

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JUNE 16, 2015

Present: Ald. Laredo (Chairman), Ald. Albright, Cote, Crossley, Lipof, Schwartz, and Harney;
absent: Ald. Lennon; also present: Ald. Hess-Mahan, Danberg, Sangiolo and Ciccone
Staff: Dan Sexton (Chief Planner), Robert Waddick (Assistant City Solicitor), Linda Finucane
Assistant Clerk of the Board)

A public hearing was held on the following item:

#105-15 FRANCIS HARVEY REMODELING LLC for PATRICIA BLANEY petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE to add two dormers to an existing two-family dwelling, which will add approximately 410 square feet of living space, increasing the Floor Area Ratio from .61 to .68, where .50 is the maximum allowed by right, at 329-331 WALTHAM STREET, Ward 3, West Newton, on land known as SBL 34, 27, 3, containing approx. 5,670 sf of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21, 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVAL 5-0-1 (Crossley abstaining)

NOTE: Julie White of Francis Harvey Remodeling presented the petition. The subject property contains two condominium units: #329 is owned by the petitioner and #331 is owned by her sister. The petitioner wishes to enlarge the attic floor by adding two dormers, which will create an additional 410 square feet of living space, increasing the existing nonconforming Floor Area Ratio (FAR) from .61 to .68, where .50 is the maximum allowed by right. The dormers on the north and south elevations of the building have been designed to resemble the existing hipped roof dormers to preserve the aesthetics while increasing the habitable space to accommodate a family; there is no increase in the footprint of the structure. The proposed dormers will be visible from Waltham Street and to the immediate abutters; however, existing mature trees at the rear along the front of the site partially screen the house. The Planning Department noted that the density of the neighborhood limits the potential for additional screening.

There was no public comment. Alderman Crossley was concerned about whether the height shown on the plan is compliant with building code, as it appears it is barely over the seven feet required for habitable space. Ms. White said that more than 60% of the space is seven feet or greater. Several members of the committee pointed out that this is a code issue that will be addressed when the petitioner applies for a building permit. Other members were concerned that if the height does not meet code the petitioner will have to seek a consistency ruling or an amendment to the special permit. The majority of the committee agreed it was a code issue. After being asked if she wished to go forward this evening or wait for Inspectional Services to weigh in, the petitioner decided to go forward.

The hearing was closed and Alderman Cote moved approval of the petition finding that the proposed increase in FAR is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood; the dormers will increase the gross floor area by approximately 410 square feet; the dormers will match the materials of the existing structure; the expansion of the existing nonconforming structure is not substantially more detrimental than the existing nonconforming structure is to the neighborhood and will not result in an increase in the building footprint or a decrease in open space. The motion to approve carried 5-0-1, with Alderman Crossley abstaining, with the findings and conditions in draft special permit #105-15 dated July 13, 2015.

A public hearing was held on the following item:

#122-15 ALLISON AVRAMOVICH petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING STRUCTURE to construct an attached garage and mudroom with a new driveway off of Ward Street, which will increase the existing Floor Area Ratio from .35 to .40, where .33 is the maximum allowed by right, at 1005 CENTRE STREET, Ward 2, Newton Centre, on land known as SBL 13, 32, 14, containing approx.15,187 sf of land in a district zoned SINGLE FAMILY RESIDENCE 2. Ref: Sec. 30-24, 30-23, 30-21(b), 30-15(u), 30-15 Table A of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The petition was presented by attorney Laurance Lee. The petitioner is proposing to construct a one-story attached garage and mudroom on the rear of an existing c. 1916 single-family dwelling located at the corner of Centre and Ward Streets. The proposed garage and mudroom will increase the existing nonconforming Floor Area Ratio (FAR) from .35 to .40, where .33 is the maximum allowed by right. Currently, vehicle access is via a shared driveway between the site and 494 Ward Street, with cars parking at the rear of the dwelling. The proposed garage will be accessed by a new curb cut on Ward Street. Mr. Lee said this will ameliorate the off-site parking problem. Pervious pavers are proposed for the driveway as well as the patio shown on the site plan. The amount of impervious surface on the site will not increase by more than 400 square feet; however, the city's Engineering Division will need to review the project prior to the issuance of a building permit to determine whether a drainage system is required, as that division's position has been that pervious pavers do not count as pervious surfaces. The petitioner has agreed to comply with the Engineer Division's decision and the Planning Department agrees the question can be addressed at the building permit stage.

Initially, the Planning Department had asked the petitioner if it could orient the garage so that the existing shared driveway continue to provide access; however, the petitioner prefers a separate driveway for improved access and because it allows for additional parking in front of the garage. Also, the shared driveway is challenging during the winter.

The garage and mudroom will not be visible from Centre Street, only from Ward Street. Siding and materials will match the dwelling. The petitioner is proposing to install a row of arborvitae trees between the proposed garage and adjacent site.

A petition supporting the proposal was signed by residents of 487, 494, 497, 507, and 509 Ward Street and 989, 990, and 1011 Centre Street. The public hearing was closed.

The Chairman said that since there is no parking on the Centre Street frontage, this proposal is a logical solution. Alderman Albright moved approval of the petition finding that the increase in FAR to .40, where .33 is the maximum allowed by right and .35 exists, is consistent with and not in derogation of the size, scale, and design of other structures in the neighborhood; the proposed attached garage and mudroom will increase the gross floor area by approximately 676 square feet; the proposed addition will match the materials and design of the existing structure and is not substantially more detrimental than the existing nonconforming structure is to the neighborhood; the site is an appropriate location for the proposed attached garage and mudroom; access by a new driveway will eliminate the need for the subject property owner to use the existing shared driveway; the addition of a two-car garage and mudroom will not adversely affect the neighborhood; the addition of a two-car garage will not create a serious nuisance or hazard to vehicles or pedestrians, as the proposed access will be from a mostly residential side street and will reduce the number of vehicles utilizing the shared driveway. The motion to approve carried 7-0 with the findings and conditions in draft special permit #122-15 dated July 13, 2015.

A Public Hearing was held on the following item:

#123-15 OTTO MARIANO petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to EXTEND A NONCONFORMING USE to legalize a third dwelling unit in a legally nonconforming dwelling with two other existing dwelling units and an existing small office and to allow parking in a setback and to waive various dimensional requirements for parking stalls, aisle width, entrance drive, and screening and lighting requirements as well as surfacing, curbing and striping requirements at 111-113 ADAMS STREET, Ward 1, NONANTUM, on land known as SBL 14, 8, 44, containing approx. 8,225 sf of land in a district zoned MANUFACTURING. Ref: Sec. 30-24, 30-23, 30-21, 30-19(h)(1), (2), (3)a), (4)a), 30-19(i), 30-19(j), 30-19(m) of the City of Newton Rev Zoning Ord, 2012 and Special Permit #249-62.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The petition was presented by attorney G. Michael Peirce. The existing dwelling was constructed prior to 1900. A two-family residence, it was converted without building permits to four units and an office prior to the petitioner's purchase of the property. In 1962, special permit #249-62 allowed the addition of four rooms. The petitioner is seeking a special permit to extend the nonconforming two-family use to allow a third unit and to retain the existing office use. There are no proposed changes to the site plan. The only proposed modification to the structure is a small stairway for code compliance for a second egress. There are 11 parking stalls on the site, where seven are required. The requests for waivers from the dimensional/design requirements of the parking are to legalize the existing nonconforming conditions. Mr. Peirce explained that the building contained four residential units when the petitioner purchased the property in 2006. The basement unit was eliminated in 2014. The small office has been used for 30-40 years. The first floor will consist of the office and a portion of units 1 and 2; the second floor will consist of the remainder of units 1 and 2 and a portion of unit 3; the third floor will consist of a portion of unit 1 and the remainder of unit 3. A 1929 building permit confirms the legitimacy of the use and although there are no building permits for the additional unit, Inspectional Services' files have a number of plumbing and electrical permits issued over the course of the structure's lifetime to verify the existence of the third unit. However, unlike a pre-

existing accessory apartment, there is no requirement for documentary evidence to prove the existence of the units. This petition is to extend an existing nonconforming residential use, which pre-dates zoning, in a Manufacturing District where residential is not allowed by right.

There was no public comment and the public hearing was closed. Alderman Lipof moved approval of the petition finding that the proposed three dwelling units and office use are not substantially more detrimental than the existing nonconforming use is to the neighborhood; literal compliance with certain design requirements for parking facilities is impracticable due to the narrow shape of the lot; the site is an appropriate location for the proposed three dwelling units and office space, as the site is located in a dense neighborhood proximate to Nonantum's village center; the proposed three dwelling units and the office use will not adversely affect the neighborhood as the property is abutted by commercial uses and a municipal parking lot and has adequate parking; the addition of one unit will have a minimal impact on the amount of traffic generated by the site and there will be no serious nuisance or hazard to vehicles or pedestrians as there are no proposed changes to the existing site conditions; access to the site over streets is appropriate for the types and numbers of vehicles involved. The motion to approve carried 7-0 with the findings and conditions in draft special permit #123-15 dated July 13, 2015.

A public hearing was opened and continued on May 12:

#89-15 NOBLE and DEVINE HOLDING COMPANY, LLC petition for a SPECIAL PERMIT/SITE PLAN APPROVAL for a restaurant with more than 50 seats (94 seats), to allow a 1/3 reduction in the parking requirement, to waive 20 parking stalls, to allow parking in the side and rear setbacks, to allow a maneuvering aisle less than 24 feet wide, to waive screening, interior landscaping, lighting, surfacing and striping, and bicycle parking requirements at 271-283 AUBURN STREET, Ward 4, Auburndale, on land known as SBL 44, 25, 2, containing approximately 17,772 sq. ft. of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-11(d)(9), 30-19(d)(13), (d)(18), 30-19(h)(1), (3)a), 30-19(i)(1) and (2), 30-19(j)(1) and (2), 30-19(k), 30-19(m) of the City of Newton Rev Zoning Ord,

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The property is located in Auburndale Square and is comprised of two lots that abut the Massachusetts Turnpike to the south. The site contains a multi-tenant one- and two-story c. 1920's commercial building. Although the property has been used as a mix of office and service uses, it used to contain a 71-seat restaurant, which is the space the petitioner is proposing for the 94-seat restaurant. The petitioner is seeking a special permit for a restaurant with more than 50 seats, a waiver of the required number of parking stalls, and to legalize the existing dimensions and design of the parking facility with more than five vehicles. The proposed use requires 69 parking stalls. There are 26 stalls including HP stalls provided on-site; however, since the site contains a mix of three or more uses, the petitioner is seeking a third 1/3 reduction in the number of parking stalls required, which is 46 parking stalls resulting in a waiver of 20 parking stalls. Existing parking is provided in both the front and rear of the property. Access to the rear is via a right-of-way along the north of the property. Initially, the petitioner expects to open only for dinner, with nine employees on the largest shift. Parking will free up after the other tenants have left in the evening.

The Planning Department supports the petition and believes the neighborhood has a considerable amount of off-street parking available particularly in the evening. However it recommends the petitioner conduct a parking utilization study of the surrounding public parking options, especially on-street spaces and municipal parking lots during peak weekday/weekend hours. It also recommends that the petitioner develop a parking demand management plan, which would include employee parking at the rear of the site. Also, Planning is comfortable with the requests for waivers from the lighting requirements and striping, but it is not supportive of granting waivers to the screening and bicycle parking requirements. The petitioner is not proposing to install any additional landscaping screening, but it appears as proposed the petition will result in the reduction of the existing vegetated areas and the removal of three mature trees. Planning noted that the existing landscaping needs to be “refreshed.”

The only person to comment was Mary Anne Muriello, 123 Charlesbank Road, who said the traffic is very congested in this area and a study should be done.

Subsequent to May 12, the petitioner submitted a Parking Utilization Study and a Transportation Demand Management Plan. The petitioner also submitted summaries of meetings held with surrounding business owners and residents on May 26 and May 27, respectively. Although generally supportive, the owners of the adjacent commercial parcel at 450 Lexington Street were concerned about trash removal, odors, and rodents. Residents also were supportive, noting that traffic is a problem during peak commute times but it clears out after 6:00 PM.

The petitioner has agreed to relocate the trash receptacles, increase the frequency of pickups and screen the trash receptacles. The petitioner proposes to post area parking information within the restaurant and is willing to pay for signage and if necessary the towing of vehicles on the 450 Lexington Street property. The petitioner is working with the trustees of 450 Lexington Street to identify screening measures amenable to both it and the trustees to discourage use of the parking lot at 450 Lexington Street and to visually screen the petitioner’s site.

According to the Parking Utilization Study there are 98 parking stalls available for public parking within a two-minute walk from the site. The study documented 44 and 78 stalls vacant respectively during lunch and dinner peak hours. On-site an average of 11 and 23 spaces were documented as vacant during the same periods. In addition, the study noted that the businesses in the area including those on the subject site are eligible to obtain Auburndale Business Permit Parking passes to park on the other side of the Turnpike along Central Street, which could provide parking for employees and free up closer spaces for patrons and other businesses.

Although the petitioner plans to open only for dinner, given the number of businesses and workers in the area there is definitely a potential for a lunch trade, particularly takeout. After discussing whether or not it wished to limit the hours of operation, the committee ultimately agreed that it would not limit the hours. The committee did agree to include a condition that after one year of occupancy the petitioner would if necessary mitigate any negative impact of the final site plan on the property at 450 Lexington Street. Michael Keene of Keene Productions, a trustee for 450 Lexington Street, said the importance of the lookback cannot be stressed enough. The parking lot is already used by the public and he fears the proposed landscaping and fencing may not be enough. Currently, cars cannot exit the lot onto Grove Street during the evening

peak commute. He is also concerned with restaurant patrons entering the lot between 5:00 and 7:00 PM.

Alderman Harney moved approval of the petition finding that the site is an appropriate location for the proposed 94-seat restaurant use because it is located in a mixed use site and proximate to Auburndale Square; the requested 1/3 reduction of the total number parking stalls required is appropriate because the site contains a mix of three or more uses and those uses operate at different peak times; the requested waiver of twenty parking stalls and waivers from the design and dimensional controls at this site are appropriate because literal compliance with the required number of parking stalls for the types of land uses proposed to occupy the site is impracticable due to the nature of the proposed uses; the location, shape, and size of the lot; and the development patterns present on the subject property and in the surrounding neighborhood; the proposed use, as developed and operated will not adversely affect the neighborhood which is a mixed use area; the requested waivers will not result in the creation of a nuisance or hazard to vehicles or pedestrians on the site or in the surrounding neighborhood. The motion to approve carried 7-0 with the findings and conditions in draft special permit 89-15, dated July 13, 2015.

A public hearing was opened and continued on May 12:

#93-15 CAPASSO REALTY/PACKARD COVE ASSOCIATES LLP petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive 5 parking stalls, to allow parking in the front and side setbacks, to waive the maneuvering aisle width, to allow a driveway entrance in excess of 25 feet, to allow tandem parking, and to waive parking lot screening and lighting requirements in order to locate a food establishment at 339 RIVER STREET, Ward 4, West Newton, on land known as SBL 44, 15, 13, containing approximately 10,150 sq. ft. of land in a district zoned BUSINESS 2. Ref: 30-24, 30-23, 30-19(d), 30-19(h)(1), 30-19(h)(3)b) and (4)b) and (5)a), 30-19(i)(1), 30-19(j), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; APPROVED 7-0

NOTE: The petition was presented by Tony DePasquale who is leasing the property from Capasso Realty. Mr. DePasquale wishes to convert the existing 1950 building at the corner of River and Lexington Streets at Night Caps Corner, which was formerly occupied by a vehicle repair shop and truck rental businesses, to a restaurant with 37 interior seats and 16 seasonal outdoor seats and take out. To accommodate the number of seats and six employees the petitioner is required to provide 16 parking stalls; however, only 11 parking stalls on the site meet the dimensional and design requirements. The petitioner is seeking a special permit to waive five parking stalls and to allow additional waivers to the dimensional and design requirements for parking facilities with more than five vehicles.

The Planning Department is supportive of the petition and believes it will benefit the surrounding neighborhood and complement the current mix of commercial and residential uses. As long as the petitioner utilizes pavement markings and signage directing patrons on the site most of the waivers are reasonable. However, Planning is not supportive of granting a waiver from the screening requirements as the site directly abuts residential properties. Planning recommends that the petitioner consider installing a sight-obscuring fence around the proposed dumpster area as well as along the property lines of abutting residential properties. The Planning Department

also recommends that the petitioner complete a parking utilization study of surrounding public parking options, particularly during peak weekday/weekend hours as there is some concern about the additional parking pressure the use may cause on the area. Planning also recommends that the petitioner develop a parking demand management plan. The petitioner expects a lot of patrons will walk as there are approximately 1000 employees in the area.

Alderman Harney asked the petitioner whether he had had the opportunity to read the Associate City Engineer's memo. The petitioner said his engineer Verne Porter would be meeting with the Associate City Engineer. Alderman Gentile pointed out that the petitioner does not own the property. Alderman Lennon suggested that employee parking might be provided at the Capasso's Rumford Avenue buildings.

The petitioner is proposing to rebuild the existing retaining wall along the northern property line. The site does not have room to accommodate much landscaping, but Alderman Albright urged the petitioner to find a way to provide some landscaping even if only window boxes and planters.

Comment:

Sam Picariello, 21 Lexington Street, said that Capasso transformed what was the city dump and incinerator into apartments and office buildings. The neighborhood was pleased when the Capasso family bought this property which had rental trucks and cars jammed all over the site. There was a sense that something nice would be done with the property. The neighborhood is making a comeback and he supports this petition 100%.

Ginny Gardner, 48 William Street, echoed Mr. Picariello's comments. The property had been a U-Haul business and essentially a junkyard. This is a huge improvement for Night Caps Corner. The Capasso family is well respected. Mr. DePasquale has been extraordinarily transparent and she urged the committee to approve the petition.

Alderman Harney suggested the petitioner hold a neighborhood meeting prior to the close of the public hearing. The committee asked that the petitioner to do a parking study and incorporate some landscaping and screening onto the site.

This evening the Planning Department reported that the petitioner held a neighborhood meeting on June 9 at which the attendees were excited about the proposed restaurant and did not raise any specific concerns. The petitioner submitted a parking survey for the surrounding area during the anticipated hours of operation. The survey indicates that the on-street parking stalls in the area are in use for short periods during the morning peak commute hours. Availability appears to increase during the mid-day, afternoon, and evening hours. Staff visits to the site confirmed the results of the survey and it appears that there is on average a surplus of available on-street parking to support the waiver of five parking stalls.

As to landscaping, the petitioner is proposing to install raised planting beds, potted plants, and planter boxes. The petitioner is proposing to rebuild the existing retaining wall along the northern property line and construct new retaining wall with a six-foot tall vinyl fence on top along the southerly property line, which abuts a single family residence. Neither wall will be

over four feet. The dumpster storage area located at the northeast corner of the site will be enclosed.

Alderman Harney moved approval of the petition finding that the waivers of five parking stalls and the design and dimensional controls for a parking facility are appropriate because literal compliance with the required number of parking stalls and the design and dimensional requirements for the type of land use proposed to occupy the site is impracticable due to the nature of the proposed use; the location, shape, and size of the lot and the development patterns present on the subject property and in the surrounding neighborhood; the site is an appropriate location for the proposed restaurant use, which is allowed by right in the Business 2 district, because it is located within a mixed use area; the proposed use as developed and operated will not adversely affect the neighborhood; and the waivers will not result in the creation of a nuisance or hazard to vehicles or pedestrians on the site or in the surrounding neighborhood. The motion to approve carried 7-0 with the findings and conditions in draft special permit #93-15 dated July 13, 2015.

Request for Consistency Determination and for Extension of Time to Exercise Special Permit #152-14, granted on June 16, 2014, to enclose an existing nonconforming structure to create a garage at 1186 Chestnut Street, Newton Upper Falls.

NOTE: A number of years ago a prior owner obtained a building permit to excavate the slope along Chestnut Street and construct a system of stepped retaining walls greater than four feet in height in the setbacks in order to create two off-street parking spaces. At some point a building permit was issued to construct a deck extending out from the house above the rear portion of the parking area. The existing access from the parking area to the house is via a deteriorated exterior staircase on the east side of the property. The petitioner was granted a special permit to construct a sloped roof over the parking area that will extend out from the existing deck and to enclose the front of the parking area with a garage door with a new interior staircase from the enclosed garage leading up to the deck and walkway to the house. The petitioner upon the advice of his contractor wishes to reconfigure the enclosure so the internal staircase enters the enclosure from the rear and basement level access will connect the enclosure to the house. The proposed changes also involve a different roof pitch with two skylights and a revised façade design. After reviewing the proposed design, the committee decided that the changes are not consistent with what was approved. However, it voted unanimously to grant a one-year extension of time in which the petitioner may exercise the existing special permit.

Request for Consistency Determination Special Permit #40-07, granted on May 21, 2007, for five attached dwelling units at 13 Elm Street (Ward 3): proposal to locate a shed in the rear of the property.

NOTE: The petitioner resides in one of the condominium units and maintains the grounds. He wishes to construct a 20'x20' shed in which to store a lawn mower and other gardening implements. Although a 120-foot 10'x12' shed is allowed by right, the petitioner said that is too small. However, the committee agreed that a 120 square-foot shed is large enough to accommodate a lawn mower and equipment necessary to maintain the grounds for a five-unit dwelling and would not be consistent with the approved site plan.

Please see the June 23 Committee report for the following two items:

#124-15 WELLS AVENUE LLC. petition for a SPECIAL PERMIT to demolish a portion of an existing one-story building and construct a 3-story addition adjacent to the remaining portion of the building, which will increase the gross floor area in the aggregate to 20,000 or more from the existing 68,740 gross square feet to 132,598 gross square feet; to construct one or more retaining walls which may be greater than 4 feet within the setbacks; to allow parking in the rear setback; and to waive the required driveway width at 2 WELLS AVENUE, Ward 8, on land known as SBL 84, 34, 2K, containing approx. 436,175 square feet of land in a district zoned LIMITED MANUFACTURING. Ref: 30-24, 30-23, 30-12(g)(2), 30-5(b)(4), 30-19(h) and (m) of the City of Newton Rev Zoning Ord, 2012.

#124-15(2) Accompanying petition #124-15 is a request that the restriction adopted by Board Order #276-68(3), dated November 18, 1968, and subsequent amendments be further amended.

ACTION: HEARING CONTINUED TO JUNE 23

#121-15 THE NEIGHBORHOOD HARDWARE GROUP, INC./DTS TRUST petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to waive five parking stalls and for associated waivers of various requirements for an existing parking facility, including parking in the front and side setbacks, and screening, interior landscaping, and lighting requirements for an existing hardware store at 2-12 WINDSOR ROAD (1641 BEACON STREET) Ward 5, Waban, on land known as SBL 53, 29, 2A, containing approx..54,198 sf of land in a district zoned BUSINESS 1. Ref: Sec 30-24, 30-23, 30-19(c)(2)a), 30-19(h)(1), 30-19(d)(10), 30-19(i)(1) and (2), 30-19(j), and 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CONTINUED TO JUNE 23

The meeting was adjourned at approximately 10:30 PM.

Respectfully submitted,
Marc C. Laredo, Chairman