

CITY OF NEWTON

IN BOARD OF ALDERMEN

LAND USE COMMITTEE REPORT

TUESDAY, JULY 14, 2015

Present: Ald. Laredo (Chairman), Ald. Albright Cote, Crossley, Schwartz, and Lennon; absent: Ald. Harney and Lipof; also present: Ald. Brousal-Glaser and Baker
Staff: Daniel Sexton (Senior Planner), Robert Waddick (Assistant City Solicitor), Linda Finucane (Assistant Clerk of the Board)

A public hearing was opened and continued on May 12 and June 23:

#91-15 CP NEEDHAM STREET LLC petition for a SPECIAL PERMIT/SITE PLAN
#182-09(2) APPROVAL to convert existing retail space to a restaurant use, to allow parking requirements to be met off-site (at 188-210 Needham Street), to allow parking within a setback in a parking facility with 5 or less parking stalls, to waive off-street loading requirements, and to waive lighting and screening requirements in a parking facility at 180 NEEDHAM STREET and to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #182-09, dated 11/07/09, which allowed up to 6,000 sf of retail space to be converted to restaurant use, in order to expand parking within a setback in a facility with more than 5 parking stalls, to increase the number of parking stalls accessed by a nonconforming aisle width, to waive requirements for vegetative screening and lighting for a parking facility with 5 or more parking stalls at 188-210 NEEDHAM STREET to accommodate the parking proposed for 180 Needham Street, Ward 8, Newton Upper Falls, both of which properties are located in a district zoned MIXED USE 1. Ref: 180 Needham Street: 30-24, 30-23, 30-13(b)(5), 30-19(f)(2), 30-19(g)(1), 30-19(i), 30-19(j), 30-19(l), 30-19(m) and 188-210 Needham Street: 30-24, 30-23, 30-21(b), 30-19(h)(1), and (h)(3), 30-19(i), 30-19(j), 30-19(m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CLOSED; #91-15 and #182-09(2) APPROVED 6-0

NOTE: On May 12, the petition was presented by attorney Alan Schlesinger and Kerry McCormack, Director of Development for Crosspoint. The property at 180 Needham Street contains a two-story building which currently consists of office space on the second floor and retail on the first floor with parking at the front and side of the building. The petitioner wishes to convert the ground-floor retail space into a restaurant with up to 105 seats and remove the parking in front of the building and replace it with a patio for seasonal outdoor seating. The façade of the building will be cleaned, windows opened up, and the existing canopies removed.

There are 13 parking stalls on the site. The eight parking stalls in the front of the building will be removed and the five perpendicular stalls on the north side of the property will be reconfigured to three parallel stalls.

The petitioner is proposing to provide 34 of the required parking stalls for 180 Needham Street, behind the adjacent property at 188-210 Needham Street, which is under common ownership and subject to special permit #182-09, as that parking lot is rarely full. The petitioner is also proposing to expand and convert the existing exit driveway at 188 Needham Street to a two-way access/egress in order to allow more access points to and provide better circulation on the site. Utilities will be undergrounded on the site from an existing utility pole. Needham Street, a state roadway, is still in the process of being redesigned. The petitioner has had and will continue discussions with the Massachusetts Department of Transportation (MassDOT).

The petitioner is seeking a special permit for 180 Needham Street to allow a restaurant use in a Mixed Use 1 district, to allow the parking requirements to be met off site, to allow parking within a setback and to waive the associated requirements for vegetative screening and lighting requirements, and off-street loading requirements.

The petitioner is seeking to amend special permit #182-09 to expand parking within a setback in a facility with more than five stalls, to increase the number of parking stalls accessed by a nonconforming aisle width, and to waive the requirements for vegetative screening and lighting.

The Planning Department has no issue with the conversion from retail to a restaurant and the elimination of the back-out parking onto Needham Street which will eliminate vehicle conflicts as well as improve safety. The outdoor seating patio will create a pedestrian-friendly environment and an attractive streetscape. The Planning Department believes that parking for the proposed restaurant can be accommodated at 188-210 Needham Street without impacting the parking on that site. Weekday peak operating hours of the restaurant most likely will be during lunch when patrons from surrounding businesses will probably walk to the site.

The petitioner recently filed its notice of intent with the Conservation Commission which must approve the additional parking at 188-210 Needham Street as the site is in Wetland Resources areas adjacent to South Meadow Brook, which also runs underneath Needham Street through a culvert that is partially located on site. The Commission is expected to discuss it at its May 21 meeting. The Planning Department said it would support eliminating some of the proposed parking stalls if the Conservation Commission requires it.

A traffic study by Stantec indicates the proposed project would have a modest impact on the Level of Service at the site. The Planning Department agrees that conversion of the use will not have any material impact on the traffic as the proposal does not involve expanding the building size. As there are no parking waivers involved, the petitioner had not performed a parking study. Planning noted that the petitioner also owns the site across the street at 131 Needham Street which offers an opportunity to share/manage the parking demand between the sites, if necessary. The traffic study indicates that volumes for the left turn into 188 Needham Street will be relatively minor. Left turns can operate from the existing single southbound lane without imposing significant delays on through traffic. The recently-approved Newton Nexus project opposite this site includes restriping Needham Street to include a two-way center left turn lane in advance of the proposed roadway reconstruction by MassDOT. Stantec recommends that this two way center left turn striping be continued south past the 188 Needham Street driveway.

The Planning Department noted that although the petitioner is proposing some plantings along the frontage of the site, it should consider planting one or two street trees to provide shade for the outdoor patio.

Alderman Crossley said that elimination of the parking in front of the building makes sense and is consistent with the city's vision for Needham Street. However, she is predisposed to not expand the rear parking as it appears underutilized, making it a candidate for shared parking. Alderman Albright said the rendering looks great; she is thrilled with the direction Needham Street is moving towards. She too agrees that such a large lot seems ideal for shared parking. Alderman Schwartz also agreed. Perhaps parking at the rear of the lot should be dedicated for employees. However, he has concerns about encroaching upon the Brook and would like to see a more appealing amenity to encourage people to walk from 188 Needham to 180, perhaps picnic tables and benches could be placed in the area abutting the Brook. What about providing a pathway over the abandoned rail bed between the properties?

Several committee members asked whether it is possible to include additional stalls on the north side of the building where the three parallel stalls are. Mr. Schlesinger said the petitioner will try to refine the number of stalls near the building, but he believes the committee and petitioner are heading in the same direction. The committee continued the public hearing pending action by the Conservation Commission. Also, the Planning Department is also awaiting a memo from Transportation Director Bill Paille.

Subsequent to May 12, the petitioner submitted revised plans reflecting comments made at the Conservation Commission hearing on May 21. Modifications include removal of 17 of the parking stalls proposed at the rear of the site and identification of three parking stalls to "employee only." The petitioner returned to the Conservation Commission on June 11 and was granted a continuance until the next hearing on July 2 in order to provide additional details on stormwater management, slope stabilization and mitigation landscaping efforts. However, the city's Environmental Planner does not expect resolution of these details will result in any significant changes to the site plan.

The petitioner performed a parking survey which indicates a conservative peak parking demand during the weekday is approximately 206 parking stalls; there are 250 stalls proposed. The Planning Department suggests that eliminating all of the 12 new stalls proposed along the northern property line of 188-210 Needham Street would still maintain a peak utilization of only 86% of the available stalls and create an opportunity to create a walkway from the rear portion of the site to the restaurant entrance.

The city's Transportation Director William Paille submitted a memorandum outlining his concerns relative to the proposed access points to and pedestrian movement within the parking lot at 188-210 Needham Street. Mr. Paille is concerned with the conversion of the one-way exit to a two-way entrance/exit because of its proximity to the southern entrance of the recently-approved site across the street at 131-181 Needham Street. Queuing of vehicles making lefts into the respective entrances could create traffic issues. The Transportation Division is concerned

about the potential for conflicts among vehicles traveling northbound on Needham Street turning left from the center double left-turn lane into the southerly Nexus site driveway competing for the same space with vehicles traveling southbound turning left from the center double left-turn lane into the new entrance drive at the northern edge of 188 Needham Street. The driveways at 131-181 and 188-210 Needham Street are in close proximity across from each other but not aligned.

Mr. Paille recommends that the petitioner submit additional analysis that clarifies how conversion to a two-way travel lane will impact the intersection and vehicles turning left into 131-181 Needham Street. Until then the Director recommends the one-way exit be maintained. The memorandum also suggests that the petitioner create pedestrian walkways within the site to connect the parking stalls at the rear with the restaurant and other uses at 188-210 Needham Street.

Traffic Engineer Rick Bryant from Stantec provided a real time traffic movement of that portion of Needham Street adjacent to the site. The Traffic Impact Assessment Study indicates that that the proposed use will result in an increase of 65 additional site-generated vehicle trips during the peak PM hours, and 320 trips per day. Mr. Bryant said that traffic counts show that vehicles infrequently wait to turn left. He pointed out that a center turn lane is a standard treatment used on streets like Needham Street. It was suggested that if the special permit were approved it include a condition similar to the one in the special permit for 131-181 Needham Street requiring a post occupancy traffic study at the access point and within the portion of Needham Street adjacent to the project site and to mitigate accordingly if and as determined by MassDOT and the city. The hearing was continued to July 14.

This evening, the Planning Department reported that the Conservation Commission had approved the petitioner's revised plans. The Order of Conditions requires additional analysis after three- and six-year periods to ensure that the removal of invasive species and other plantings is successful.

Mr. Pantalone reported that although Director of Transportation Bill Paille was unable to attend this evening's meeting Mr. Paille had met with representatives of MassDOT on Friday, July 10 to discuss the proposal to convert the existing one-way exit at 188-210 Needham Street to a two-way entrance/exit. Mr. Pantalone also reported that there were differing opinions expressed by MassDOT officials in the meeting. Mr. Paille suggested that the petitioner realign the existing one-way exit to align with that of 131-181 Needham Street. The Transportation Division fears introducing new conflicts onto the street. The petitioner said that re-alignment would involve costs for engineering and construction to relocate the culvert through which South Meadow Brook flows and necessitate a return to the Conservation Commission, all of which is cost and time prohibitive. The petitioner prefers the center lane left turn option. The two lanes have approximately 30 feet between them, which allows sufficient room for vehicles. Alderman Crossley pointed out that it seems fair to implement the turn lane as was done with the 131-181 Needham Street site. If it is implemented on a trial basis and it does not work, then it can be changed to a one-way in or out. Alderman Cote agreed. Alderman Lennon said and the committee agreed that perhaps there was some overthinking of this issue. The Planning

Department prepared a draft special permit board order with a condition to require an after study, and mitigation and potential modification to the site plan should the results of the study indicate that the project has created an unsafe environment or hazardous conditions for vehicles or pedestrians on that portion of Needham Street.

Alderman Crossley moved approval of petition #91-15 and of the amendment to #182-09 with the findings and conditions enumerated in the draft special permit board orders dated August 10, 2015, which motions to approve carried 6-0.

Public Hearings were held on the following items:

#149-15 JOAN DEVINE, TRUSTEE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to allow an increase in Floor Area Ratio from .45 to .58 for a customized modular home that was permitted at 14 CHARLEMONT STREET, Ward 8, Newton Highlands, on land known as SBL 83, 33, 18, containing approximately 8,251 square feet of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-15(u)(2) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CONTINUED TO AUGUST 4, 2015

NOTE: The petitioner was represented by attorney G. Michael Peirce. Mr. Peirce explained that his client purchased the property in May 2014 with the intention of removing the previous house from its foundation and replacing it with a custom designed modular home and renovating the existing two-car detached garage by replacing the roof and re-cladding it to match the new house. The goal was to maintain all existing dimensional compliances, which it does. The petitioner received building permits to demolish a single-family dwelling and to construct the new modular home. Without benefit of local zoning counsel, the petitioner met with various city officials to determine the exact size house that could be placed upon the foundation. The petitioner had the home designed and constructed and purchased it. However, when the petitioner went to obtain the building permits the Inspectional Services Department determined that the total gross floor area for the proposed dwelling combined with the floor area of the detached garage exceeds the maximum allowable Floor Area Ratio (FAR) of .45 by 1,085 square feet (or 29%). Since the modular structure was already under construction off-site, the petitioner's choices were to either obtain a special permit to exceed the maximum allowable FAR or demolish the detached garage and modify the grade bring the FAR into compliance. The petitioner is seeking a special permit to exceed the maximum allowable FAR of .45 to .58

The Planning Department expressed reservations about the bulk and mass of the buildings as they represent a departure from the size, scale and design of the other one- and two-story homes, many of which have attached and detached garages, in the neighborhood. The Planning Department recommends that the petitioner remove the detached garage and install plantings along the front and sides of the property to diminish the visual impact of the house. The rear of the property is partially screened by existing trees. Although the amount of new impervious surface is below the threshold that triggers review by the Engineering Division, the petitioner is installing an on-site drainage and infiltration system.

Mr. Peirce said a garage is important for marketing a property in New England. He noted that the garage, which is located directly behind the house shielded by trees and not visible from the street, has been on the property for 60 years. Even if it is removed it will have no effect on the massing visible from the street because the house will not change. The house is not out of scale with a number of houses in the neighborhood that have been expanded or constructed in the past few years. The first and second floors and the attic of the house comply with the FAR. The garage, which is 455 sq. ft., is only 9.5% of the total FAR, but accounts for approximately 42% of the waiver requested. The 709 sq. ft. of the basement is less than 15% of the total existing FAR but represents 65% of the waiver requested. Mr. Peirce stressed that this was not a case of the petitioner getting erroneous information from the city. There was simply no discussion relative to the impact of the detached garage. Mr. Peirce urged committee members to visit the site, which permission the petitioner gave to board members.

Alderman Albright said the garage is not the problem; the house is too big for the site. Alderman Schwartz agreed that the house is the bigger problem. Has the petitioner considered any modifications to the house? Can a custom built modular house be modified? What about the bump out at the rear?

Mr. Peirce said that for better or worse, we are left with the house the petitioner has on the site. Is the purpose of FAR served by requiring the garage to be taken down? Re-grading of the site around the house can eliminate 700 square feet, but the house will remain the same. However, the petitioner will look at other options including modifications to the house.

Public Comment:

Richard Salter, 42 Stephen Place, believes there are two issues: if the homeowner were claiming ignorance or if the final result added value to the neighborhood. In this case neither is true.

Nancy Sharby, 38 Charlemont Street, is a 40-year resident. The new house is triple the size of the sweet bungalow with a lovely garden that was previously on the site. She was offered \$750,000 cash for her house by a developer. If the Board approves this petition, there will more issues in the future.

Jon Koot, 430 Winchester Street, submitted photos of the previous house and the current house. He asked about the issue of the building permit being contingent on the special permit, should it not be the opposite. The new house looms on the lot. It is the mass and scale of the house, not the garage that is the problem.

Note: The Chairman explained that when someone seeks to cure a zoning violation the enforcement action is frozen pending the outcome, i.e., the building permit had already been issued and the petitioner is seeking a special permit.

The committee continued the public hearing to August 4 to allow the petitioner to respond to the concerns raised this evening and to allow members to visit the site.

#416-12(4) MAIN GATE REALTY LLC petition to AMEND Special Permit/Site Plan Approval for a Change in Nonconforming Use #416-12(3), granted August 12,

2013, which limited two existing tenant spaces to office, low parking demand/turnover service, or retail uses, in order to allow office and storage space in the basement and to re-stripe an existing parking lot to create five parking stalls, where four currently exist, and to waive the dimensional requirements for the parking stalls at 242-244 COMMONWEALTH AVENUE, Ward 7, Chestnut Hill, on land known as SBL 61, 13, 11, containing approximately 7,452 sq. ft. of land in a district zoned MULTI RESIDENCE 1. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(h)(2)a) and (m) of the City of Newton Rev Zoning Ord, 2012.

ACTION: HEARING CONTINUED TO AUGUST 4, 2015

NOTE: Attorney G. Michael Peirce presented the petition. The building was constructed in 1922 prior to zoning and is located in a Multi Residence 1 District, directly adjacent to single- and multi-family residences. The Boston College campus is less than a quarter mile to the east. Historically, tenant spaces have included a grocer, drug store, gift shop (for which a special permit was granted in 1973), insurance office, and poster shop.

The petitioner was granted a special permit in February of 2013 to extend the existing nonconforming uses of office and retail to permit the use of the entire first floor for office and/or retail uses, limited to two tenants; to permit a four-stall parking facility in a setback; and, to erect a freestanding sign of up to 15 square feet. A further amendment in August of 2013 allowed a massage parlor or another service use with caps on the number of clients/employees. The petitioner is seeking to amend the special permit to allow expansion of the office use for his personal real estate business in a portion of the basement. Currently, the two spaces on the first floor are occupied by Modern Barre and an interior design business. The petitioner is also seeking to waive the parking stall width requirement to allow the restriping of the existing four-stall parking lot to provide five parking stalls.

The petitioner said that most of the real estate business is conducted by phone, email, or at sale properties off-site, and will not generate a significant number of clients on the site or increase in traffic; there is plenty of parking along the Commonwealth Avenue carriage lane. Planning staff observed on site visits that there appears to be ample on-street parking. The entire length of the east side of Manet Road is resident permit parking and parking is prohibited all days on the entire west side.

The Planning Department noted that since there appears to have been some commercial use in the building's basement level previously, the relatively small office space proposed may be an appropriate low-impact use for the site and surrounding neighborhood. There are no proposed external alterations to the building. Mr. Peirce said that the basement was used in the past for an office as well as storage. The proposed office space is approximately 250 square feet, with an exterior access already there. A recent water line break resulted in a considerable amount of water damage to the basement. The petitioner has done some work to the basement such as pulling out wet flooring and sheetrock, and wiring, etc. The petitioner has worked with the Code Enforcement Official and submitted to Inspectional Services detailed photos taken for insurance purposes that document the water damage. Mr. Peirce allowed that the petitioner does use the basement but only to work at his computer; there are no closings or meetings with clients. The petitioner is seeking permission to use a portion of a building he owns for his own professional

space, as have past owners. Mr. Peirce has an affidavit stating that the basement was used as office space when it was the John T. Burns Insurance Agency.

The committee noted that from photos the parking lot looks cramped. How is it working? Mr. Peirce said the design business has few clients who visit the site. The Barre Studio has two employees. There are three classes a day and attendance varies between approximately six to ten attendees.

Public Comment:

Rachel Blankstein, 75 Manet Road, a direct abutter said the building is a huge disturbance to the neighborhood. Oftentimes she cannot get out of her driveway because of the cars.

Kevin Curry spoke on behalf of his daughter-in-law Sarah Winchester of 254 Commonwealth Avenue. A realtor himself, he has had the opportunity while staying with his family to observe the neighborhood. It appears that Barre Studio has four to five classes per day, seven days a week, from 7:30 AM to 8:00 PM, with one instructor and six to eight participants. Does the petitioner rent to tenants without disclosing the conditions of the special permits? What is going on in the basement - repairs or new construction? Has the city inspected the basement? He urged the committee to deny the petition. Ms. Winchester and Steven Curry also submitted an email in opposition.

Michael Noone and Marcos Carreno, 252 Commonwealth Avenue, are direct abutters to the parking lot. Mr. Noone submitted an email with photographs of the parking lot, which was distributed to the Board. Mr. Carreno believes the petitioner is renting a parking spot to a Boston College student. The petitioner's sidewalk was not shoveled this past winter. Included with Mr. Noone's email were emails from Martha Mulloy and Bill Hoffner, 294 Commonwealth Avenue, and Cathleen and Edward O'Sullivan, 226 Commonwealth Avenue, citing the parking situation and alleging that the petitioner has already converted the basement space.

A resident of 260 Commonwealth said he is opposed. The parking, traffic and snow are problems.

The chairman questioned the allusion to significant construction work on site without building permits. Exactly what is on the site? The committee asked Mr. Peirce to clarify whether building permits were issued for the recent work to the basement as well as to provide details of exactly what is on the site.

#150-15 ANTHONY DePASQUALE petition for a SPECIAL PERMIT/SITE PLAN APPROVAL to change an existing nonconforming use to another nonconforming use in order to convert an existing clubhouse to a multi-family dwelling with five units and to waive one parking stall and to allow parking within the front setback at 15 SOUTH GATE PARK, Ward 3, West Newton, on land known as SBL 33, 31, 9, containing approximately 14,120 square feet of land in a district zoned SINGLE RESIDENCE 3. Ref: Sec 30-24, 30-23, 30-21(b), 30-19(d)(2), (g)(1), and (m) and 30-24(f) of the City of Newton Rev Zoning Ord, 2012.

ACTION HEARING CONTINUED TO AUGUST 4, 2015

NOTE: The petition was presented by attorney Terrence Morris, architect Ron Jarek, and civil engineer Verne Porter. The subject property was constructed in 1920 as a social club, most recently occupied by the Knights of Columbus, and purchased by the petitioner approximately one year ago. The site was originally part of a larger parcel that was subdivided into house lots in 1946. Although zoned Single Residence 3, the neighborhood consists mostly of two-family homes. The petitioner wishes to create five residential units in the existing structure with six to eight parking stalls located in a garage beneath the building and three surface stalls. A legally nonconforming use, the petitioner is seeking a special permit to allow a multi-family dwelling, to waive one parking stall, and to allow parking in the setback. The Historical Commission waived the one-year demolition delay based on the proposed site and architectural plans with some minor changes it suggested.

The proposed units range in size from 460 to 1,709 square feet and include one universally accessible unit and one inclusionary housing unit. Changes to the façade include removal of an existing protruding addition on the building, the addition of a rear dormer, and restoration of the original porch. The proposed site plan represents an improvement to the site as most of the parking will be underground resulting in the removal of the existing bituminous area that will be landscaped. Mr. Morris said the units will probably be rentals as there is a dearth of rental properties.

The petitioner is proposing to install granite curbing and sidewalks along a portion of the frontage where currently none exist. Mr. Porter said there are no drainage issues. The removal of the large amount of existing impervious surface and the soil composition will allow water and snow to infiltrate on-site. Any other engineering issues can be addressed with the Engineering Division in the building permit phase.

The Planning Department supports the project. Aesthetically it will preserve and restore the existing building while adding smaller residential rental units to the city's housing stock. There was some concern expressed about the width of the entrance/exit ramp for the garage as well as the maneuverability of vehicles in the garage. Three mature trees will be removed to accommodate the ramp.

Alderman Crossley complimented the design, one which is cleverly designed to create small units. She is not concerned with the number of underground parking stalls but is curious about the layout and how it and the driveway will work. Will there be an interior signal to assist people entering and exiting? Will the number of cars allowed by the occupants be restricted? She cannot envision parking on both sides of the narrow street.

Alderman Cote wanted to know if the petitioner planned to clean up the site, which is eyesore with overgrown grass, a snowplow, and other debris. He also wanted to know if there could be more affordable units.

Alderman Albright asked how many people the social hall could accommodate for a function and what the parking and traffic were like when it was active. Alderman Lennon is pleased about the

restoration of the existing historical building; in his opinion that is a big plus. He noted that in another lifetime he had DJ'd some functions at the Knights of Columbus hall and at capacity – there were two halls – it accommodated approximately 150 or so people and there were cars parked everywhere.

Alderman Schwartz said the design and the way it fits onto the site are impressive, but asked if the petitioner had considered four units instead of five. Mr. Morris said they started out with different schemes from one unit to six units, ultimately deciding on the five smaller-sized units.

Public Comment

Ruth Comstock, 112 Adena Road, a 28-year resident, said her concern is the number of units, two or three would be more appropriate. In recent years, the number of functions has dropped to several a month at most.

Brenda Mulligan, 109 Adena Road, pointed out that Adena Road is directly across from the proposed driveway, which concerns her

Judy Jaffe, 45 South Gate Park, submitted a letter in opposition, circulated to the full Board via email, which she read aloud.

Eric Boyer, 105 Adena Road, agreed the property as is stands is an eyesore; however, he suggested the petitioner re-think the location of the driveway as he shares concerns about traffic hitting Adena and North Gate.

Deirdre Antonelli, who lives at 28 South Gate Park and also owns numbers 29 and 30, noted that there is no on-street overnight parking from November to April. Although she appreciates the look of the petitioner's proposal, five units may be too many. She wants to ensure there is fencing and landscaping.

The committee continued the public hearing so the petitioner could hold a neighborhood meeting.

The meeting was adjourned at approximately 10:00 PM.

Respectfully submitted,

Marc C. Laredo, Chairman