

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, MARCH 31, 2015

Present: Ald. Laredo (Chairman), Cote, Albright, Lipof, Schwartz, Lennon, and Harney; absent Ald. Crossley; also present: Ald. Lappin, Yates, and Fuller, and Hess-Mahan
Staff: Alexandra Ananth (Chief Planner for Current Planning), Daniel Sexton (Senior Planner), Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board)
Also present: Linda Walsh (Interim Commissioner of Health and Human Services), Biosafety Committee members Carl Cohen and William Dietrich

A public hearing was opened and continued on February 3, 2015

#2-15 ATRIUM WELLNESS CENTER LLC. petition for a SPECIAL PERMIT/SITE PLAN APPROVAL and EXTENSION of a NONCONFORMING STRUCTURE to repurpose an existing vacant building into a mixed-use facility including medical office, laboratory, general office, retail, and restaurant uses (to allow restaurants of more than 50 seats) at 300 BOYLSTON STREET, Ward 7, Chestnut Hill, on land known as SBL 82, 2, 1, containing approximately 125,771 sq. ft. of land in a district zoned BUSINESS 1. Ref: 30-24, 30-23, 30-21, 30-11(b)(3), 30-11(d)(9), 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 7-0

NOTE: The public hearing was opened on February 3. Present were Aldermen Laredo (Chairman), Albright, Crossley, Schwartz, Lipof, Cote, and Harney; also present were Aldermen Gentile, Lappin, and Fuller. The petition was presented by attorney Alan Schlesinger; architect Larry Grossman a principal with ADD, Inc., Betsey Gilman Duane from environmental and engineering consulting firm EH&E.

This petition is to repurpose the former Atrium Mall, which was constructed by-right in 1986 and vacated in 2013, into a mixed-used facility containing general and medical office, laboratory, retail, and restaurant uses. A 1988 zoning amendment that included changes to the height and setback requirements for a Business 1 zoning district rendered the building a nonconforming structure. The building has been the subject of several special permits for a freestanding sign and restaurant uses which included some modifications to the entrance and exit drives. The petitioner, who acquired the property in 2012, is proposing to allocate up to 25,000 square feet for restaurant uses, with a maximum of 332 seats; approximately 100,000 square feet is proposed for laboratory uses and the remaining 160,300 square feet will be developed with general and medical office and retail uses. The petitioner is in the process of modernizing the façade, which is by-right and not part of this petition.

The building has 1,106 parking stalls on-grade and in a parking garage. The proposed mixture of uses requires a total of 902 parking stalls. Based on calculations, there appears to be a surplus of 204 parking stalls on the site. A Trip Generation Comparison provided by Vanasse & Associates

indicates that the change from all retail to a mixed use is expected to generate less traffic during the weekday and weekends on a daily basis and less traffic during the weekday evening and Saturday midday peak hours. Only during the weekday morning peak hour would there be an expected traffic increase. The figures indicate a significant diminution of traffic, with over a 6,000-car reduction on the weekends.

A laboratory use is allowed by special permit in the Business 1 zoning district, but the Planning Department has encouraged the petitioner to seek comments from Newton's Biosafety Committee (NBC). However, a laboratory use with recombinant DNA research or technology must also obtain a permit from the commissioner of health and human services with the prior approval of the NBC. Mr. Schlesinger said this is a high-profile location close to Boston and life science is the fastest growing segment of the state's economy. Chapter 12 of the city ordinances, which regulates rDNA research, lists Manufacturing, Limited Manufacturing and Mixed Use 1 and 2 zoning districts, but is silent to Business districts. Sec. 30-11(d)(3) allows a laboratory by special permit in districts zoned Business 1, 2, 3, and 4. A number of Biosafety Level I and II companies have expressed interest in locating at the site. Mr. Schlesinger reported that the petitioner is going to the NBC Committee on March 12.

Ms. Duane explained not all life science research involves rDNA. Recombinant DNA Levels I and II laboratory uses are the lowest levels. Examples of Level I include Boston College, Newton Wellesley Hospital, Golden Living Nursing Center, other medical uses on Route 9, high school labs, etc. Level II is a slightly higher level. The highest is Level III, which is not proposed for this building. These uses are strictly regulated in accordance with federal and state regulations and companies have internal monitoring protocols or hire a consultant, such as herself, to run such a program.

Aldermen Fuller and Crossley asked if examples could be put in lay terms. Are there others in Newton and, if so, are they in proximity to residences? What about other communities? Are Newton Wellesley Hospital and Boston College permitted? Does the city, for example the Fire Department, have sufficient capabilities to address any incident?

Alderman Albright said she has worked for 20 years in a building that does this work and is aware of the standards and review procedures. Is there information from other cities? Alderman Schwartz believes this discussion is important as everyone needs to be comfortable with this use. He noted out that the waivers sought in the special permit are separate from the charge given to the Biosafety Committee. He recalled that in the 1970's there was a lot of unease about rDNA; however, many antibiotics and other treatments are a product of this type of research.

Public comment:

Sandra Phillips, a Board member of Imperial Towers, 280 Boylston Street, reported that many residents are very worried. Who will the tenants be? What is their background? It's a far stretch from a high school lab to a hospital.

Jackie Jacobs, 280 Boylston Street, said that despite the third lane added as part of the Chestnut Hill Square Development, it is still difficult exiting their drive, which is approximately 15 feet

from the drive at the Atrium Garage, and this is with an empty Atrium. How many employees will there be? What about lighting at night? How many shifts will there be?

A resident of 2 Hammond Pond Parkway said she works at Dana Farber and is familiar with this type of research. She explained that every phial of blood taken in a doctor's office is Level II. You cannot do Level III in a Level I or Level II lab. All laboratories are subject to unannounced inspections by a number of agencies, including the Fire Department. She supports the use.

Attorney Paul Feldman, representing the Hampton Place Condominium Association at 77-79 Florence Street, said this is a generic request. The public needs to know who the tenant(s) will be, then the Board can decide whether to allow rDNA. This is not according to procedure; it is premature without an identified tenant. His clients cannot concede that rDNA is allowed in this district. The argument that the city is missing out and that the life science use is lucrative in and of itself may not be what the city wants. There are hundreds of residential units within a stone's throw. It seems that another location better suited to this type of research exists elsewhere in the city. How much of the proposed 100,000 square feet of laboratory space will be devoted to rDNA? His clients are concerned about "level creep." Who will ensure that after several years it will not be Level III?

Greg Reibman, President of the Newton-Needham Chamber of Commerce, spoke in favor of the petition. Granting a permit without a tenant allows the city to be competitive by having ready space. The Biosafety Committee will do its due diligence. The city has already lost opportunities in this field and has lost other businesses such as Trip Advisor and Clark's.

Robert Karp, 99 Florence Street, is President of the Board of Trustees of The Farm. He only today received the petitioner's FAQ sheet. He wanted to be assured, which he was, that they will have an opportunity make their views known

Monte Yaffe, 79 Florence Street, is opposed. He wants more information about the various agencies that are responsible for the oversight of the laboratory.

Sandy Goldstein, 280 Boylston Street, is opposed. She is concerned about the guidelines and what the result will be if they are not adhered to.

The committee, in response to concerns raised by committee members and members of the public, asked that a summary of the questions raised this evening be prepared and sent to the Biosafety Committee for its guidance. The committee continued the hearing to a date to be determined.

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This evening, Mr. Schlesinger briefly recapped documents submitted since February 3 which include his letter of March 5, in which he addresses questions from the committee and members of the public; a letter dated March 10 in which he addresses additional questions, and the Biosafety Committee's response (attached) from Interim Commissioner of Health & Human Services Linda Walsh, dated March 24, to questions raised on February 3.

Interim Commissioner of Health & Human Services Linda Walsh introduced Carl M. Cohen and William Dietrich, members of the Newton Biosafety Committee. The committee asked Messrs. Cohen and Dietrich for brief biographies. Both early in their careers worked as bench scientists. Mr. Cohen has more than 30 years of biomedical research and management expertise, including having been Chief Operating Officer of Biovest International focused on cancer immunotherapy and Vice President for Research and Development at Creative BioMolecules. He served as Chief

of the Division of Cellular and Molecular Biology and Acting Chair of the Department of Biomedical Research at St. Elizabeth's Medical Center of Boston. He also held/holds positions of Professor of Medicine and Professor of Anatomy and Cellular Biology at Tufts University School of Medicine.

Mr. Dietrich is the Director of Discovery and Translational Pharmacology in the Developmental and Molecular Pathways department at Novartis Institutes of BioMedical Research in Cambridge. He teaches at Harvard Medical School and is a co-author/inventor on more than 60 scientific publications and patents, and has led or performed IND-enabling pharmacology research for 4 different drug discovery programs.

Public comment:

Robert Karp, 99 Florence Street, President of the Board of Trustees of The Farm, met yesterday with the Atrium team, after which the condominium Board of Trustees held a meeting. Mr. Karp today submitted three proposed conditions (attached) to be included in the special permit if it is approved. Mr. Karp said that in his previous life he developed properties in the Raleigh-Durham area and as a landlord a use clause was often included in leases to protect both the landlord and others.

Monte Jaffe, a member of the Board of Trustees on Hampton Place wished to associate himself with Mr. Karp. There remains concern about introducing this risk to a densely populated area. Oil from The Cheesecake Factory ended up their pond. He looks to elected officials to protect the residents. He remains concerned that there is no tenant identified. (Ald. Lappin wished to note that the residents of Hampton Place had not had the opportunity to review the Biosafety Committee's responses dated March 24.)

Louise (last name unknown), a resident of Hampton Place, remains opposed. She noted that the CDC has had a number of incidents and is losing its credibility. Recently there was an unintentional mix of flu viruses. Another incident involved transporting a high-risk virus to a low-risk lab.

Bob Pittman, Hampton Place Board of Trustees, wanted to know if any research has been done on accidents nationwide. He is concerned about MRSA research. Hampton Place has only one entrance for access and egress. There are 100 units. What if there is an accident. The CDC has accidents all the time. He is concerned about drainage into their pond and the pond on The Farm. He is concerned about property values.

Norman Finn, Hampton Place, asked if the facility would it be restricted to Levels I and II? What about toxic waste? (Ms. Walsh explained that waste must be removed by a contractor certified to haul medical waste.)

Sam Itkin, 21 Louise Road, a member of the Chestnut Hill Village Alliance, a group of Brookline and Newton residents, from whom an email was received late today, said that there had been a verbal contract back in 1986 that a rear drive onto Florence Street would only be used for deliveries and emergencies. Since then there has been additional development with additional traffic and he would like to see that verbal agreement be made a condition.

There was considerable discussion about this exit. Alderman Lipof pointed out it is very narrow and probably not used by many people, only those who discover it by accident. The petitioner said that although it is not wide, it is essential for operation of the building. It is used for

deliveries and valet parking. The petitioner has no objection to posting signage that it is not an exit. Ald. Albright suggested revisiting how it functions within six months after a full occupancy permit. It was agreed that the drive should be limited to deliveries, valet service, and emergencies.

Mr. Schlesinger said the petitioner is seeking a special permit because he has turned away tenants who wish to locate this type of facility there. It is not only an advantage to the petitioner but to the city as well. The chairman said there is no requirement that a petitioner have a tenant in order to apply for a special permit. The special permit allows the owner to market the property. The Board of Aldermen has a responsibility to protect both the public and the economic health, long-range, for the interests of the entire city.

Alderman Schwartz understands there is fear behind many of the questions. He asked Messrs. Cohen and Dietrich if they know of any situations that have occurred from this type of use. Both said that they don't routinely monitor whether there are situations, but reiterated that Levels I and II are pretty benign, essentially a notch above high school labs. There can always be consequences, but there are treatments. It is important to remember that the facility is required to have an Institutional Biotechnology Committee (IBC), pursuant to Sec. 12-23 Chapter 12, which includes the commissioner of health and human services and two community representatives with expertise in rDNA research and technology and/or safety issues. The IBC must meet at least once a year. Each institution shall name at least three (3) members of its staff to the IBC, including the safety officer. The industry requires universal precautions, overseen by the National Institute of Health (NIH) as well as de facto in Chapter 12. The NIH rules are meant to protect both researchers and surrounding areas. Many questions tonight are outside the Biosafety Committee's purview. The Biosafety Committee is interested in looking at Chapter 12 and updating it.

Conditions suggested by Mr. Karp included reducing the amount of laboratory space from 100,000 square feet to 35,000 square feet. Mr. Schlesinger said the petitioner is willing to reduce the square footage for laboratory use to 50,000 square feet. Another condition related to inserting use clauses in leases to life sciences industry tenant(s) and submitted those clauses to the Commissioner of Health & Human Services for review in consultation with a third party consultant to be selected by the Commissioner and paid by the petitioner, to determine compliance with all relevant regulatory requirements. Mr. Schlesinger agreed this was acceptable.

Relative to Mr. Karp's suggestion that animal testing of any kind be prohibited, Mr. Schlesinger said this was not an acceptable condition as it would preclude too much work. As to the landlord/potential tenant being required to submit to the jurisdiction of the regulators for a permit to operate even if the laboratory does not intend to perform rDNA research, Ms. Walsh and Messrs. Cohen and Dietrich emphasized this is outside the purview of the Biosafety Committee at this time.

Alderman Fuller asked if the petitioner would, as have Chestnut Hill Square and The Street, be willing make a contribution towards a shuttle service on Route 9 should one be established in the future. She is aware that the petitioner participates in the 128 Business Council shuttle with a

stop at 320 Needham Street and launching a similar service to serve Newton Centre/Route 9 would be a great benefit. Mr. Schlesinger said the petitioner would be pleased to contribute.

The committee reviewed a draft special permit board order and Alderman Lipof moved approval with the findings and conditions contained in draft special permit #2-15, dated April 6, 2015. The motion to approve carried 7-0.

A public hearing was opened and continued on 12/9/2014, continued to February 10, 2015; continued on March 17

#366-14 ARMAN CHITCHIAN petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to construct an addition and reconfigure an existing two-family dwelling to two side-by-side attached dwellings, which will increase the Floor Area Ratio from .24 to ~~.42~~ .41, where ~~.36~~ .38 (with bonus) is allowed, at 143 LINCOLN STREET, Ward 5, NEWTON HIGHLANDS, on land known as SBL 52, 1, 18, containing approximately 11,775 sf of land in a district zoned SINGLE RESIDENCE 2. Ref: Sec 30-24, 30-23, 30-21(b), 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED ASA AMENDED 6-0-1 (Harney abstaining)
NOTE: This is the fourth meeting in which the committee heard and discussed this petition. The petitioner is represented by attorney Terrence Morris and architect Ron Jarek. The subject property consists of a legally nonconforming 2½-story dwelling originally constructed in 1872. The house is situated on the corner of Lincoln Street and Mountfort Road. There is approximately 67 feet of frontage on Lincoln Street and 138 feet on Mountfort Road, which Mr. Morris said dictated the design. The use is nonconforming because the dwelling is located in a single residence district. After a fire in the 1960's, the building was substantially reconstructed, losing any semblance to a Victorian dwelling. The petitioner is proposing to demolish and rebuild portions of the house, add an addition to the north side of the existing portion, and create a two-car below grade garage. A freestanding carport and two other carports are shown on each side of the garage. This original iteration sought a special permit to increase the size of the nonconforming two-family use in a single residence district and to increase the Floor Area Ratio (FAR) from .24 to .50, where .36 is the maximum allowed by right. The Historical Commission reviewed the proposal and determined the structure not preferably preserved. The petitioner is proposing to use exterior design elements and treatments from the Italianate and Second Empire styles. The existing roof, which is slightly sloped, will be replaced with a Mansard roof, which was the original roof prior to the fire.

The proposed increase in FAR is related mostly to the proposed 2½-story addition to the north side of the existing house. The proposed building lot coverage of 26% will not exceed the maximum allowed and the minimum available open space will be reduced to 56%, where 50% is required.

The Planning Department had no particular concerns with the construction of an addition; however it had reservations about the size, bulk, and mass of the proposed addition and its visual fit within the surrounding buildings and context. The Planning Department commended the petitioner for a design that attempts to be sympathetic towards the surrounding historic homes;

however, it suggested the petitioner consider changes that would add symmetry to the house and more in keeping with the context of the neighborhood.

Ald. Crossley said that given what the architect was asked to do, it is a masterful job. Lincoln Street is the best example in Newton of a New England village. The homes have a large presence and they march down the street as monuments to their time. She believes the mansard roof and other elements are appropriate. She has concerns about the size, particularly in relation to Mountfort Road. The mass and presentation along Mountfort Road doesn't work. The underground parking makes it look like a 4-story structure in the rear. The FAR is a big ask.

Ald. Albright confirmed that the house is really 80 feet long on Mountfort Road; the 80-foot stretch, although it is well under the height limitation, feels too large. Ald. Schwartz believes it should keep more with the size and scale of the neighborhood.

Public Comment

Lawrence Rosenberg & Ann Rosenberg, 153 Lincoln Street, said it is out of character with the neighborhood, no houses have garages underneath. The proposed carports will cover the lot. *Leslie Cohen & Arnie Cohen*, 19 Mountfort Road, said they will see the enormous side of the house; the lot will be filled with the house.

Pedro Arboleda, 122 Lincoln Street, agreed, this will upend the neighborhood.

Nancy & Kevin Dougherty, 8 Mountfort Road, do not mind the look so much, it is an improvement over the existing house, but it is too big, the driveway and parking will be along their property line and the underground parking is not in keeping with the neighborhood.

Dan Kernan, 135 Lincoln Street, it will surpass every other house in the neighborhood.

Benjamin Siegal, 154 Lincoln Street, agreed with the previous speakers.

Ron Mauri, 35 Bradford Road, noted that the Newton Highlands Area Council does not support the petition. It is a nice house in the wrong place. There is no compelling reason to go so high.

George Mansfield, 312 Lake Avenue, is part owner of 173 Lincoln Street. Three blocks of Lincoln Street comprise a National Register District, which is very significant. The Historical Commission found the existing house not preferably preserved because of the changes to it. He is disappointed because the commission could have negotiated with the owner for a different design.

Per Dutton, 157 Lincoln Street, agreed with the speakers.

Alderman Schwartz asked if the petitioner planned to meet with the neighborhood. Mr. Morris said they will take tonight's comments under advisement and will meet with neighborhood if they go forward. The item was continued to a date to be determined.

This item was scheduled to be continued on January 27, but that meeting was cancelled due to a snow storm. On February 10, the Planning Department reported that the petitioner had submitted revised plans in response to concerns raised at the public hearing on December 9. Both units were reduced in size and the petitioner removed the underground parking and the freestanding carport. The two other carports remain to provide each unit with two covered parking stalls. The total mass was reduced as well. The changes, which the Planning Department supports, significantly reduce the length and width of the proposed dwelling. However, the Planning

Department suggests the petitioner minimize the amount of bituminous paving by adding grass pavers to the driveway wings. An illustrative site plan shows that the petitioner is not removing any trees and shows the addition of proposed landscaping with a mix of new deciduous and evergreen trees that will help screen the proposed addition.

Mr. Jarek noted that this iteration would be by-right if it were a single-family dwelling, with a FAR just below .36, which is just below the by-right FAR for a two-family dwelling. Alderman Crossley said she appreciates the extent the original design was modified. What counts as mass? Is the mansard going to be used for storage? Why not meet the code and finish and use the space? Alderman Schwartz asked about exterior material. Mr. Jarek said it is HardiePlank, which will replace the existing aluminum siding.

Public Comment

Ann & Lawrence Rosenberg, 153 Lincoln Street, read an email from Gisele Voss, who remains opposed to the project. Carports are very 1960's. This is a neighborhood of Victorian homes. The existing landscape is poor. This proposal will result in a loss of open space. It impacts two streets. The architect and petitioner missed the complaints: it is not just the size.

Benjamin Siegal, 154 Lincoln Street, it is the sheer mass of the house. It is an attempt to slide in the attic without it counting towards the FAR.

Dan Kernan, 135 Lincoln Street, this proposal is better, except for the carports.

Leslie Cohen & Arnie Cohen, 19 Mountfort Road, modified proposal is an improvement, but it still looks like a row house, the proposed materials are not authentic, there is too much impervious surface, and the carports do not fit in with the neighborhood.

Ron Mauri, 35 Bradford Road, also believes the proposed house is too large.

Jim Donovan, 31 Mountfort Road, carports are a concern as is parking on the street.

George Mansfield, 312 Lake Avenue, is part owner of 173 Lincoln Street, which has been rehabbed, although not to the extent of the Rosenberg's house. He said the plans indicate "HardiePlank and or vinyl siding and "majestic slate" for the roof. These are all fabricated materials. He suggested the committee asked for samples. What is space above the garage with windows? The site plan shows eight tandem spaces. Even if the carports are removed, that still leaves six cars on the site. The proposed glass roof lantern tower is not in scale with the building.

Ald. Crossley has no problem with HardiePlank. It wears well and is used on lots of new construction; she feels the same about "majestic slate." Looking at a sample close up is very different than from 20 feet away. From a distance you cannot tell if a slate roof is real or fabricated material. Mr. Jarek clarified that the intention is to use HardiePlank, not vinyl.

After suggesting that the petitioner meet with the neighbors, the committee continued the hearing to March 17.

On March 17, the petitioner reported that a meeting with the neighborhood was held on March 4. Residents were concerned about the visual impact of the dwelling on the surrounding historic homes and asked the petitioner and committee to consider the two entrances on Mountfort Road, the carports, the size of the driveway, and the exterior cladding. The garage has been moved

back to be subordinate to the house, the carports have been removed, and one entrance has been removed, as has the glass roof lantern tower. The size of the driveway has not changed, but the petitioner will use a surface of bituminous and grasscrete pavers with pervious edging. This iteration increased the footprint of the buildings (including house and garage) by 16 square feet and reduced the total floor area of the structures by 572 square feet. The petitioner provided images of the proposed exterior materials, which are Majestic Synthetic Slate Roof System and a Harvey Industries – Fiber Cement Siding System.

Alderman Crossley attended that meeting along with 10-12 people. She left believing that although everyone was not in entire agreement, the concessions given by the petition appeared to steer the project in a good direction. She was surprised when all the emails decrying the size of the house started today. The character is derived from extremely large houses that face Lincoln Street. She believes this is an attempt to restore a house that had a mansard roof, which is consistent with that period, when it was built in 1872. It is not inconsistent with the size and scale of other houses in the neighborhood.

Public Comment

Benjamin Siegal, 154 Lincoln Street, the massing, size of the house are out of character. Nature of the project is unreasonable. It is on the smallest lot

Ann & Lawrence Rosenberg, 153 Lincoln Street, said they haven't met since the community meeting. It is still too large. Do not approve.

Kevin Dougherty, 8 Mountfort Road, there is not enough landscaping

Leslie Cohen & Arnie Cohen, 19 Mountfort Road, although the garage has been moved back, the side of the building still feels too long.

Dan Powdermaker, 119 Lincoln, is not opposed, but is concerned about the scale and the townhouse nature on a small lot.

Per Dutton, 157 Lincoln Street, still believes it is too large and the FAR is too much.

The committee wants to know specifically what could be built by right. It also wants to know if the petitioner would be allowed to make any modifications to the existing house without a special permit. The hearing was continued to March 31.

This evening, it was reported that another neighborhood meeting was held on March 25. Mr. Sexton reported that the residents appeared to feel that the latest redesign was improved with a lowered roof. The driveway width has been reduced, thereby reducing the amount of impervious surface. The entrance to Unit B has been relocated to the rear. An upper roof balcony facing the Rosenberg property has been removed as have the front and rear garage single dormers. The surface formerly proposed for parking on each side of the garage will be grassed area. The Planning Department believes that comments relative to landscaping can be addressed by the proposed landscape plan.

The Planning Department overall is pleased with the modifications to the design; however, it encouraged the petitioner to go further and design the second-story rear addition in a true mansard style, as it believes this would further subordinate the addition, allowing it to

complement the restored principal structure. This would put the second floor within the mansard roofline. However the petitioner is not receptive because it will further reduce the usable floor area on the second floor of the addition. The only alternative would be to maintain the verticality between the first and second floor walls and affix the mansard roof line to those walls. This would result in an extension of the mansard eave disproportionately in relation to the rest of the house as well as not be authentic.

In this current iteration, the proposed unit sizes are 2,068 square feet (Unit A) and 2,191 square feet (Unit B), which sizes are consistent with the size of other dwelling units in the surrounding neighborhood. The petitioner gained a 2% FAR bonus through averaging of the setback on Mountfort Road, so the proposed FAR is going from .38 to .41. The total square footage of the buildings is 4,827 square feet, which is consistent with other dwellings in the area, and an increase of approximately 360 square feet more than what could be done by right on the site.

In response to the committee, the petitioner provided conceptual drawings for a by-right single-family dwelling with a carport. Essentially, it would be a very large single-family home, just under 4,464 square feet, whatever style the owner wished, without input from abutters and without the conditions of a special permit. The Commissioner of Inspectional Services confirmed that any expansion of the existing nonconforming two-family home located in a single-residence district unless di minimis would require a special permit because of its nonconforming status.

Benjamin Siegal and Lawrence Rosenberg both said they have not yet seen these revised plans. Ald. Lennon noting the number of emails received today and what appeared to be errors in some documents, wanted to make sure that a complete set of revised plans would be submitted to the Planning Department and Clerk.

The committee reviewed a draft special permit board order and Alderman Lipof moved approval of the petition as amended, with the decrease in the requested FAR, with the findings and conditions in draft special permit #366-14, dated April 6, which motion carried unanimously.

A public hearing was opened and continued on March 10

#40-15 CURTIS P. O'HARA, JOHN O'HARA & KARL J. O'HARA, TRUSTEES of the BB&G REALTY TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE/USE to construct additions to the northeast side and to the rear of an existing restaurant, which will increase the existing nonconforming Floor Area Ratio and front and side setbacks, to increase the seating from 116 seats to 146 seats, and to waive 11 parking stalls at 95-97 ELM STREET, Ward 3, West Newton, on land known as SBL 33, 13, 11, containing approximately 3,506 sq. ft. of land in a district zoned BUSINESS 1. Ref: 30-24, 30-23, 30-11(d)(9), 30-15 Table 3, 30-19(c)(2)a), 30-19(d)(13), 30-19(m), 30-21(b) of the City of Newton Rev Zoning Ord, 2012.

ACTION: APPROVED 7-0

NOTE: Attorney Stephen Buchbinder and architect Donald Lang presented the petition on March 10.

The petitioners are seeking to construct a 77-square foot addition on the northeast side of the existing 2½-story restaurant to create an HP ramp and lift, a 284 square-foot addition to the rear to expand the kitchen, and an 86 square-foot addition to the second floor towards the front to improve internal access, and to add 30 additional seats. The petitioner is seeking relief to expand the nonconforming building, to extend the nonconforming FAR, to extend the nonconforming side setback, and to waive 11 parking stalls. Located in West Newton Square, the site is abutted by commercial uses and a multi-family dwelling. The parking requirement calls for one stall for every three additional seats. The Architectural Access Board has granted a waiver for an elevator provided the first floor of the restaurant is fully accessible and that all private parties will be held on the first floor. Mr. Buchbinder acknowledged that parking in West Newton Square can be difficult; however, 30 additional seats do not mean 30 additional cars. The additional seats will reduce waiting time for patrons, thereby turning over seats faster. Many patrons are locals who walk or people who work in the area, or are going to the movies or the gym. The petitioners would be happy to do a parking study, but the snow would hinder its accuracy. The petitioners submitted a petition signed by 472 Newton residents in support of the project.

Ald. Brousal-Glaser asked if the two dumpsters to the right side of the building would be enclosed. Ald. Albright asked if the petitioners had considered a shared parking arrangement with other area businesses as was done with their other restaurant in Newton Highlands.

Public Comment

A gentleman from Webster Street said that Paddy's is a perfect neighbor and asset to the neighborhood.

John Bonadio, 76 Elm Street, said he and his family fully support the expansion. Many, many neighbors walk to Paddy's.

A woman who rents 89 Elm Street, which is the multi-family next door, said this is a fait accompli, there is noise, and cars impact the parking and block Webster and Elm Streets.

Lynn Slobodin, 61 Washburn Avenue, is a frequent patron with mobility issues who will be pleased when the restaurant is accessible.

A gentleman from Westview Terrace also spoke in support. The parking is and will remain self-regulating.

Rick Sewall, 83 Aspen Avenue, a life-long Newton resident, who in college worked as a bar tender at the Troubadour, Paddy's predecessor, said this is a classic neighborhood restaurant.

Danny Gentilucci, who owns Galaxy Auto Body on Border Street, supports the petition because he won't have to wait to be seated.

The committee suggested that the petitioners in lieu of a parking study explore instead the possibility of arranging off-site parking, and held the item until March 31.

This evening, Mr. Buchbinder reported that the petitioners have identified several lots, including two MBTA-owned lots, a private lot at 1385 Washington Street, and private lot at 30 Border Street. Of the four lots, one MBTA lot would be open to the public during the day, and the petitioners will encourage more employees – some already utilize the lot – to park there. The

other MBTA lot may be used in the evening, when court is not in session. The two private sites would be available at night after 5:00 or 6:00 PM; however, these lots would require stacked parking and the Washington Street lot includes only a portion of the stalls. The Planning Department recommends that the petitioners identify the location of the MBTA lots on its website and within the restaurant and incentivize the use of public transportation by its employees. Mr. Buchbinder submitted a Transportation Demand Management Plan incorporating these measures.

The petitioners have agreed to enclose the dumpsters. The petitioners have also agreed to contribute \$2,500 to the city to be used for parking improvements and/or pedestrian access or circulation improvements in the vicinity of West Newton Square.

The committee lauded the petitioner for seeking shared parking arrangements; however, it really is the city's responsibility to provide parking in the village centers. Alderman Hess-Mahan said he is not worried about the proposed expansion, noting that many patrons are going or have gone to other destinations and this will reduce the wait line as did the special permit granted to Rox Diner in Newtonville.

Alderman Cote moved approval of the petition with the findings and conditions in draft special permit board order #40-15, dated April 6, 2015. The motion to approve carried unanimously.

Request for Withdrawal without Prejudice:

#476-14 JOHNNY'S LUNCHONETTE/KRASNER METRO BOSTON ASSOC. LP & HKS PROPERTIES petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to extend a NONCONFORMING USE to expand the number of seats in an existing restaurant from 88 to 96 and to waive three parking stalls at 30 LANGLEY ROAD, Ward 6, Newton Centre, on land known as SBL 61, 33, 14 in a district zoned BUSINESS 1. Ref: 30-24, 30-23, 30-21(b), 30-11(d)(9), 30-19(c)(2)a), (d)(13), and (m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: WITHDRAWAL WITHOUT PREJUDICE APPROVED 7-0

NOTE: The parking situation was resolved, and the petitioner no longer needs to seek a special permit.

#214-10(7) ALD. HESS-MAHAN, ALBRIGHT, CROSSLEY, BAKER, LAREDO, LIPOF, FULLER requesting a discussion with the Inspectional Services and Planning Departments and New England Development about the as-built condition of Chestnut Hill Square and its apparent lack of conformity with the plans and elevations as approved and conditioned by the Board of Aldermen in special permit #214-10, granted on December 6, 2010.

ACTION: HELD 7-0

NOTE: Ms. Ananth was present; however, Commissioner of Inspectional Services John Lojek was unable to attend, so the item was held until Mr. Lojek is able to meet with the committee.

The meeting was adjourned at approximately 10:00 PM.

Respectfully submitted,

Marc C. Laredo, Chairman

Attachments: March 24, 2015 Biosafety Committee Response to Questions from Land Use Committee

Proposed conditions submitted by Robert Karp, 99 Florence Street.

NOTE: Many communications related to these petitions were sent to the Board, all of which are available on line in each special permit file and in the office of the Clerk of the Board.

City of Newton



Setti D. Warren
Mayor

HEALTH AND HUMAN SERVICES DEPARTMENT

Linda Walsh, Interim Commissioner
1000 Commonwealth Avenue
Newton, MA 02459

Telephone 617.796.1420 Fax 617.552.7063
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Public Health
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TO: Marc Laredo, Board of Alderman Land Use Committee, Chair

FROM: Linda Walsh, Newton Biosafety Committee, Chair

RE: Biosafety Committee Response to Questions from Land Use Committee regarding special permit application for Atrium Center

DATE: March 24, 2015

RECEIVED
 NEWTON CITY CLERK
 2015 MAR 24 PM 5:21
 David J. Olson, OMS
 Newton, MA 02459

Question 1

In general, what are Level I and Level II laboratory uses? What is rDNA research or technology and how does it fit in with Level I and Level II laboratory uses? Please provide examples of such uses, explain where such uses are conducted, and whether such uses are considered safe.

BSL (Biosafety Level)-1 and BSL (Biosafety Level)-2 laboratories are facilities that are used to safely conduct life science research under strict federal, state and local guidelines and oversight.

BSL-1: BSL-1 activities pose no or low individual and community risk. BSL-1 Labs are typically not separated from the general traffic patterns of others, work is performed on open bench tops and special containment equipment and devices are not needed. BSL-1 laboratory personnel have specific training in the procedures conducted in the laboratory and are supervised by personnel with general training in microbiology or related field. This is the type of laboratory found in municipal water-testing laboratories, in high schools, and in some community colleges

BSL-2: BSL-2 activities involve agents of moderate potential risk to personnel and the environment. These agents can cause disease in healthy individuals and pose a moderate risk to the environment. Precautions for use of these agents include BSL-1 practices plus limited laboratory access when work with these organisms is being performed and the recommended use of "biological safety cabinets" and/or protective equipment when performing work which may generate aerosols (transferring liquids, rapid mixing, etc.). In BSL-2 labs, personnel have training in the handling pathogenic materials, are familiar with the hazards associated with the specific agents they are using, and are directed by scientists who are competent and familiar with good microbiological laboratory technique. BSL-2 labs may handle clinical materials (biopsies, etc) diagnostic quantities of infectious cultures and human blood.

rDNA: The term recombinant DNA (rDNA) refers to the result of modifying genetic material (DNA), typically in a laboratory setting, to change it in some way. A simple example would be the ability to insert a small piece of new or foreign DNA into the existing DNA of a cell or organism (for example a bacterium) as illustrated in the figure below.

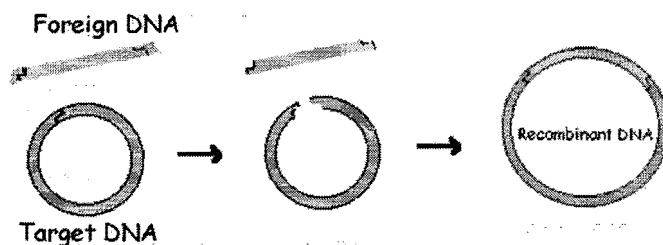


Figure: cartoon illustration of the construction of recombinant DNA (rDNA).

One example of rDNA technology is the insertion of a new or foreign piece of DNA into the DNA of human or bacterial cells being grown in a laboratory. The result is that the modified cells produce medically useful (sometimes lifesaving) materials that they would otherwise not produce. Insulin, for example, can be produced in this way. Recombinant DNA techniques such as that illustrated above are now universally used in life science research and in the manufacture of drugs by the biotechnology and pharmaceutical industries. Other applications of rDNA include but are not limited to basic research into gene structure-function and applied microbiology applications like FROSTBAN which was tested but never marketed (*P. syringae* "ice-minus" genetically altered strain) or for foods based on microbial fermentation.

Safety: Decades of experience has shown that when performed under the appropriate conditions (ie BSL 1, BSL-2, etc) and oversight (see below) the process of modifying the genetic material of cells or organisms in this way is safe and poses little or no risk to workers or to the community in which the work is done.

The potential risks of creating or using rDNA are based on the risks associated with the source of the DNA and its function and are determined according to NIH risk guidelines. People may perform rDNA research in BSL-1 and BSL-2 facilities when they are properly trained and equipped and the facilities have been properly constructed, maintained and all activities are in adherence to official safety guidelines

In the Boston area, there are literally hundreds of BSL-1 and BSL-2 laboratories. Such facilities are found in colleges, universities, medical laboratories, hospitals, and in biotech and pharmaceutical companies.

The safety of such laboratories is such that they are typically found in buildings also containing dining and patient treatment areas, and are in close proximity to schools, daycare centers, and homes.

****Please see appendices for more detailed information and sources about Risk Group definitions, and the practices required of BSL-1 and -2 work.**

City of Newton



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Question 2

What are the processes for vetting a laboratory utilizing rDNA technology under federal and/or state regulations as well as under Newton ordinances? Once established, is there any continuing oversight?

The Newton City Ordinance regulating rDNA research requires that laboratories must first obtain a permit from the HHS Commissioner.

The role of the Newton Biosafety Committee (NBC) is to review laboratory applications, ensuring that the applicants plan to adhere the regulations and practices for Biosafety and rDNA research that have been established by the NIH and CDC. If the application is found to be acceptable, a recommendation is given by the NBC to the HHS Commissioner to issue the requested permit.

Criteria for the NBC review include ensuring that the planned research can be safely conducted at the proposed biosafety level, according to established CDC and NIH guidelines. The NBC then determines if the facilities, waste disposal plans, employee expertise, etc. are adequate for the proposed biosafety level, and that the training and ongoing oversight of the program meets the requirements of the proposed biosafety level.

Ongoing oversight includes the establishment of an Institutional Biosafety Committee (IBC), which includes representatives from the Health and Human Services Department and community members appointed by the Mayor and Board of Aldermen. The IBC inspects the facility and program annually, and reviews and approves all proposed work requiring biosafety regulation

Question 3

Hypothetically speaking, would the Atrium Wellness Center be an appropriate site for a qualified Level I or Level II laboratory use, including the use of rDNA technology, assuming that such laboratory successfully passed all vetting processes and received a Health Department permit to conduct rDNA technology?

Yes, assuming the tenant successfully passed all the above vetting processes.

Specific applications by potential laboratory tenants will need to be carefully reviewed on a case-by-case basis, and the proposal to perform rDNA work must adhere to established safety guidelines in order for it to be approved by the NBC, as described in the answer to Question 2. Our positive answer to this question does not positively or negatively dispose the NBC to grant approval to conduct work under the rDNA ordinance to any specific applicant.

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Appendix 1, 2 and 3

Biosafety Committee Response to Questions from Land Use Committee regarding special permit application for Atrium Center

Appendix 1: NIH/CDC Risk Group Classifications

IN GENERAL, Level I and Level II (or Biosafety Level 1: BSL-1 and Biosafety Level 2: BSL-2) are designations for sets of biology research practices mandated by the National Institutes of Health (NIH) and the Centers for Disease Control (CDC) that aim to manage the risk of working with biological hazards from the RG-1 and RG-2 risk groups.

Table 1: Classification of Infectious Microorganisms by Risk Group

Risk Group Classification	NIH Guidelines for Research involving Recombinant DNA Molecules 2002²	World Health Organization Laboratory Biosafety Manual 3rd Edition 2004¹
Risk Group 1	Agents not associated with disease in healthy adult humans.	(No or low individual and community risk) A microorganism unlikely to cause human or animal disease.
Risk Group 2	Agents associated with human disease that is rarely serious and for which preventive or therapeutic interventions are often available.	(Moderate individual risk; low community risk) A pathogen that can cause human or animal disease but is unlikely to be a serious hazard to laboratory workers, the community, livestock or the environment. Laboratory exposures may cause serious infection, but effective treatment and preventive measures are available and the risk of spread of infection is limited.
Risk Group 3	Agents associated with serious or lethal human disease for which preventive or therapeutic interventions may be available (high individual risk but low community risk).	(High individual risk; low community risk) A pathogen that usually causes serious human or animal disease but does not ordinarily spread from one infected individual to another. Effective treatment and preventive measures are available.
Risk Group 4	Agents likely to cause serious or lethal human disease for which preventive or therapeutic interventions are not usually available (high individual risk and high community risk).	(High individual and community risk) A pathogen that usually causes serious human or animal disease and can be readily transmitted from one individual to another, directly or indirectly. Effective treatment and preventive measures are not usually available. ³

Source of Table:

Biosafety in Microbiological and Biomedical Laboratories, 5th edition.
HHS Publication No. (CDC) 21-1112, Revised December 2009

Please also see:

NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules, November 2013. For lists of micro-organisms and their designated Risk Group.

Appendix 2: NIH/CDC Biosafety Level 1 and 2 Practices.

Table 2. Summary of Recommended Biosafety Levels for Infectious Agents

BSL	Agents	Practices	Primary Barriers and Safety Equipment	Facilities (Secondary Barriers)
1	Not known to consistently cause diseases in healthy adults	Standard microbiological practices	<ul style="list-style-type: none"> ■ No primary barriers required. ■ PPE: laboratory coats and gloves; eye, face protection, as needed 	Laboratory bench and sink required
2	<ul style="list-style-type: none"> ■ Agents associated with human disease ■ Routes of transmission include percutaneous injury, ingestion, mucous membrane exposure 	BSL-1 practice plus: <ul style="list-style-type: none"> ■ Limited access ■ Biohazard warning signs ■ "Sharps" precautions ■ Biosafety manual defining any needed waste decontamination or medical surveillance policies 	Primary barriers: <ul style="list-style-type: none"> ■ BSCs or other physical containment devices used for all manipulations of agents that cause splashes or aerosols of infectious materials ■ PPE: Laboratory coats, gloves, face and eye protection, as needed 	BSL-1 plus: <ul style="list-style-type: none"> ■ Autoclave available

"Standard Microbiological Practices" include:

- Wash hands after completion of work and before leaving laboratory.
- No eating, smoking, drinking, handling contact lenses, applying cosmetics, or food storage.
- No mouth pipetting.
- Careful handling and disposal of sharps.
- Minimize aerosols and splashes.
- Decontaminate surfaces, cultures, and equipment after work is complete.
- Laboratory biohazard signage.
- Ensure appropriate training and supervision of personnel.

Source: Biosafety in Microbiological and Biomedical Laboratories, 5th edition. HHS Publication No. (CDC) 21-1112, Revised December 2009

Appendix 3: More detailed information regarding definitions of biosafety and rDNA work

- A general definition of “biosafety” encompasses the practices, procedures, and use of equipment needed to ensure adequate safety conditions in all facilities that work with potentially infectious microorganisms and other biological hazards. These include health care settings, clinical and diagnostic laboratories that handle human clinical samples, veterinary facilities that work with animal tissue samples, biological research laboratories, and teaching laboratories. All of these facilities must seek to reduce the risks associated with handling potential biological hazards by employing a continuous process of hazard recognition, risk assessment, and hazard mitigation.
- “Biosafety levels” (BSLs) are designations of laboratories in ascending order based on the degree of risk associated with the work being conducted. A biosafety level is a level of the biocontainment precautions required to isolate dangerous biological agents in an enclosed laboratory facility. The levels of containment range from the lowest biosafety level 1 (BSL-1) to the highest at level 4 (BSL-4). In the United States, the Centers for Disease Control and Prevention (CDC) have specified these levels. In the European Union, the same biosafety levels are defined in a directive.
- BSL1 is suitable for work involving well-characterized agents not known to consistently cause disease in healthy adult humans, and of minimal potential hazard to laboratory personnel and the environment. (no or low individual and community risk). A microorganism that is unlikely to cause human disease or animal disease This is the type of laboratory found in municipal water-testing laboratories, in high schools, and in some community colleges teaching introductory microbiology classes, where the agents are not considered hazardous. At BSL-1 there is no specific recommendation that the laboratory be isolated from other parts of the building. The use of gloves and hand washing is one of the most important procedures that can be used by laboratory workers to prevent removal of unwanted microbiological agents, radioactive materials, or chemicals from the laboratory environment.
- BSL2 is similar to Biosafety Level 1 and is suitable for work involving agents of moderate potential hazard to personnel and the environment. (moderate individual risk, low community risk). A pathogen that can cause human or animal disease but is unlikely to be a serious hazard to laboratory workers, the community, livestock or the environment. Laboratory exposures may cause serious infection, but effective treatment and preventative measures are available and the risk of spread of infection is limited. It includes various bacteria and viruses that cause only mild disease to humans, or are difficult to contract via aerosol in a lab setting. BSL-2 differs from BSL-1 in that: laboratory personnel have specific training in handling pathogenic agents and are directed by scientists with advanced training;
 - access to the laboratory is limited when work is being conducted;
 - extreme precautions are taken with contaminated sharp items; and
 - certain procedures in which infectious aerosols or splashes may be created are conducted in biological safety cabinets or other physical containment equipment.

In general, Level I and Level II (BSL-1 and BSL-2) laboratory uses comprise the overwhelming majority of academic, biotech, and pharmaceutical research activities in biology.

In life science research, Recombinant DNA is the general name for taking a piece of one DNA, combining it with another strand of DNA. Recombinant DNA (rDNA) molecules are DNA molecules formed by laboratory methods of genetic recombination (such as molecular cloning) to bring together genetic material from multiple sources, creating sequences that would not otherwise be found in biological organisms. Recombinant DNA is possible because DNA molecules from all organisms share the same chemical structure. They differ only in the nucleotide sequence within that identical overall structure. Using recombinant DNA technology and synthetic DNA, any DNA sequence may be created and introduced into any of a very wide range of living organisms. Following transplantation into the host organism, the foreign DNA contained within the recombinant DNA construct may or may not be designed to make a protein, or other biochemical product. Recombinant DNA is widely used in biotechnology, medicine and research. The most common application of recombinant DNA is in basic research, in which the technology is important to most current work in the biological and biomedical sciences. However, recombinant proteins and other products that result from the use of rDNA technology are found in essentially every western pharmacy, doctor's or veterinarian's office (e.g. recombinant insulin, growth hormone, blood clotting factors, etc), medical testing laboratory (e.g. diagnostic probes and primers to detect HIV, etc.), and in biological research laboratory searching for new cures to disease. In addition, organisms that have been manipulated using recombinant DNA technology, as well as products derived from those organisms, have found their way into many farms, supermarkets, home medicine cabinets, and even pet shops, such as those that sell GloFish and other genetically modified animals.

- Scientists and regulatory bodies such as the CDC and NIH have recognized that the potential existed for organisms containing recombinant DNA to have undesirable or dangerous properties. In the US, agencies like the CDC and NIH have developed rigorous guidelines which mitigate or eliminate risks posed by rDNA research. Research involving rDNA must now comply with the National Institute of Health's "Guidelines for Research Involving Recombinant DNA Molecules" as published in the Federal Register. The recombinant DNA guidelines are applicable to all recombinant DNA research within the United States or its territories, which is conducted at or sponsored by an institution that receives any support for recombinant DNA research from NIH but serve as the basis for all regulations.
- Recombinant DNA (rDNA) research is an example of a situation where the appropriate biosafety level for the work must be considered.
 - Usually, the biosafety level of an rDNA research project is at the same level as the host organism, but this is determined after careful scientific review.

CONDITIONS PROPOSED BY ROBERT KARP - 99 FLORENCE ST.

1. Life science uses within the premises shall not exceed 100,000 square feet of which 35,000 square feet may be devoted to actual lab space with the remainder to be used for office and other ancillary uses.

2. Laboratory uses not permitted in the premises shall include (i) animal testing of any kind (mice, rats, dogs or other species); (ii) organic chemistry operations that are capable of making gram quantities; (iii) any other use that may produce noxious fumes or odors.

3. The role of the Biosafety Committee and/or the Health department ("The Regulators") should be expanded to regulate life sciences uses for this building;

- o The landlord and any potential tenant should be required to submit to the jurisdiction of the Regulators for a permit to operate, even if the laboratory does not intend to perform RNA research;
- o The Regulators should be allowed to impose restrictions and requirements on the tenant similar to those allowed under Article III, Sections 12-21 to 12-30 of the Newton Zoning Law to ensure safe operations, including the suspension of its permit in the event violations of the operating rules are discovered.
- o The cost of this ongoing regulation should be borne by the landlord through the establishment of a fund with the City at the time this Special Use Permit is granted for the specific purpose of allowing the Regulators to do its work, and should be increased when deemed necessary by the Regulators in the future to ensure ongoing local oversight