



Land Use Committee Report

City of Newton

In City Council

Tuesday, December 13, 2016

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

Also present: Councilors Baker, Fuller, Albright

City Staff Present: Deputy City Solicitor Ouida Young, Senior Planner Neil Cronin.

#308-16 **Special Permit Petition to further increase nonconforming setback at 79 Kenwood Ave**
SURRENDRA DUDANI AND SHALINI SEN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to FURTHER INCREASE THE NONCONFORMING SETBACK by razing the existing 12'x22' detached garage and construct a 22'x22' detached garage, reducing the setback from 16.2' to 6.2' where 25' is required at Kenwood Avenue, Ward 6, Newton Centre, on land known as SBL 64 20 01, containing approximately 7,964 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.

Action: **Land Use Approved Extension of Time to February 8, 2017 4-0. (Councilors Lennon, Schwartz, Harney not voting)**

Note: The Public hearing was closed on October 13, 2016. Because the petitioner was unavailable, they have requested an extension of time to February 8, 2017 for the City Council to act. Councilor Crossley motioned to approve which carried 4-0.

#337-16 **Special Permit Petition to construct accessory apartment and garage at 41 Dorset Rd**
TIMOTHY LEARY petition for SPECIAL PERMIT/SITE PLAN APPROVAL to CONSTRUCT AN ACCESSORY APARTMENT approximately 846 sq. ft. with dormer wider than 50% of the exterior wall below, above a three car garage at 41 Dorset Road, Ward 5, Waban, on land known as SBL 55010 0045, containing approximately 24,936 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3, 7.4, 6.7.1.D, 3.4.3.A.4.c, 3.4.4.E.3, 1.5.4.G.2, 1.5.4.G.2.b of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 4-0. (Councilors Lennon, Schwartz, Harney not voting)**

Note: Architect Andrew Falkenstein, represented the petitioner, Timothy Leary and presented the request to locate an accessory apartment in a proposed detached three car garage at 41 Dorset Road. Mr. Falkenstein noted that the grade of the large lot is approximately 25' below the grade of the street. The two main abutters to the site are the MBTA Green line and the Angier School. The proposed garage structure, would be set back 70' from the street. It was noted that the petitioner has hired a landscape architect to plant plantings that will help shield the massing. The petitioner intends to maintain the existing landscaping. Senior Planner Neil Cronin presented the relief requested to allow a detached accessory apartment and dormer greater than 50% of the size of the floor below it.

The Public Hearing was opened. With no member of the public wishing to speak, Councilor Crossley motioned to close the public hearing which carried 4-0. It was noted that while generally developing in close proximity to the lot line is discouraged, in this case the abutting property is the Angier School. Additionally it was noted that the addition in a manner that is subservient to the existing dwelling. Committee members reviewed the findings and proposed conditions and suggested that the findings reflect the nature of the abutting property. With Councilor Crossley's motion to approve, Committee members voted 4-0 in favor of the petition.

#392-16 Special Permit to amend Special Permit #416-12(3) at Modern Barre

JULIA WILLIAMSON/WALLY ZAINOUN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to amend special permit #416-12(3) to allow for more than 3 customers at one time, expanded hours of operation and amend the previously approved site plan at 242-244 Commonwealth Avenue, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: 7.3.3, 7.4 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Land Use Held 7-0.

Note: The Chair read the item into the record and provided an overview of the Committee's intent in reviewing the petition. He noted that after considerable deliberation, a special permit was granted in January 2016. The petitioner chose not to exercise the special permit and has chosen to refile a different special permit application. The Chair noted that the petitioner seeks to change conditions that were specifically crafted in January 2016. He hopes to understand what has changed since the petition was initially granted.

Mr. Lee McIntyre representing petitioner Julia Williamson presented details to the petition. Mr. McIntyre believes that the special permit passed was unfavorable to the landlord and subsequently prevented him from being able to exercise the special permit. After the consistency ruling was not approved in Summer, a new special permit is necessary in order to allow for the petitioner to sustain her business. Mr. McIntyre also noted that he hoped to begin making site improvements but was told that he would either need to exercise the special permit or get a new building permit. It was noted that the money to make the site improvements has been set aside.

Because of constraints on the number of customers (3) on the current special permit, Ms. Robinson has had to scale back her business. As a result, she has had to rent space in Brighton to hold classes with more than 3 people and hold outdoor classes. Ms. Robinson has lost business to clients who are unable/unwilling to travel to her studio in Brighton. Mr. McIntyre noted that neighborhood feedback has been solicited to be incorporated into the plans. He believes that changes to conditions 13, 14 and 21 will preserve the site improvements and allow for continued business for Ms. Robinson at a higher class cap of 11. The conditions will allow for 15 minutes between classes and will prohibit parking in the back lot by students. Mr. McIntyre noted that the business will only be open 18-21 hours each day and will only use 6/50 Commonwealth Ave parking spots. Mr. McIntyre noted that Modern Barre is willing to eliminate the 6:15 am classes and noted that the hours of operation only coincide with those of Ruana's Interior Design one total hour a week.

Elizabeth Benedict, 137 Commonwealth Avenue, is on a lease to own the building. She intends to exercise the option on March 15, 2017. Ms. Benedict noted that when she began to rent at the property, she stated that she would not purchase with the impositions that they were putting on her side of the building. She intends to take over the other side of the building and hopes to make it a one tenant building in the future. In the interim, she hopes to use Modern Barre for additional income. The Planning Memo discusses the use and intensity as an arts and crafts store which inaccurately reflects the use. Ms. Benedict noted that as an Interior Design Studio, they have a retail storefront but do not advertise and the use is different. Ms. Benedict also noted that with a cap of 3 people, she will not be able to operate her business.

The Public Hearing was Opened.

Marcus Careno, 252 Commonwealth Avenue, believes that compromises can be found that incorporate the input of all involved parties. He noted that he felt this compromise was found in February 2016 but believes a solution can still be found.

Skye Shirley, 50 Crosby Road, attends Modern Barre and believes it is a blessing to the neighborhood. Ms. Shirley noted that the green line can be unreliable and it is helpful to be able to walk to Modern Barre. She stated that she never feels unsafe crossing streets to get to Modern Barre.

Julie Mahoney, 33 Irving Street, noted that the petitioner has tremendous focus on etiquette relating to clients when arriving/departing. She added that the business is not inconsistent with the neighborhood and activities like the Boston Marathon on Commonwealth Avenue.

Kenneth Parker, 51 Winchester Street, stated that if the Interior Design Business is a consulting business, it would be prohibited with the proposed conditions. The relief that is sought is identical to the relief that was sought in January. He noted that the client did not like the conditions and therefore did not exercise the special permit.

Sara Winchester, 254 Commonwealth Avenue, noted that the additional use at Modern Barre is at night and on the weekends when the residents are home and affected. She stated that while the swing studio in Brighton has been used, the neighborhood has seen a decrease in parking constraints.

Matt King, 287 Nahanton Street, noted that there used to be a nursery school at the site which had a much higher intensity use.

Marita Tressler, 79 Manet Road, stated that the site is not conducive for business operation. She noted that the property owner has demonstrated disdain for existing special permit constraints and should not be granted other special permits.

Scott Farmalant, 3 South Cedar Park, Melrose, believes that the conditions were unsuitable as crafted. He noted that the business has been harmed by the limitations and that the conditions that were imposed. He noted that something changed in the Council Order from when the Land Use

Committee voted to approve to the full Board Meeting. The Chair confirmed that no changes were made on the floor of the Board.

Committee members agreed that when crafting the Council Order; Ms. Benedict's business needs be considered and incorporated. Councilors deliberated whether the business type should be considered or if the matter should be based on the site and the site's capacity. Mr. Cronin confirmed that he would get details of Ms. Benedict's business prior to the January 10, 2017 public hearing. When discussing the site and impacts to the neighborhood, Councilors discussed if it were more appropriate to impose a cap of the number of people in the building, or count the number of trips generated by the business. Deputy City Solicitor Ouida Young noted that imposing a cap can be easier for enforcement purposes and attributing vehicles to a business can be difficult. Councilors agreed that a Council Order could be crafted to limit people in the building and trips to the site. Committee members agreed that residents are generally concerned about traffic impacts. Committee members requested that the Planning Department provide information about the distinction between retail and service uses and which use might be appropriate on an existing nonconforming site.

Councilor Cote motioned to carry the item which carried 7-0.

#391-16 Special Permit to further extend nonconforming 2-family use at 37-39 North Gate Park JOHN & MARGARET SPENCE petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct a first floor addition and enclose an existing deck, further extending the nonconforming two-family use and FAR at 37-39 North Gate Park, Ward 3, West Newton, on land known as SBL 34028 0008, containing approximately 8,020 sq. ft. of land in a district zoned SINGLE RESIDENCE 3. Ref: 7.3.3, 7.4, 3.4.1, 7.8.2.C.2 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: Public Hearing Closed; Land Use Approved 7-0.

Note: Architect Peter Sachs representing the petitioners, presented the petition to expand the nonconforming two-family use by constructing a first floor addition and enclosing an existing deck at 37-39 North Gate Park. Mr. Sachs noted that abutters were contacted and have been supportive of the project.

Mr. Cronin reviewed the requested relief and construction. The Public Hearing was opened. A Committee member noted that no negative feedback has been received for the project. Mr. Sachs confirmed that the driveway on the right side of the property is at least 16' wide so the addition is not directly next to a neighbor.

With Councilor Cote's motion to close the public hearing, the Committee voted 7-0. After a review of the findings and the Council Order and no changes, Councilor Cote's motion to approve carried 7-0.

#361-16 Special Permit Petition to exceed FAR at 642 Centre Street LISA AND JOSH SCHWARZBERG petition for SPECIAL PERMIT/SITE PLAN APPROVAL to CONSTRUCT a 1,087 sq. ft. two-story addition to the front of house, resulting in an FAR

of .49 where .38 exists and .39 is allowed at 642 Centre Street, Ward 1, Newton, on land known as SBL 72035 0002, containing approximately 9,600 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 4-0-3 Subject to Second Call (Councilors Schwartz, Crossley, Lennon abstaining)**

Note: Lisa Shwarzberg presented the petition to exceed the FAR from .38 to .50 by adding an eat in kitchen and family room to the front of the dwelling at 642 Centre Street. The petitioner hopes that these changes will be beneficial for family life. The petitioner intends to maintain the current architecture and design at the residence and has received neighborhood support. **Mr.** Cronin reviewed the requested relief.

The public hearing was opened with no comment from the public.

Some Committee members had concerns about the size of the addition and the request for FAR relief in addition to the positioning of the massing on the front façade of the structure. Other Committee members noted that because the house is situated farther back into the lot, the proposed structure and increased FAR is not concerning. Committee members asked if there were attempts to situate the massing differently. Ms. Schwarzberg noted that because the backyard is small, locating the mass in the rear would not be possible and an infill project or relocating the kitchen within the house was cost prohibitive.

Councilor Auchincloss motioned to close the public hearing which carried 7-0. Several Committee members did not feel comfortable voting to approve the petition without seeing the site first. With Councilor Auchincloss' motion to approve, the Committee voted 4-0-3 with abstentions from Councilors Crossley, Lennon and Schwartz to allow for a visit to the site prior to the full Council vote.

#389-16 **Special Permit to establish accessory apartment at 20 Metacomet Road**
REBECCA MILLER petition for SPECIAL PERMIT/SITE PLAN APPROVAL to construct an approximately 900 sq. ft. accessory apartment in the basement of a single family dwelling on a lot with less than 15,000 sq. ft. at 20 Metacomet Road, Ward 5, Waban, on land known as SBL 55005 0002, containing approximately 12,271 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. 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 7-0.**

Note: Petitioner Rebecca Miller presented the petition to locate an accessory apartment at 20 Metacomet Road. Ms. Miller's children are the fourth generation in the house and she hopes to have her family in the house for generations. She is seeking to establish an accessory apartment to generate additional income to be able to stay in the house. The proposed accessory apartment is in the rear of the house. Ms. Miller has sought and received written support from twelve neighbors.

The Public Hearing was opened. No member of the public spoke for or against the petition. Mr. Cronin reviewed the requested relief and noted that some interior space will be converted. Ms. Miller confirmed that while she has made some interior renovations, she has not installed a second stove. Councilor Crossley motioned to close the public hearing which carried 7-0. After a review of the findings and Council Order, the Committee voted 7-0 in favor of Councilor Crossley's motion to approve the item.

#390-16 Special Permit to extend nonconforming 3-story structure and FAR at 7 Manet Circle
DAVID MORTON petition for SPECIAL PERMIT/SITE PLAN APPROVAL to allow three-story single-family structure and exceed FAR by adding side and rear additions at 7 Manet Circle, Ward 7, Chestnut Hill, on land known as SBL 63004 0031, containing approximately 12,706 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 1.5.4.D-F, 3.1.3, 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.**

Note: Architect David Morton, representing petitioners Jason and Candace Weissman, presented the petition to extend the nonconforming use and FAR relief at 7 Manet Circle. Because of the grade of the lot, the basement is counted towards FAR. The family is looking to create larger kitchen, dining and living room space to accommodate their family needs.

The Public hearing was opened with no member of the public wishing to speak. Letters of support were submitted to the Committee prior to the hearing. Mr. Morton spoke on behalf of one abutter, Mr. Fingert, who was present at the meeting. Mr. Fingert had initial concerns about shadows from the addition being cast onto his home. Mr. Morton performed a shadow study and confirmed that there will not be any shadows cast on the abutting dwelling. Additionally, the Planning Memo recommended that evergreens be planted to shield the abutting property and Mr. Fingert requested that the evergreens not be planting as they could create additional shadows.

A Committee member asked if there would be any shielding for the rear abutters as there is a significant amount of windows in the design. Mr. Morton noted that it is likely that the energy analysis will result in the elimination of some window space at the rear of the structure.

Councilor Auchincloss motioned to close the public hearing which carried 7-0. Committee members requested that the conditions reflect the possibility of a change in the amount of glass space on the rear of the dwelling to what is on the plans. Councilor Lennon motioned to approve the item which carried 7-0.

#399-16 Special Permit to exceed FAR at 441 Ward Street
YAKIR AND CHERYL LEVIN petition for SPECIAL PERMIT/SITE PLAN APPROVAL to add a 415 sq. ft. garage, creating an FAR of .42 where .39 is allowed at 441 Ward Street, Ward 7, Newton Centre, on land known as SBL 73030 0006, containing approximately 9,299 sq. ft. of land in a district zoned SINGLE RESIDENCE 2. Ref: 7.3.3, 7.4, 3.1.9 of Chapter 30 of the City of Newton Rev Zoning Ord, 2015.

Action: **Public Hearing Closed; Land Use Approved 7-0.**

Note: Yakir Levin presented the petition to exceed the FAR at 441 Ward Street by adding a two car attached garage and mudroom. There is currently no garage at the site currently and the petitioner would like to be able to shield their cars from the elements during inclement weather. The Chair noted that the neighborhood is densely residential contrary to a Planning Memo note. The Public Hearing was opened.

Mr. Cronin presented the requested relief for the project. Mr. Cronin noted that the garage wall extends further forward than the main dwelling wall. Councilor Crossley motioned to close the public hearing which carried 7-0. Councilor Crossley motioned to approve the item. Mr. Cronin noted that if the Engineering Department requires a drainage plan, the petitioner will have to take ownership of the system and ensure that it is recorded at the Registry of Deeds. The Committee voted 7-0 in favor of Councilor Crossley's motion to approve.

2017 Auto Dealer License Renewals

Class 2

#410-16 STAN'S AUTOMOTIVE INC.
249 Centre Street
Newton Corner 02458

Action: **Land Use Approved 7-0.**

#404-16 NEWTON CENTRE SHELL, INC.
1365 Centre Street
Newton Centre 02459

Action: **Land Use Approved 7-0.**

#401-16 LIFT THROTTLE AUTOMOTIVE, LLC
64 Hillside Avenue
West Newton 02465

Action: **Land Use Approved 7-0.**

#406-16 OLD TIME GARAGE LTD.
1960 Washington Street
Newton Lower Falls 02462

Action: **Land Use Approved 7-0.**

#400-16 AUCTION DIRECT PREOWNED
1545 Washington Street
West Newton 02465

Action: **Land Use Approved 7-0.**

#402-16 MAP DEVELOPMENT & INVESTMENTS

d/b/a CHRISTIAN TAPIA/MASTER USED
CARS of WATERTOWN
175 North Street
Newtonville 02460

Action: **Land Use Approved 7-0.**

#409-16 ROBERT'S TOWING, INC.
926r Boylston Street
Newton Highlands 02461

Action: **Land Use Approved 7-0.**

#403-16 NEWTON AUTO GROUP, INC.
1235 Washington Street
West Newton 02465

Action: **Land Use Approved 7-0.**

#407-16 REGANS INC.
2066 Commonwealth Avenue
Auburndale 02466

Action: **Land Use Approved 7-0.**

#411-16 JOHN BORTONE d/b/a ENZO'S AUTO SALES
10 Hawthorn Street
Nonantum 02458

Action: **Land Use Approved 7-0.**

#412-16 JOHN & CATALINA BORTONE
d/b/a VELOCITY MOTORS
14 Hawthorn Street
Nonantum 02458

Action: **Land Use Approved 7-0.**

Class 2 & 3

#413-16 ECHO BRIDGE SALVAGE CO.
16-24 Maguire Court
Newtonville 02460

Action: **Land Use Approved 7-0.**

#414-16 SCHIAVONE BROTHERS, INC.
16-24 Maguire Court
Newtonville 02460

Action: **Land Use Approved 7-0.**

Note: The Committee voted to approve auto dealer licenses #410-16, #404-16, #401-16, #406-16, #400-16, #402-16, #409-16, #403-16, #407-16, #411-16, #412-16, #413-16, #414-16.

#405-16 NTC-NEWTON TRADE CENTER
103 Adams Street
Nonantum 02458

Action: Land Use Held 7-0.

#408-16 SAM'S AUTO CENTER
875 Washington Street
Newtonville 02460

Action: Land Use Held 7-0.

Note: Councilor Crossley motioned to hold auto dealer licenses #405-16 & #408-16 to allow them time to pay their taxes. The motion carried 7-0.

Respectfully submitted,

Marc C. Laredo, Chair