees proposed will be able to survive and how they may be planted near the retaining wall.
3. The scale of proposed buildings, the topographic differentials, and proposed landscaping raise some concerns when building rear lot subdivisions.
4. Estimate of topography of surrounding buildings.
5. Concerns regarding the Engineering review memo.
6. Please explain in detail 'whether any historic or conservation public benefit is provided or advanced by the proposed development'.
7. Due to the sloped driveway, will there be adequate driveway parking for the petitioner, guests and Fire Department vehicles.

Councilors encouraged Attorney Morris and the petitioner to host a neighborhood meeting. Attorney Morris agreed and said that he and the petitioner were unaware of any neighbors concerns.

Councilor Lipof motioned to continue the Public Hearing, Council members agreed 8-0. He then made a motion to hold this Special Permit. Chair Laredo stated he anticipates scheduling this item tentatively for the last meeting in October.

#286-16 **Special Permit Petition to further increase nonconforming setback at 115 Waban St**
JOHN MULLIGAN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE NONCONFORMING SETBACK by building a 308 sq. ft. one story addition including a mudroom, study and half bath at 115 Waban Street, Ward 1, Newton, on land known as SBL 12004 0032, containing approximately 7,072 sq. ft. in a district zoned MULTI-RESIDENCE 1. Ref: 7.3, 7.4, 3.2.3, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 8-0**

Note: Petitioner John Mulligan presented the petition to build a one-story addition including a mudroom, study and half bath to accommodate his family. This request would increase the nonconforming setback in order to build this addition.

Mr. Cronin said that the proposed extension of the structure would decrease the nonconforming front set back of the residence from 18 feet to 14.73 feet where 25 feet is the minimum allowed. The Planning Department is generally not concerned with this petition as it believes the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The site is an appropriate location for the proposed expanded structure. The proposed addition will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians and access to the site over streets is appropriate for the types and numbers of vehicles. The home is located on a corner lot, with a primary and side set backs on Waban Street at the curve.

A Councilor asked why a Sycamore tree would have to be removed. Mr. Mulligan stated that he was advised by an arborist to have the tree removed as it may injure the root structure and the proposed foundation area. He intends to plant additional trees throughout the lot.

The Public Hearing was opened with no public comment from the public.

Councilor Lennon motioned to close the Public Hearing and it was closed 8-0. Councilor Lennon made a motion to approve the Special Permit. After a review of the draft Council Order, the motion to approve carried 8-0.

#285-16 Special Permit Petition to create an accessory apartment at 133 Harwich Road
SHEHZAD S. BASARIA/MILENA BRAGA petition for SPECIAL PERMIT/SITE PLAN APPROVAL to CREATE AN ACCESSORY APARTMENT in an existing single-family dwelling less than 2,500 sq. ft. by building a rear addition including a kitchen and living space to the ground floor and office space to the first floor at 133 Harwich Road, Ward 8, Chestnut Hill, on land known as SBL 82037 0076, containing approximately 11,170 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 6.7.1.D, 6.7.1.F of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 8-0

Note: Architect Benyamin Ber presented the petition to build a rear addition including a kitchen and living space to the ground floor and office space to the first floor. Mr. Ber stated that the home is approximately 138 feet square feet short of the minimum required for an accessory apartment. The proposed work conforms to Zoning Ordinance and all requirements. The petitioner, Mr. Basaria stated that this request is to build an accessory apartment for his elderly parents. It is not his intent to rent his home. He stated that he understands the proposed kitchen requires a Special Permit.

Mr. Cronin stated that the petitioners are seeking a Special Permit to allow for the creation of an 800 square foot accessory apartment in the basement of a single-family dwelling, which is less than 2,500 square feet. The site is an appropriate location for an accessory apartment that will not adversely affect the neighborhood. The accessory apartment will not create a nuisance or serious hazard to vehicles or pedestrians.

A councilor asked where the requirements are located for the accessory apartment minimum square feet allowed for lot size and building size. Mr. Cronin answered that the chart for these requirements are in the Zoning Ordinance, Chapter 30, Section 6-19.

A councilor stated that the existing and proposed conditions are combined in the plans making them confusing to read. Mr. Ber explained the plans including the existing and proposed areas.

The councilor then asked where the second egress was located. Mr. Ber stated the sliding doors are the second egress. The primary egress is through the main home, there is no common space.

Chair Laredo asked if this is permissible under the City Ordinance. Mr. Cronin and Ms. Young answered yes.

The Public Hearing was opened.

Guyle Morris, 33 Brookline Street, said that an issue with accessory apartments is that when it is built, it becomes an apartment and tends to be rented out. It is necessary to enforce accessory apartments.

Chair Laredo stated that an owner of an accessory apartment must occupy one unit. He suggested contacting Inspectional Services for enforcement. Mr. Ber stated that if the intent was to create a rental unit, the design would have been different. These designs are specifically for an accessory apartment.

Councilor Lipof motioned to close the Public Hearing and it was closed 8-0. He then made a motion to approve the Special Permit. After a review of the draft Council Order and revisions made, the motion to approve carried 8-0.

#284-16 Special Permit Petition to maintain increased nonconforming FAR at 7-9 Arundel Ter CARMEN FUGAZZOTTO petition for SPECIAL PERMIT/SITE PLAN APPROVAL to MAINTAIN FURTHER EXTENDED NON NONCONFORMING USE and INCREASED FAR by maintaining the existing enclosed garage that encroaches on the rear and side setbacks, exceeding the maximum lot coverage, continuing to be below minimum open space and maintain the increased nonconforming FAR at 7-9 Arundel Terrace, Ward 1, Newton, on land known as SBL 71001 0025, containing approximately 5,100 sq. ft. of land in a district zoned MULTI-RESIDENCE 2. Ref: 7.3.3, 7.4, 3.2.3, 3.2.11, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 8-0

Note: Attorney Terry Morris presented the petition to maintain an existing garage. In the 1960s, the petitioner's deceased father erected a carport without a building permit. It was attached to the home and neighbor's garage. Since it was built as a carport, it did not count towards the FAR when it was introduced. The petitioner requires a Special Permit to increase the already nonconforming FAR from .59 to .65, where .58 is the maximum allowed by-right. A variance is necessary as well, as the carport does not meet the rear and side setbacks.

Mr. Cronin stated a Special Permit is necessary because the proposed increase in nonconforming FAR from .59 to .65, where .58 is the maximum allowed by-right, will not be in derogation of the size, scale and design other residential structures in the neighborhood.

A Councilor said that the Zoning Code is confusing and this is a reasonable request.

Chair Laredo stated that Council members have received letters in support of this request.

The Public Hearing was opened.

Ms. Georgakopoulos, 48 Boyd Street, spoke in support of this petition.

Councilor Lennon motioned to close the Public Hearing and it was closed 8-0. Councilor Lennon made a motion to approve the Special Permit. After a review of the draft Council Order including subject to the conditions, the motion to approve carried 8-0.

The Committee adjourned at approximately 9:45 p.m.

Respectfully submitted,

Marc C. Laredo, Chair