



# CITY OF NEWTON, MASSACHUSETTS

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Ruthanne Fuller  
Mayor

## ZONING BOARD OF APPEALS

**To:** Zoning Board of Appeals Members

**From:** Brenda Belsanti

**Date:** November 19, 2024

**Subject:** Materials for **November 20, 2024** Public Hearing

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### Packet 2

Hello,

Please see the following supplemental materials for the upcoming hearing on November 20, 2024 Public Hearing. The following board members are scheduled to sit: *Michael Rossi (Chair), Brooke Lipsitt, Stuart Snyder, Elizabeth Sweet, Denise Chicoine.*

1. Letter to the ZBA dated November 18, 2024.

Thank you,

Brenda Belsanti

**bbelsanti@newtonma.gov** |

# GELERMAN AND CABRAL, LLC

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JEFFERY D. UGINO  
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November 18, 2024

BY EMAIL [bbelsanti@newtonma.gov](mailto:bbelsanti@newtonma.gov)

Hon. Michael Rossi and  
Members of the City of Newton  
Zoning Board of Appeals  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Re: 16-22 Clinton Street, Newton, MA  
Cases #06-24, #07-24

Dear Members of the Zoning Board of Appeals:

I wish to provide an update on the efforts of my client, 20 Clinton Street, LLC, to work with four City Councilors to address neighborhood concerns. At the outset, I wish to note that prior to the Council's July 12, 2023 unanimous Special Permit grant, my client made substantial concessions to neighbors, including:

- Scrapping an as-of-right proposal for commercial use on the ground floor plus five residential units, including 14 parking spaces, assenting to neighborhood requests for a solely residential, and smaller, project
- Extensive negotiations resulting in two June 6, 2023 Cooperation Agreements under in which deeded easement rights were given by my client in exchange for full project support from two sets of project abutters (Jason Gee and Anli Jiao of 13R Lincoln Road and Daniel and Rita Leone of 12-14 Clinton Street)
- Moving the structure five feet away from the Flynn property at 15 Lincoln Road at their request
- Scrapping a planned basement upon City Councilor request
- Changing the orientation of porches to face one another instead of outward

Following continuance of the ZBA's October 23, 2024 hearing, on November 7, 2024, I met with my client and four City Councilors (Oliver, Scibelli Greenberg, Leary and Laredo) and Jason Gee and, as a result, assented to three of the group's four requests contingent on non-disturbance of the Special Permit and otherwise no new building permit requirements, and a dismissal of the Councilors' and Mr. Gee's ZBA appeals<sup>1</sup>:

1. Gee Water Runoff Complaint. My client agreed to review any licensed civil engineer-produced reports which demonstrate that excessive stormwater runoff is occurring from 20 Clinton Street to 13R Lincoln Street as a result of the development, and work collaboratively with Mr. Gee and Ms. Jiao to mitigate any such effect. To date, Mr. Gee and Ms. Jiao have not produced any reports in this regard. I wish to note that these are third-party claims which are separate and apart from the matter before the ZBA concerning the buildout of the project in accordance with approved plans.
2. Privacy Screening of Balconies. My client agreed to provide the requested balcony screening designed by its architect.
3. Broken China. My client agreed to pay \$500.00 to the Flynns (15 Lincoln Road) with an understanding of there being no admission of liability.

As my client stated during the November 7, 2024 meeting, he formally declined to agree to requests to lower the project's finished grade and building height due to such work being beyond the scope of the contemplated minor mitigation suggested by the ZBA in allowing for a hearing continuance.

Four days after the November 7, 2024 meeting, the Councilors made an additional request for the extension of a wooden fence along the Flynn property line at 15 Lincoln Road, to which my client agreed under the same condition as the other items.

To this response, the Councilors have today added new requests: unspecified additional screening items relating to a different neighbor and expansion of the scope of parties eligible make water runoff claims, along with a suggestion to continue the November 20, 2024 hearing. To this, my client has well-founded concerns that such requests will continue to grow with a hearing continuance and therefore declines to agree to such requests or a continuance.

In the spirit of moving forward, we have informed the Councilors that my client's November 13, 2024 offer remains open until the ZBA hearing resumes on November 20, 2024.

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<sup>1</sup> The full correspondence regarding the offer is enclosed herewith.

Should the Councilors not accept the standing offer by the resumption of the ZBA hearing, my client wishes to reiterate the legal and substantive points contained in my October 22, 2024 letter to the Board which I enclose herewith.

Those points include: (1) no party appealed the grant of zoning relief, and the project has been under construction for the better part of a year; (2) it is well-settled that the decisions of local building officials deciding local matters, such as the ISD Commissioner here, are entitled to substantial deference that their judgment is appropriate; (3) ISD determined in an August 14, 2024 memorandum, after reviewing and taking all pertinent measurements in conjunction with a review of plans, that the Project, which is not yet complete, is progressing towards completion in accordance with all such plans, including as to retaining walls and building height; (4) accord with the Planning Department's statement that depictions on architectural plans, such as the two persons, a fence, a tree, and comparative grade height as shown on the Project's Architectural Plans, Sheet 10, are for renderings only, as the Civil Plan (referenced on the Architectural Plans) determines the actual grading of the Project.

It follows that my client respectfully asks that should the Councilors not accept the standing offer before the November 20, 2024 resumption of the ZBA hearing, the Board deny the Appellants' appeal and affirm the ISD Decision.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at your convenience.

Very truly yours,

/s/ Jeffery D. Ugino  
Jeffery D. Ugino

Enc.

cc: Client  
Deputy City Solicitor  
Councilor Oliver  
Councilor Scibelli Greenberg  
Councilor Leary  
Councilor Laredo

**From:** jugino@gelermancabral.com  
**Sent:** Monday, November 18, 2024 4:46 PM  
**To:** 'John Oliver'; 'Maria Scibelli Greenberg'  
**Cc:** 'Alison M. Leary'; 'Marc C. Laredo'  
**Subject:** RE: mitigation

Dear Councilors,

You have today added new requests: unspecified additional screening items relating to a different neighbor and expansion of the scope of parties eligible make water runoff claims, along with a suggestion to continue the November 20, 2024 hearing. To this, my client has well-founded concerns that such requests will continue to grow with a hearing continuance and therefore declines to agree to these new requests or a continuance.

In the spirit of moving forward, my client will keep its November 13, 2024 offer open until the ZBA hearing resumes on November 20, 2024.

Very truly yours,

Jeffery D. Ugino, Esq.  
Gelman and Cabral, LLC  
30 Walpole Street  
Norwood, MA 02062  
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Mobile: 617.818.2418  
[jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)  
Additional offices in Boston and Winchester

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**From:** John Oliver <joliver@newtonma.gov>  
**Sent:** Monday, November 18, 2024 11:11 AM  
**To:** jugino@gelermancabral.com; Maria Scibelli Greenberg <msgreenberg@newtonma.gov>  
**Cc:** Alison M. Leary <aleary@newtonma.gov>; Marc C. Laredo <mlaredo@newtonma.gov>  
**Subject:** Re: mitigation

Mr. Ugino,

We have had a chance to review your offer among the City Councilors, Mr. Gee, and the abutters. We believe we are making meaningful steps towards reaching a resolution on this matter.

We accept items 3, 4, and 5 of your offer. We would like to further discuss items 1 and 2.

Regarding the water runoff issue: the excessive water runoff impacts not just Mr. Gee's property, but all abutters, and in particular Mr. Flynn's property, which is also at the Lincoln Rd grade. We would expect that your client's water mitigation solution would address all impacted properties, provided, of course,

that the engineer's report supports such a need. We will be requesting that the engineer's report include a recommended solution.

The height of the building relative to the neighbors - in particular the Johnsons' - remains a top concern. It is materially impacting the Johnsons' use and enjoyment of their property. Of particular concern to them are the large picture windows at the stairwells of your client's development, which, given the sheer height of the structure, face directly into the Johnson's windows. Forgetting the impact to sunlight, they would like to be able to open their blinds without looking directly into your client's property. If lowering the finished grade (and therefore overall stature of the building) is not achievable, then we need to agree on some alternative solutions to minimize the impact - whether they be adjustments to window placements/size, planting additional trees, installing privacy/frost on the windows at issue, or something else.

Finally, neither the Councilors nor the abutters are in a position to influence your request that these settlement items be contingent upon a guarantee of no additional permitting. That would need to be raised with ISD, which will presumably follow the permitting rules and regulations.

Our suggestion is to provide the ZBA with a brief update on our discussions and request a continuation of this matter until the December ZBA meeting, which will hopefully provide us with enough time to resolve both open items.

Regards,

John Oliver  
City Councilor-at-Large, Ward 1  
p 248 219 3858

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**From:** [jugino@gelermancabral.com](mailto:jugino@gelermancabral.com) <[jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)>  
**Sent:** Friday, November 15, 2024 10:46 AM  
**To:** Maria Scibelli Greenberg <[msgreenberg@newtonma.gov](mailto:msgreenberg@newtonma.gov)>  
**Cc:** Alison M. Leary <[aleary@newtonma.gov](mailto:aleary@newtonma.gov)>; John Oliver <[joliver@newtonma.gov](mailto:joliver@newtonma.gov)>; Marc C. Laredo <[mlaredo@newtonma.gov](mailto:mlaredo@newtonma.gov)>  
**Subject:** RE: mitigation

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Councilor Greenberg,

That is fine so long as I hear from you by Monday, Nov. 18 at noon. If we do not have agreement by that time, we plan to submit a written update to the ZBA for the public record by the 48-hour pre-hearing deadline detailing our efforts here and reiterating our baseline position on the appeals. Thank you.

Jeff Ugino

Jeffery D. Ugino, Esq.

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**From:** Maria Scibelli Greenberg <[msgreenberg@newtonma.gov](mailto:msgreenberg@newtonma.gov)>  
**Sent:** Thursday, November 14, 2024 9:24 PM  
**To:** [jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)  
**Cc:** Alison M. Leary <[aleary@newtonma.gov](mailto:aleary@newtonma.gov)>; John Oliver <[joliver@newtonma.gov](mailto:joliver@newtonma.gov)>; Marc C. Laredo <[mlaredo@newtonma.gov](mailto:mlaredo@newtonma.gov)>  
**Subject:** Re: mitigation

Dear Mr. Ugino,  
Thank you for your response and especially for considering that late request.  
We ( the Councilors and abutters) are working toward discussing our next steps.  
Work schedules and family life have made it difficult to meet therefore we need to extend our reponse deadline to Monday Nov. 18th.

Best,

Maria Scibelli Greenberg (she/her)

Newton Ward 1 City Councilor

617-631-8691

**The Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.**

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**From:** [jugino@gelermancabral.com](mailto:jugino@gelermancabral.com) <[jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)>  
**Sent:** Wednesday, November 13, 2024 4:10 PM  
**To:** Maria Scibelli Greenberg <[msgreenberg@newtonma.gov](mailto:msgreenberg@newtonma.gov)>  
**Cc:** Alison M. Leary <[aleary@newtonma.gov](mailto:aleary@newtonma.gov)>; John Oliver <[joliver@newtonma.gov](mailto:joliver@newtonma.gov)>; Marc C. Laredo <[mlaredo@newtonma.gov](mailto:mlaredo@newtonma.gov)>  
**Subject:** RE: mitigation

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FOR SETTLEMENT PURPOSES ONLY

Dear Councilors,

Thank you again for last Thursday's meeting. We appreciate the opportunity to work together to resolve these issues. The offer below demonstrates my client's willingness to come to a resolution prior to the scheduled November 20, 2024 ZBA hearing.

Following discussion with my client, 20 Clinton Street LLC, it has the following response to the matters we discussed:

1. Gee Water Runoff Complaint. My client agrees to review any licensed civil engineer-produced reports which demonstrate that excessive stormwater runoff is occurring from 20 Clinton Street to 13R Lincoln Street as a result of the development, and work collaboratively with Mr. Gee and Ms. Jiao to mitigate any such effect.
2. Request to Lower Finished Grade and Building Heights. By the conclusion of our meeting, I believe everyone understood that this is unworkable due to it being beyond the contemplated minor mitigation sought by the ZBA in allowing for a hearing continuance.
3. Privacy Screening of Balconies. My client agrees to provide the requested balcony screening.
4. Broken China. My client agrees to pay \$500 to the Flynns (15 Lincoln Road), but does not admit any liability in this regard.
5. Extension of Wooden Fence. Though it was not raised until four days after the original November 7, 2024 meeting, my client agrees to extend the wooden fence neighboring the Flynns' property (15 Lincoln Road).

All of the above is contingent on (1) ISD requiring no additional building permits for the work or otherwise no disturbance of the July 12, 2023 Special Permit, and (2) both the Councilors and Mr. Gee dismissing their respective appeals before the ZBA.

The above offer remains open until Friday, November 15, 2024 at noon, after which it will be withdrawn. Thank you for your attention to this matter.

Very truly yours,

Jeffery D. Ugino, Esq.  
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Phone: 781.769.6900  
Mobile: 617.818.2418  
[jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)  
Additional offices in Boston and Winchester

---

**From:** Maria Scibelli Greenberg <[msgreenberg@newtonma.gov](mailto:msgreenberg@newtonma.gov)>

**Sent:** Sunday, November 10, 2024 7:08 PM

**To:** [jugino@gelermancabral.com](mailto:jugino@gelermancabral.com)

**Cc:** Alison M. Leary <[aleary@newtonma.gov](mailto:aleary@newtonma.gov)>; John Oliver <[joliver@newtonma.gov](mailto:joliver@newtonma.gov)>; Marc C. Laredo <[mlaredo@newtonma.gov](mailto:mlaredo@newtonma.gov)>

**Subject:** mitigation

Dear Mr. Ugino,



Since our meeting with you last Thursday the Flynn's have a concern regarding the fencing that runs along their property. Please see first photo.

The Flynn's understood that the fence that was installed would extend to the metal fencing seen in the attached photo( on the left side of photo).

Currently an alley way has been created which allows access from Clinton st to the Flynn's property. We are requesting that the space from the new fence to the adjacent wooden fence be blocked with a continuation of your wooden fence. See 2<sup>nd</sup> photo.

Please add this to the list of mitigation requests.

We only made aware of this concern the day after our meeting with you so apologies for the late notification.

Best,

Maria Scibelli Greenberg (she/her)

Newton Ward 1 City Councilor

617-631-8691

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When responding, please be aware that the Massachusetts Secretary of State has determined that most email is public record and therefore cannot be kept confidential.

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JEFFERY D. UGINO  
[JUGINO@GELERMANCABRAL.COM](mailto:JUGINO@GELERMANCABRAL.COM)

October 22, 2024

BY EMAIL [bbelsanti@newtonma.gov](mailto:bbelsanti@newtonma.gov)

Hon. Michael Rossi and  
Members of the City of Newton  
Zoning Board of Appeals  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Re: 16-22 Clinton Street, Newton, MA  
Cases #06-24, #07-24

Dear Members of the Zoning Board of Appeals:

This firm serves as counsel to 20 Clinton Street LLC (“Applicant”), owner of the above-referenced property at 16-22 Clinton Street in Newton (“Property”). Through this memorandum, we urge the Board to deny appeal of the City Council and several petitioners’ appeal (“Appellants”) of the Inspectional Services Department’s August 14, 2024 decision (“ISD Decision”) finding no zoning violations at Property.

### Factual Background

On July 12, 2023, after recommendation by the City Council’s Land Use Committee, the Council unanimously approved (23-0, 3 abstentions) the Applicant’s Special Permit and Site Plan Review to allow four residential housing units in two separate structures at the Property (“Project”). The zoning relief includes floor area ratio, height and number of stories, to allow for ground floor residential use, and to alter an extend a nonconforming side setback.

No party appealed the grant of zoning relief, and the project has been under construction for the better part of a year. In response to requests for zoning enforcement

alleging that the Project is not being constructed in accordance with approved plans, the Inspectional Services Department issued the ISD Decision, which found no violations by the Applicant. The Appellants appeal the ISD Decision to the Board. The appeal amounts to allegations that the Project should not have been approved in the first instance and, alternatively, that it is not being constructed in accordance with approved plans. However, none of the Appellants exercised their right of appeal from the City Council's original grant of zoning relief, and they have brought forward no evidence that the construction fails to comply with the plans approved by the Council.

#### Legal Standard to Maintain Appeal

Given the findings of the Department of Inspectional Services and the Department of Planning and Development that the Project is being constructed in accordance with all approved plans, which are discussed in further detail below, the requests for enforcement represent an impermissible appeal of the original grant of zoning relief well past time to do so. To this end, private parties may not use such tactics where such objections could have been raised through timely appeals from the relief granted. In Gallivan v. Wellesley Zoning Board of Appeals, 71 Mass.App.Ct. 850 (2008), the Court held that an affected party may not bypass the administrative remedy available under G.L. c.40A, §§8 and 15 to appeal a grant of zoning relief and "subsequently litigate the question by means of a request for enforcement under G.L. c. 40A, § 7." Given the lack of evidence of a violation, that is precisely what is sought here by the appellants.

In any event, for the sake of argument, even if the appellants are not attempting to circumvent previously-granted zoning relief, in an enforcement action (whether initiated by the zoning enforcement officer or, as here, a third party) the burden is upon the complainant to show a violation. Moreis v. Oak Bluffs Bd. of Appeals, 62 Mass.App.Ct. 53, 57 (2004). Additionally, it is well-settled that the decisions of local building officials deciding local matters, such as the ISD Commissioner here, are entitled to substantial deference that their judgment is appropriate. Britton v. Zoning Bd. Of Appeals of Gloucester, 59 Mass.App.Ct. 68, 77 (2003). See also Schissel v. Hause, No. 09 MISC 414355 KCL, 2012 WL 5494002, at \*6 (Mass. Land Ct. Nov. 13, 2012).

As further explained below, the appellants have shown absolutely no evidence of a violation to meet their burden to overturn the Inspectional Services Decision. They simply claim that they were unaware of what approved plans for the Project actually call for. The allegations are wholly unsupported by any analysis, plans, calculations, affidavits, or opinion from any licensed professional engineer or architect or any other person or firm having the expertise to make such assessment of the Project.

Inspectional Services Department's Evaluation of Enforcement Request

On August 2, 2024 and August 6, 2024, the Inspectional Services Department sent its Commissioner and an Inspector to the Property in response to an enforcement request concerning the buildout of the project as approved by the Council. The Commissioner and Inspector determined, after reviewing and taking all pertinent measurements in conjunction with a review of plans, that the Project, which is not yet complete, is progressing towards completion in accordance with all such plans, including as to retaining walls and building height. Inspectional Services' findings are detailed in its August 14, 2024 memorandum ("ISD Decision").

The ISD Decision explains that as final grading of the Property has yet to be completed, preliminary height measurements are not determinative of final measurements and, in the opinion of the Department, construction of the Project is in conformance with approved site and architectural plans. The ISD Decision is a thorough review of the Project after detailed inspection and reliance on plans and opinions from licensed professionals, including stamped as-builts for architectural, engineering, and site surveyor plans.

Planning Department Review of Enforcement Request

The Applicant wishes to highlight the work of the Department of Planning and Development ("Planning Department"), which on October 16, 2024 submitted a memorandum to the Board which comprehensively examined the Appellants' claims. The memorandum states that the Planning Department, after careful examination of all plans submitted at the time of the application, including the existing conditions plan and civil plans, concludes that the Project is presently being constructed in accordance with the Council's approved grade and height changes as shown in those plans. As to the special permit application requirement to include a computer-generated model or architect-certified rendered perspectives, the Planning Department concludes that plans submitted with the application on the design professional's title block, along with special permit certification language, met the Department's filing requirements.

Concerning architectural renderings, the Planning Department in its memorandum explains that architectural renderings are generally only used for presentation purposes, and that the final details are found in stamped architectural and civil plans, which as to the Project were sufficient. Lastly, the Planning Department emphasizes that depictions on architectural plans, such as the two persons, a fence, a tree, and comparative grade height as shown on the Project's Architectural Plans, Sheet 10, are again for renderings only, and the Civil Plan determines the actual grading, and that, in sum, construction of the Project is in conformance with such plans.

Conclusion

It follows that my client respectfully ask that board deny the Appellants' appeal and affirm the ISD Decision.

Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me at your convenience.

Very truly yours,

/s/ Jeffery D. Ugino  
Jeffery D. Ugino

cc: Client